

26-0950-cv

United States Court of Appeals *for the* Second Circuit

SHAKIRA LESLIE, on behalf of themselves and all others similarly situated,
Plaintiff-Appellant,

SHAMILL BURGOS, on behalf of themselves and all others similarly situated,
Plaintiff,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK (NEW YORK CITY)

BRIEF AND SPECIAL APPENDIX FOR PLAINTIFF-APPELLANT

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— v. —

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Defendants-Appellees.

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INTRODUCTION

For years, Defendants-Appellees the City of New York (the “City”), including the New York City Police Department (“NYPD”) and the New York City Office of Chief Medical Examiner (“OCME”), has secretly collected and analyzed the DNA of unsuspecting New Yorkers, adding the resulting DNA profiles to a “Suspect Index,” where they are constantly compared against the City’s entire database of DNA crime scene evidence. The City targets New Yorkers—including those who have not been convicted or formally charged with any crime, and those who are not even under arrest—by conducting custodial interrogations in rooms specially prepared to capture their saliva, skin cells, or other genetic material. And it does so without obtaining their consent or a warrant. This practice renders the more than 34,000 New Yorkers in the City’s Index—including hundreds of children, as young as eleven years old— suspects in every crime involving DNA evidence, without any actual suspicion that they were involved in those crimes.

In this case, the City set its sights on Plaintiff-Appellant Shakira Leslie (“Leslie”). After arresting Leslie because she was a passenger in a car in which police found a firearm, the NYPD transported her to a precinct, held her for approximately seven hours, and interrogated her in a room the NYPD had prepared to secretly collect her DNA. After pressuring Leslie to drink from a disposable cup, the NYPD almost immediately concluded the interview, then retrieved the cup

within a minute of escorting her from the interrogation room. Using traces of saliva left on the cup, OCME extracted her DNA profile. The City then maintained that DNA profile in the Suspect Index for years, even after she was cleared of all charges. Through similar trickery, the City has collected the DNA of tens of thousands of New Yorkers without their knowledge or consent.

The City's warrantless DNA searches violate the Fourth Amendment. The district court, however, granted summary judgment to the City, holding that the City's DNA collection and indexing scheme does not implicate the Fourth Amendment at all. This Court should reverse.

Both the Supreme Court and this Court have long held that the collection and analysis of DNA samples is a Fourth Amendment search. Because DNA contains the literal building blocks of life, and analysis of it can reveal a host of deeply personal information, individuals have "very strong privacy interests" in their DNA. *United States v. Amerson*, 483 F.3d 73, 85 (2d Cir. 2007). For that reason, this Court has always subjected DNA collection and indexing regimes to Fourth Amendment scrutiny. And although this Court has upheld some DNA indexing regimes as reasonable under the Fourth Amendment, those programs are materially different from the City's *ultra vires* practice. Federal and state DNA indexing statutes strictly curtail when the government may collect DNA, how it may analyze and use that DNA, and when it must be destroyed. But the City's practice, which is unauthorized

under state law, contains none of those critical safeguards. Instead, it leaves the collection and maintenance of New Yorkers' DNA—and all the sensitive personal information it can reveal—entirely up to officials' error-prone discretion. The Fourth Amendment's privacy protections do not countenance such a rogue practice of warrantless, discretionary, and unregulated DNA searches.

JURISDICTIONAL STATEMENT

This case presents a Fourth Amendment claim, brought under 42 U.S.C. § 1983, and state law claims. The district court had subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3), and 1367. The district court issued a final appealable order granting Defendants' motion for summary judgment, denying Leslie's cross-motion for summary judgment, and declining supplemental jurisdiction over Leslie's state-law claims on March 20, 2026, and entered judgment for the City on March 23, 2026. *See* Joint Appendix ("JA") 688. Leslie timely filed a notice of appeal on April 13, 2026. JA 689-90. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Whether the City's secret collection, analysis, and indexing of unsuspecting New Yorkers' DNA are searches under the Fourth Amendment.

2. Whether the City’s warrantless collection, analysis, and indexing of unsuspecting New Yorkers’ DNA are unreasonable searches under the Fourth Amendment.

3. Whether the district court erred in declining to exercise supplemental jurisdiction over Leslie’s state-law claims.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND¹

A. The City’s Collection, Analysis, and Indexing of Leslie’s DNA

In the early morning of July 3, 2019, Shakira Leslie, a Black woman from the Bronx who works as a hair and make-up stylist, was riding in the middle backseat of her cousin’s car when NYPD officers stopped the car for a purported traffic infraction. JA 623 ¶ 133. The police ordered all five occupants out of the car to be searched. *Id.* ¶ 134. According to the NYPD, an officer recovered a firearm from a passenger in the front seat. *Id.* ¶ 135. The officers then arrested Leslie and the other four passengers and transported them to the 41st precinct. JA 623-24 ¶¶ 135-36; JA 163. There, officers confiscated Leslie’s jewelry, took her fingerprints, and

¹ Because this appeal concerns the district court’s grant of summary judgment for the City following the parties’ cross motions for summary judgment, the relevant facts before this Court are those asserted in Leslie’s Rule 56.1 counterstatement and those in the City’s Rule 56.1 statement that are not disputed.

handcuffed her to a bench in a cell. JA 624 ¶ 137. Leslie fell asleep, and around 10:10 a.m., NYPD detectives took her to an interview room. *Id.* ¶ 138.

As the detectives escorted Leslie into the room and removed her handcuffs, a white disposable cup with water sat on the interrogation table waiting for her. JA 624-25 ¶¶ 138-39. After questioning Leslie for a few minutes, an NYPD detective offered her some water. JA 624-25 ¶ 139. Leslie declined. *Id.* The detective persisted—asking “You sure?”—and Leslie reiterated that she did not want water. *Id.* The detective pressed further, stressing that it would “[b]e a while before you get something to drink.” *Id.* Leslie then drank some water from the disposable cup. *Id.* After she stopped, the detective instructed her to “keep drinking.” *Id.* She complied and drank more water, placing the cup back on the table. *Id.* Immediately thereafter, detectives stood Leslie up, handcuffed her hands behind her back, and escorted her back to her cell. JA 625 ¶ 140. Within a minute, a detective returned to the interrogation room and retrieved the cup from which Leslie had sipped, collecting her DNA sample without her knowledge, consent, or a warrant. *Id.*

The NYPD sent the cup to OCME for analysis. JA 625-26 ¶ 141. From the residual DNA left on it, OCME generated a DNA profile, entered it into the Suspect Index, and compared it to the DNA collected from the firearm. *Id.* Leslie had no idea that the NYPD had taken her DNA. JA 626 ¶ 143. At no point did the NYPD inform Leslie that her DNA would be collected, analyzed, or retained, nor was she

provided an opportunity to refuse to provide a DNA sample. *Id.* OCME determined that Leslie’s profile did not match any DNA evidence on the firearm, and the prosecution dropped all charges against her. *Id.* ¶ 142. But Leslie’s DNA profile remained in the Suspect Index for nearly three more years. *Id.* During this period, although her charges were dismissed, and she was never convicted of a crime, the City continually searched Leslie’s indexed DNA profile against all existing and newly uploaded crime-scene DNA profiles. *Id.* The City only removed her DNA profile from the Suspect Index after she initiated this lawsuit. *Id.*

B. The City’s Policy and Practice of Secretly Collecting, Analyzing, and Indexing the DNA of Unsuspecting New Yorkers

Leslie’s experience is one of many: The City has secretly collected, analyzed, and included in its Suspect Index the DNA of tens of thousands of New Yorkers. JA 606 ¶ 92. The City has a policy and practice of secretly collecting the DNA of anyone whom the NYPD, with almost unfettered discretion, deems a suspect in a crime, analyzing that DNA, and then continually comparing it against both specific crime scene evidence and its entire database of such evidence. *See generally* JA 564-610, 619-23 ¶¶ 1-100, 121-32.

The City’s practice begins with the NYPD taking what it calls “abandonment samples”—without a warrant or court order and without the knowledge or consent of the individual from whom the sample is taken. JA 564, 567-68 ¶¶ 1-8. In most cases, the NYPD collects a suspect’s DNA sample in “a controlled environment,

meaning from a[] [police] interview room.” JA 569 ¶¶ 12-13. The NYPD’s Detective Guide gives detectives step-by-step instructions on the collection process. JA 570 ¶ 14. Per the Guide, the NYPD instructs detectives to provide suspects with an object that will be partially consumed or drunk. JA 570-71 ¶ 15. The NYPD specifically trains its detectives to collect “cigarette butts, water bottles, soda cans, and paper cups” because they have saliva and are “the best items” for DNA testing purposes. JA 573 ¶ 22. If detectives cannot collect an item with saliva, they can collect items that the suspects touched instead, like a pen. JA 573-74 ¶ 23.

After the interrogation, NYPD policy requires that an officer “handcuff all” people in custody “with hands behind their back” before escorting them back to their cell. JA 574-75 ¶¶ 25-27. Detectives then return to the interview room to collect the person’s DNA sample. JA 571, 573, 625 ¶¶ 16-21, 140. The NYPD does not notify individuals that it has their DNA. JA 567-68 ¶ 8.

The NYPD gives its detectives broad discretion to determine when to secretly collect DNA samples. They have discretion to decide who is a suspect in the first place. Having decided someone is a suspect, they can secretly collect DNA from adults (regardless of the alleged crime), from children as young as 13 suspected of a felony, and even from those not under arrest. JA 577-85 ¶¶ 31-36, 40-43, 45. And suspects may wind up waiting multiple hours before they are offered a beverage or food, which can then be used to collect a DNA sample. JA 576-77 ¶¶ 29-30.

After collection, the NYPD sends the DNA sample to OCME for testing. JA 589-90 ¶ 55. OCME will test a DNA suspect sample only if the NYPD submits crime scene evidence associated with the case for comparison. JA 591-92 ¶ 60. After receiving the sample, OCME analyzes it, develops a DNA profile, compares the profile to the specific crime scene evidence submitted with the DNA sample, and includes the profile in OCME's Suspect Index—regardless of whether it matched the crime scene evidence. JA 592-94, 603-04 ¶¶ 61-66, 87. Once in the Suspect Index, the profile is compared against all past and future crime scene evidence DNA profiles. JA 602-03 ¶¶ 84-85. OCME does not notify suspects when it uploads their DNA profile to the Suspect Index. JA 605 ¶ 90. The only way someone can avoid inclusion in the Suspect Index is through a protective order, which individuals cannot seek without notice that their DNA has been collected in secret. JA 603-04 ¶ 87.

The Suspect Index includes the DNA profiles of a vast range of New Yorkers, including children, people who were not under arrest, and arrestees such as Leslie. JA 582, 605, 626 ¶¶ 40, 91, 142. As of August 1, 2025, the Suspect Index included over 34,000 searchable DNA profiles, which are continually searched against nearly 65,000 forensic crime scene profiles. JA 602-03, 606 ¶¶ 85, 92. Nearly 90% of the DNA profiles in the Suspect Index derived from Black and Hispanic individuals. JA 615 ¶ 113.

C. The City’s Suspect Index Exists Outside Any Statute or Regulatory Scheme

Significant forensic DNA advances in the early 1990s made it possible to extract usable DNA results from small amounts of saliva or skin cells. JA 627, 639-40 ¶¶ 146, 178-79. Modern DNA analysis can now be used reliably to identify an individual and reveal myriad personal details about that individual and their background, including ethnicity, susceptibility to disease, anticipated response to certain therapeutic agents, and—when paired with genealogical investigations—kinship to near and distant relatives. JA 637-38 ¶¶ 171-73. And because humans constantly, unknowingly, and unavoidably shed DNA—through saliva, hair, and skin cells—the possibilities for deploying those advances in forensic DNA testing are endless. JA 627-35 ¶¶ 146-65.

Against this backdrop, the State Legislature enacted powerful genetic privacy protections, passing Civil Rights Law § 79-l to prohibit any person from “perform[ing] a genetic test,” including “DNA profile analysis,” “on a biological sample taken from an individual without the prior written informed consent of such individual.” N.Y. Civ. Rights Law §§ 79-l(2)(a), (1)(a). The willful violation of this law is a misdemeanor punishable by a fine and imprisonment. *Id.* § 79-l(5)(b). The law provides exceptions permitting non-consensual genetic testing when performed pursuant to a court order or pursuant to Article 49-B of the New York State Executive Law, which established a single centralized, statewide DNA index (“State

Index”). *Id.* (4)(b); N.Y. Exec. Law §§ 995-c(1), c(2), § 995(6). Before issuing a court order authorizing such tests, courts must “consider the privacy interests of the individual subject of the genetic test” along with the public interest. N.Y. Civ. Rights Law § 79-l(4)(d). Article 49-B limits inclusion in the State Index to DNA from “designated offenders” who have been convicted of felony or misdemeanor crimes. N.Y. Exec. Law § 995-c(3)(a), § 995(7). Article 49-B also creates the Commission on Forensic Science to regulate the operation of the State Index and to accredit state and local DNA laboratories that perform forensic DNA testing. *See id.* §§ 995-a, 995-b.

In 1999, the State Legislature considered, but rejected, a proposal spearheaded by then-Mayor Rudy Giuliani to expand the “designated offender” category to include individuals merely arrested for a crime, even if not convicted. *See* New York Bill Jacket, 1999 A.B. 9037, Ch. 560 (Westlaw); N.Y. Exec. Law § 995-c(3)(a), § 995(7). Afterwards, the City developed its own Suspect Index, which includes DNA from both arrestees and suspects not even under arrest. JA 580 ¶ 36. The Commission on Forensic Science has no statutory authority to oversee the City’s Suspect Index, beyond accrediting OCME’s laboratory. *See* JA 608-10 ¶¶ 99-100; *see also* N.Y. Exec. Law §§ 995-a, 995-b.

D. The City’s Suspect Index Since 2020

In February 2020, the NYPD created a procedure to review the DNA profiles in the Suspect Index and recommend that OCME remove certain profiles based on the NYPD’s own criteria. JA 611 ¶ 102. The NYPD promised to review all profiles in the Suspect Index in 2020, then review every profile after its first two years in the Index, and conduct a full database review every four years. JA 611-13 ¶¶ 102-03, 106. Despite the NYPD’s promised reform, the City’s Suspect Index has grown. JA 606 ¶ 93.

The NYPD’s self-imposed and self-monitored review process aims ostensibly to retain only profiles that “produce[] informative value to the criminal justice system,” JA 615-16 ¶ 114, but its exceptions swallow the self-imposed rule. For example, the City retains profiles when there has been no judicial determination as to the person’s guilt or innocence, including when the person’s case was dismissed on statute-of-limitations or speedy-trial grounds. JA 616-17 ¶ 117. Although profiles not linked with a match in the database are eligible for removal, reviewers can make exceptions for anyone they deem to be a suspect in an ongoing investigation. JA 612, 616 ¶¶ 105, 115. And reviewers made hundreds of these exceptions when reviewing the database in 2020. JA 616 ¶¶ 115-16. As a result of such exceptions, profiles belonging to those who committed no crime may remain in the database indefinitely. JA 617-19 ¶¶ 118-20; JA 338.

Significant errors have also occurred during the review process—including data discrepancies, incorrect names, and duplicate profiles—causing the removal of certain profiles to be delayed. *Id.* And NYPD supervisors expressly instructed that the removal of certain profiles should be delayed. JA 618 ¶ 119. Remaining DNA profiles were continually compared to any existing and newly uploaded crime scene profiles during these delays. *Id.* For example, the City kept Leslie’s DNA in the Suspect Index for nearly three years and only removed it after the filing of this lawsuit. JA 626 ¶ 142.

Even when the NYPD requests that OCME remove profiles, “removal” does not actually require the destruction of the person’s DNA sample or profile. JA 620-22 ¶¶ 126-31. Instead, OCME only removes the person’s DNA profile from the Suspect Index, while retaining the underlying profile, extracts, and data outside of the Index. *Id.* OCME can still (at NYPD’s request) compare the person’s profile against any crime scene evidence. JA 621 ¶ 127. The NYPD also keeps the person’s physical DNA sample indefinitely. JA 622-23 ¶¶ 131-32.

II. PROCEDURAL HISTORY

On March 21, 2022, Leslie filed a class action complaint alleging that the City’s policy and practice of secretly collecting, analyzing, and indexing the DNA of unsuspecting New Yorkers violates the Fourth Amendment and that the City’s

maintenance of the Suspect Index violates Article 49-B of the Executive Law. JA 6; *see* JA 18-39 (Amended Complaint).²

After discovery, the City and Leslie filed cross-motions for summary judgment. JA 14-16; District Ct. ECF Nos. 127-133, 140-144. On March 20, 2026, Judge Naomi Reice Buchwald granted the City’s motion for summary judgment and denied Leslie’s cross-motion. *Leslie v. City of New York*, No. 22 CIV. 2305 (NRB), 2026 WL 798145 (S.D.N.Y. Mar. 20, 2026); *see also* Special Appendix (“SPA”) 1-44 (Mem. and Order on Summary Judgment).

First, the district court held that the Fourth Amendment did not apply to the City’s collection, analysis, or indexing of Leslie’s DNA. Despite acknowledging this Court’s holding that “DNA implicates significant privacy interests because of the sensitive information that could be extracted from genetic material,” SPA 24, the district court nevertheless held that Leslie had no reasonable expectation of privacy in her DNA, which the NYPD secretly collected from a disposable cup. SPA 35-41. The district court reasoned that Leslie failed to manifest a subjective expectation of privacy in her DNA, even though Leslie neither knew that the NYPD was secretly collecting it nor had any means to prevent that collection, such as by taking the disposable cup with her from the interrogation room. SPA 36-37. And, declining

² An additional plaintiff, Shamill Burgos, later withdrew from the case, as reflected in the Amended Complaint, and is not a party to this appeal.

to consider the many private facts that can be drawn from a DNA sample, the district court held that Leslie's expectation of privacy in her DNA was objectively unreasonable, given the City's interests, her status as an arrestee, and the City's ultimate use of her DNA to create a profile from "non-coding" regions of chromosomes, which according to the district court "do not reveal [Leslie's] genetic traits." SPA 21, 37-41. Because it held that the collection of Leslie's DNA was not a search, the district court declined to decide whether she "voluntarily abandoned" that sample while in custody. SPA 41 n.10.

As for the City's separate analysis and indexing of Leslie's DNA, the district court held that the City's practice was constitutionally indistinguishable from the statutory DNA indexing program upheld in *Maryland v. King*, 569 U.S. 435 (2013). SPA 18-31. In so holding, the district court declined to analyze the significant differences between the City's practice and the program at issue in *King*, including the significant discretion that the NYPD has in deciding whose DNA to collect and analyze, when and how that DNA can be compared to crime-scene profiles, and when that DNA must be removed from the database or destroyed. *Id.* Relying on forty-year-old case law outside of the context of DNA analysis, the district court further held that the City's indexing and analysis of DNA is not a distinct Fourth Amendment search. SPA 25-26. At the same time, the district court declined to apply the Supreme Court's decision in *Carpenter v. United States*, 585 U.S. 296

(2018), applying the Fourth Amendment in the context of technological advances, instead cabining that decision to its facts. SPA 31-35.

As to the reasonableness of the City’s collection and indexing program, the district court held, in a two-sentence footnote, that any Fourth Amendment search was reasonable because the City collects DNA through non-intrusive means, creates profiles only from non-coding loci, and has a substantial interest in identifying arrestees and investigating crimes. SPA 41 n.11.

Finally, the district court declined to exercise supplemental jurisdiction over Leslie’s state-law claims under 28 U.S.C. § 1367(c)(1), holding that the legality of the City’s operation of the Suspect Index under New York law raised a “novel” issue of State law. SPA 41-44.

SUMMARY OF THE ARGUMENT

I. The Fourth Amendment applies to the City’s DNA collection and indexing practice.

A. The City’s collection of Leslie’s DNA from a disposable water cup was a search.

1. A search occurs under the Fourth Amendment when the government invades an individual’s reasonable expectations of privacy. Both the Supreme Court and this Court have long held that the collection of DNA samples is a Fourth Amendment search. DNA holds vast amounts of sensitive personal information,

including medical, familial, and other traits, and thus individuals have “very strong privacy interests” in that information. *United States v. Amerson*, 483 F.3d 73, 85 (2d Cir. 2007).

2. The district court’s conclusion that the Fourth Amendment did not apply to the collection of Leslie’s DNA rests on several legal errors. The district court improperly faulted Leslie for failing to affirmatively manifest a subjective privacy interest in DNA. But that mechanistic analysis runs contrary to the Supreme Court’s decisions in *Kyllo*, *Carpenter*, and *Chatrie*. And the conclusion makes little sense where, as here, the City orchestrated a ruse to secretly collect Leslie’s DNA without her knowledge. Leslie’s privacy expectations as an arrestee and the City’s interests in collection go to the reasonableness of the search, not whether it was a search at all. Nor, under this Court’s case law, does it matter that the City generates DNA profiles using only “non-coding” loci or collects DNA without physically intruding on arrestees’ bodies. Fourth Amendment privacy turns on what DNA can reveal, not only what the government claims to have extracted in a particular case.

3. The abandonment doctrine has no application here either. That rule applies when a person voluntarily abandons property, thereby forfeiting any expectation of privacy in it. But in no real sense did Leslie “voluntarily” abandon her DNA. Instead, the NYPD took Leslie’s DNA through a carefully orchestrated ruse, where

the City affirmatively prevents arrestees from taking partially consumed items, like Leslie's water cup, with them.

B. The City's subsequent analysis, storage, and indexing of Leslie's DNA profile constituted a separate search. This Court has repeatedly held, in both the DNA context and others, that the collection of evidence and the subsequent querying of that evidence constitute independent Fourth Amendment searches. In reaching a contrary conclusion, the district court ignored this Court's decisions in *Amerson* and *Nicholas* and instead relied on faulty analogies to non-DNA evidence.

II. The City's warrantless collection, analysis, and indexing of DNA are unreasonable searches in violation of the Fourth Amendment.

A. The district court upheld the City's searches almost solely based on the Supreme Court's decision in *Maryland v. King*. But *King* involved a materially different DNA collection regime, which, among other things, significantly cabined official discretion, ensured that DNA was analyzed only after a probable-cause finding, and strictly limited the uses of DNA. The City's practice contains no comparable safeguards.

B. The City's DNA practice cannot survive the special-needs test that applies to suspicionless searches and requires a need distinct from ordinary law enforcement.

1. The City fails the first step of the special-needs test because its practice is designed to investigate ordinary criminal wrongdoing. The NYPD collects DNA from suspects in specific investigations, and OCME analyzes it only when crime-scene evidence is submitted for comparison.

2. The City's practice is also unreasonable under the second step's balancing test. Individual privacy interests in DNA are substantial. The City collects and stores DNA from individuals who have not even been arrested for any crime. Unlike other DNA programs this Court has reviewed, the City's practice lacks any statutory safeguards limiting when DNA may be collected, how it can be used, or when it must be destroyed. And the City acknowledges that collection errors can create a risk of wrongful prosecution or conviction. On the other side of the scale, the City's interest in ordinary evidence gathering can be addressed through a warrant or court order based on probable cause.

III. The district court abused its discretion by declining to exercise supplemental jurisdiction over Leslie's state-law claim because the claim is not novel. And traditional factors of economy, convenience, fairness, and comity favor retaining jurisdiction. To the extent that the state-law questions are unsettled, certification to the New York Court of Appeals, rather than dismissal, is the proper course.

STANDARDS OF REVIEW

This Court “review[s] a district court’s decision to grant summary judgment *de novo*, construing the evidence in the light most favorable to the party against which summary judgment was granted and drawing all reasonable inferences in its favor.” *Halo v. Yale Health Plan*, 819 F.3d 42, 47 (2d Cir. 2016) (cleaned up). “Summary judgment is only appropriate where there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.” *Kapps v. Wing*, 404 F.3d 105, 112 (2d Cir. 2005). “The same standard applies [to the plaintiff’s motion] where, as here, the parties filed cross-motions for summary judgment and the district court granted one motion, but denied the other.” *Morales v. Quintel Ent., Inc.*, 249 F.3d 115, 121 (2d Cir. 2001).

The Court reviews a district court’s decision to decline to exercise supplemental jurisdiction for abuse of discretion. *Marcus v. AT&T Corp.*, 138 F.3d 46, 57 (2d Cir. 1998). A district court’s “discretion to decline supplemental jurisdiction is available only if founded upon an enumerated category of [28 U.S.C. §] 1367(c).” *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 140 F.3d 442, 448 (2d Cir. 1998). Even “where at least one of the subsection 1367(c) factors is applicable, a district court should not decline to exercise supplemental jurisdiction unless it also determines that doing so would not promote the values articulated in [*United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966)]: economy,

convenience, fairness, and comity.” *Jones v. Ford Motor Credit Co.*, 358 F.3d 205, 214 (2d Cir. 2004).

ARGUMENT

I. THE CITY’S SECRET COLLECTION, ANALYSIS, AND INDEXING OF UNSUSPECTING NEW YORKERS’ DNA ARE FOURTH AMENDMENT SEARCHES.

The Fourth Amendment applies to government searches or seizures—when the government invades an individual’s reasonable expectation of privacy in their persons, houses, papers, or effects. Here, the City’s conduct constitutes a Fourth Amendment “search” in two independent ways. *First*, as both this Court and the Supreme Court have acknowledged, individuals have a reasonable expectation of privacy in biological samples, such as DNA, that can reveal deeply personal information. The City’s surreptitious collection of DNA samples from Leslie and tens of thousands of other New Yorkers therefore constitutes a Fourth Amendment search. *Second*, separate from its collection of Leslie’s DNA, the City’s subsequent analysis, storage, and indexing of that DNA constitutes a distinct invasion of her privacy interests, and thus an independent search.

A. The City’s Collection of Leslie’s DNA Was a Fourth Amendment Search.

The Supreme Court has long held that individuals have strong privacy interests in “biological samples” that the government collects from them, including blood, urine, breath, and DNA samples, because of the information that these

samples can reveal. *Skinner v. Ry. Lab. Execs.’ Ass’n*, 489 U.S. 602, 618 (1989). This Court, accordingly, has held for decades that people have “very strong privacy interests” in the “vast amount of sensitive information that can be mined from” their DNA. *United States v. Amerson*, 483 F.3d 73, 85 (2d Cir. 2007); see *Nicholas v. Goord*, 430 F.3d 652, 658 (2d Cir. 2005). The district court nevertheless held that Leslie had no reasonable expectation of privacy in her DNA. SPA 35-41. But that conclusion rests on a misapplication of the Fourth Amendment search analysis, as well as the nonsensical conclusion that Leslie should have affirmatively proclaimed a privacy interest in material that she did not even know the City was secretly collecting. The City’s alternative argument that Leslie voluntarily “abandoned” her DNA on a disposable cup that she had no choice but to leave in the interrogation room grossly overextends the abandonment doctrine, contrary to the Supreme Court’s admonition that courts must apply such rules cautiously, especially in new technological contexts.

1. *Individuals have a reasonable expectation of privacy in their DNA.*

The Fourth Amendment guarantees the “right of the people to be secure in their persons, houses papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. The Amendment’s “central aim” is “to secure ‘the privacies of life’ against ‘arbitrary power,’” and “to place obstacles in the way of a too permeating police surveillance.” *Carpenter v. United States*, 585 U.S. 296,

305 (2018) (citations omitted); *accord Chatrie v. United States*, No. 25-112, 2026 WL 1855568, at *8 (U.S. June 29, 2026). Consistent with that purpose, it is well established that “property rights are not the sole measure” of what constitutes a search or a seizure under the Fourth Amendment. *Carpenter*, 585 U.S. at 304 (citation omitted). That is because the Fourth Amendment “protects people, not places.” *Katz v. United States*, 389 U.S. 347, 351 (1967). Therefore, when assessing whether a Fourth Amendment search has occurred, courts ask “whether the individual has an expectation of privacy that society is prepared to recognize as reasonable.” *Kyllo v. United States*, 533 U.S. 27, 34 (2001).

Because biological samples are themselves components or products of the “person[]” that the Amendment protects, the Supreme Court has long held “that the collection and subsequent analysis of ... biological samples must be deemed Fourth Amendment searches.”³ *Skinner*, 489 U.S. at 618. The Fourth Amendment thus applies to (i) the government’s collection of blood for an analysis of alcohol content, *Schmerber v. California*, 384 U.S. 757, 767-68 (1966); (ii) breathalyzer and urine tests, *Skinner*, 489 U.S. at 614; *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995); *Nat’l Treasury Emps. Union v. Von Raab*, 489 U.S. 656, 665 (1989); and

³ The collection of biological samples may be characterized as either a search or a seizure, as it “may be viewed as a meaningful interference with the [person’s] interest in his bodily fluids.” *Skinner*, 489 U.S. at 617 n.4.

(iii) more broadly—“DNA samples,” *Maryland v. King*, 569 U.S. 435, 446 (2013). And this Court has further recognized “the vast amount of sensitive information that can be mined from a person’s DNA” and, thus, “the very strong privacy interests that all individuals have in this information.” *Amerson*, 483 F.3d at 85; *see Nicholas*, 430 F.3d at 658.

These cases accord with the Fourth Amendment’s “overriding function” of “protect[ing] personal privacy and dignity against unwarranted intrusion by the State.” *Schmerber*, 384 U.S. at 767. DNA contains the unique genetic blueprint of the very “person[]” protected by the Fourth Amendment’s text. JA 637 ¶ 172. DNA samples thus “differ in both a quantitative and a qualitative sense from other objects that might be carried on an arrestee’s person.” *Cf. Riley v. California*, 573 U.S. 373, 393 (2014). Even more so than other biological materials, DNA “can reveal a host of private medical facts” and other information about an individual. *Skinner*, 489 U.S. at 617. Like medical charts, DNA can reveal physical characteristics and genetic predispositions toward certain medical conditions. JA 641 ¶ 183; JA 412 ¶ 23; *see Riley*, 573 U.S. at 395-96. Like review of a family photo album, DNA can reveal a comprehensive history of biological familial relationships. JA 412-13 ¶¶ 23-26. And DNA can confirm whether a person is the biological parent of another, *id.*—a revelation that can shed light on that person’s past “sexual associations,” *Carpenter*, 585 U.S. at 311 (citation omitted).

A government search of an individual’s DNA thus goes far “beyond” the observation of “mere ‘physical characteristics [that are] constantly exposed to the public.’” *Cupp v. Murphy*, 412 U.S. 291, 295 (1973) (citation omitted). Indeed, a DNA sample is “less like a fingerprint” than it is “like a microchip containing an entire library’s worth of information.” Elizabeth E. Joh, Essay, *Reclaiming “Abandoned” DNA: The Fourth Amendment and Genetic Privacy*, 100 Nw. U. L. Rev. 857, 874 (2006). And an analysis of that DNA can “expose to the government far more than the most exhaustive search of a house.” *Riley*, 573 U.S. at 396 (emphasis omitted). For that reason, a host of states—including New York—have enacted privacy protections for DNA into law. *See, e.g.*, N.Y. Civ. Rights Law § 79-1.⁴ Such laws only confirm what this Court has already held: individuals have “very strong privacy interests” in their DNA. *Amerson*, 483 F.3d at 85; *see also Minnesota v. Carter*, 525 U.S. 83, 88 (1998) (explaining that the existence of statutory protections may confirm that a person has a reasonable expectation of privacy).

⁴ *See also, e.g.*, Or. Rev. Stat. § 192.537(1) (“[A]n individual’s genetic information and DNA sample are private and must be protected, and an individual has a right to the protection of that privacy.”); Fla. Stat. § 740.40 (requiring “express consent” for certain “DNA analysis” and making results of genetic testing “exclusive property of the person tested”); Colo. Rev. Stat. § 10-3-1104.7(1)(a) (“Genetic information is the unique property of the individual to whom the information pertains.”); Ga. Code Ann. § 33-54-1(1) (“Genetic information is the unique property of the individual tested.”); La. Rev. Stat. Ann. § 22:213.7(E) (genetic information is “property” of the person tested).

2. *The district court erred in concluding that the City's DNA collection is not subject to the Fourth Amendment.*

Notwithstanding the “vast amount of sensitive information that can be mined from a person’s DNA,” *Amerson*, 483 F.3d at 85, the district court held that Leslie had *no* expectation of privacy in her DNA. SPA 35-41. That conclusion rests on three legal errors.

First, the district court held that DNA collection is not subject to Fourth Amendment scrutiny because Leslie had not “manifested a subjective expectation of privacy” in her DNA, citing Leslie’s statements during her deposition that she had not previously thought much about her DNA and did not affirmatively inform the police—during her custodial interrogation—that she considered her DNA to be private. SPA 36. Such reasoning is wrong both in legal and practical terms.

On the law, the district court’s mechanistic analysis runs counter not only to *Amerson* and *Nicholas*—both of which recognized the privacy interests inherent in DNA—but also to Supreme Court decisions recognizing that an individual need not manifest a subjective expectation of privacy in circumstances where it would be unreasonable to do so, particularly when “sense-enhancing technology” renders observable information long understood to be private. *Kyllo*, 533 U.S. at 34.

In *Kyllo*, the Supreme Court considered “whether the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home constitutes a ‘search’ within the meaning of the

Fourth Amendment.” *Id.* at 29. The Ninth Circuit had held that the Fourth Amendment did not apply because the petitioner, who had been using heat lamps to grow marijuana in his home, “had shown no subjective expectation of privacy because he had made no attempt to conceal the heat escaping from his home.” *Id.* at 31. The Court never disputed that fact, but it reversed anyway. “[S]uch a mechanical interpretation of the Fourth Amendment,” the Court explained, would leave people “at the mercy of advancing technology” that could render spaces or materials previously presumed to be private open to “unreasonable governmental intrusion,” chipping away at “that degree of privacy against government that existed when the Fourth Amendment was adopted.” *Id.* at 31, 34-35 (citation omitted). In other words, that the petitioner in *Kyllo* did not affirmatively manifest a privacy interest in the heat emanating from his home did not mean that he abandoned the privacy interest in what he did inside the home.

The Court’s recent decisions in *Carpenter* and *Chatrie* reinforce that conclusion. In *Carpenter*, the Court addressed whether the “Government conducts a search under the Fourth Amendment when it accesses historical cell phone records that provide a comprehensive chronicle of a user’s past movements.” *Carpenter*, 585 U.S. at 300. The Court acknowledged that an “individual continuously reveals his location to his wireless carrier.” *Id.* at 309. And there was no indication that the petitioner had affirmatively asserted any subjective expectation of privacy in those

records; as with unconsciously shed DNA, it is unclear whether the petitioner even knew that his location was being disclosed. *Id.* at 311, 313. Yet the Court had no trouble holding that the government’s collection of those records was a Fourth Amendment search. Whether the petitioner in *Carpenter* subjectively realized it or not, cell-site location records provide “an intimate window into a person’s life.” *Id.* at 310-11. “Prior to the digital age,” society’s expectation was “that law enforcement agents and others would not—and indeed, in the main, simply could not”—amass such a detailed catalogue of a person’s movements. *Id.* (citation omitted). In the face of “seismic shifts in digital technology” making that kind of a search possible, *id.* at 313, the fact that Carpenter never expressed any subjective interest in—or even awareness of—his shedding of cell-site location data did not mean that Fourth Amendment protections evaporated.

And just a month ago, the Supreme Court reaffirmed *Carpenter* and *Kyllo* in *Chatrle*. 2026 WL 1855568, at *8-18. There, the Court addressed privacy interests in cellphone “Location History,” which records and sends to Google a person’s cellphone location “every two minutes or so.” *Id.* at *4. The individual there never manifested any expectation of privacy in that Location History. To the contrary, his location history was “stored on Google’s servers,” and he affirmatively “turn[ed] on the service” when he “set[] up a Google account.” *Id.* at *12, 15. Yet that did not matter. An individual’s location history could “serve as a personal journal of a user’s

movements” and thus resembled “other private materials” that a person “reasonably views as his own” and “reasonably expects to be shielded from the ‘inquisitive eyes’ of the government.” *Id.* at *12 (citation omitted).

Together, *Kyllo*, *Carpenter*, and *Chatrle* reject the “mechanical interpretation” of the Fourth Amendment that the district court employed here. *Chatrle*, 2026 WL 1855568, at *9 (quoting *Kyllo*, 533 U.S. at 35). In all three cases, the individual never manifested a subjective expectation of privacy, either in the heat emanating from the home, in cell-site location data, or in location history created and maintained by a third party. Yet that did not eliminate Fourth Amendment protection where, as here, the search was enabled by technological advances that could reveal “privacies of life” previously thought safe from secret government intrusion. *Carpenter*, 585 U.S. at 311 (citation omitted); *see Chatrle*, 2026 WL 1855568, at *10 (“A new technology should not transform what individuals had reasonably thought they could withhold from the Government.”). Just as *Kyllo*, *Carpenter*, and *Chatrle* had no reason to believe they needed to express an expectation of privacy in information traditionally understood to be safe from prying government eyes, neither did Leslie have cause to proclaim the privacy of her DNA: She had no reason to know the City was collecting, or even capable of collecting, her DNA from a cup of water. *Kyllo*, *Carpenter*, and *Chatrle* recognize that, in those

circumstances, a manifestation of a subjective expectation of privacy cannot be the *sine qua non* of a Fourth Amendment search.

Setting aside its legal error, the district court’s analysis also defies common sense. Virtually no one walks around everyday life contemplating—let alone proclaiming—their privacy interests in their genetic code.⁵ Rather, as with other biological samples like breath, blood, or urine, it is generally presumed that DNA is private, a presumption confirmed by state laws protecting that material. *See supra* at 21-24 & n.4. Further, most people are unlikely to expect that genetic material can or will be collected from a pen, cigarette, or cup. *See* JA 410-11 ¶¶ 16-20. And—as in *Kyllo*, *Carpenter*, and *Chatrrie*—having no reason to believe that they are exposing their DNA to the government, most people would have no reason to manifest an expectation of privacy in such material.

Second, turning to the objective prong of the analysis, the district court found that Leslie had no objectively reasonable expectation of privacy in her DNA because (i) she was an arrestee and (ii) the City purportedly has “legitimate” interests in DNA collection. SPA 37-39, 40. That reasoning fails on multiple counts. As a preliminary matter, this Court squarely rejected the notion that an arrestee’s status

⁵ *Cf. Dr. Strangelove or: How I Learned to Stop Worrying and Love the Bomb* (Columbia Pictures Corp. 1964) (General Jack D. Ripper: “I can no longer sit back and allow ... the international Communist conspiracy to sap and impurify all of our precious bodily fluids.”).

eliminates all Fourth Amendment protection in *Nicholas*. 430 F.3d at 658. More fundamentally, however, the district court’s reasoning misapplies the Fourth Amendment analysis: Whether the City has an interest in DNA collection and whether an arrestee has a relatively diminished expectation of privacy in certain respects go to the *reasonableness* of the search, *not* the predicate question of whether there was a Fourth Amendment search in the first place.⁶ The two cases on which the district court relied—*Maryland v. King*, 569 U.S. 435 (2013), and *Birchfield v. North Dakota*, 579 U.S. 438 (2016)—illustrate exactly that. *See* SPA 37-40. In each of those cases, the Court first held that the seizures of biological samples at issue were searches subject to the Fourth Amendment, even as it later held those searches were constitutionally reasonable. *See King*, 569 U.S. at 446 (finding the collection of saliva “to obtain DNA samples is a search”); *Birchfield*, 579 U.S. at 455 (finding that “the taking of a blood sample or the administration of a breath test is a search”).

Third, the district court held that, because the use of Leslie’s DNA here was limited to creating “a DNA profile from non-coding loci for identification,” Leslie’s “hypothetical privacy harms” are irrelevant. SPA 39-40. “[T]he relevant inquiry,”

⁶ For the same reason, the district court’s statement that had Leslie been arrested by the FBI, “she would have been required to provide a DNA sample” under 34 U.S.C. § 40702 is immaterial here. SPA 38. Whether warrantless federal DNA collection under § 40702 is reasonable is a distinct question from whether it is a search at all, and this Court has already held that the collection of DNA under that very federal scheme *is* a Fourth Amendment search. *Amerson*, 483 F.3d at 77.

the district court believed, “is what the government actually did, not what technological advances might theoretically permit.” *Id.* at 39; *see id.* at 31-32. In other words, while DNA samples can reveal “physical traits, medical information, ... genetic predispositions,” and other intimate facts, *id.* at 29, the district court considered those concerns immaterial because the City here did not—to Leslie’s knowledge—conduct such an analysis.

That conclusion is irreconcilable with the decisions of this Court and the Supreme Court. First in *Nicholas*, and then again in *Amerson*, this Court held that DNA collection is subject to the Fourth Amendment, even though those cases involved only the analysis of supposedly “junk DNA”—*i.e.*, “non-coding” loci. *See Nicholas*, 430 F.3d at 658, 670; *Amerson*, 483 F.3d at 76-77. That did not alter the conclusion that “the vast amount of sensitive information that can be mined from a person’s DNA” created “very strong privacy interests” in that material. *Amerson*, 483 F.3d at 85.

Lest there be any doubt, the Supreme Court has repeatedly analyzed whether the Fourth Amendment applies to a given search based on the information that could *potentially* be gleaned from the search, not what the government actually observed in a given case. In *Skinner*, for instance, the Court considered that “chemical analysis of urine ... can reveal a host of private medical facts about a [person], including whether he or she is epileptic, pregnant, or diabetic,” 489 U.S. at 617, even

though the urine sample there was used only for drug and alcohol detection, *id.* at 610. In *Carpenter*, the Court considered the fact that cell-site location data might reveal a person’s “familial, political, professional, religious, and sexual associations,” although nothing of the sort was alleged in that case. 585 U.S. at 311 (citation omitted). In *Kyllo*, the use of a thermal-imaging device did not, of course, disclose “at what hour each night the lady of the house takes her daily sauna and bath.” 533 U.S. at 38. Yet the Court rejected the argument that “there was no objectively reasonable expectation of privacy” simply because the imager there “did not expose any intimate details of Kyllo’s life.” *Id.* at 31. And most recently, in *Chatrie*, the Court confirmed that “[w]hether something is a search does not depend on what it finds” in a particular case. 2026 WL 1855568, at *14. The mere possibility that intimate details could be disclosed evidences sufficient privacy interests to implicate the Fourth Amendment.

So too here. That the City used Leslie’s DNA sample—as far as she knows—only to generate a profile “from non-coding loci for identification,” SPA 39, does not change the fact that the same hair, skin cell, or drop of saliva from which the City gathers DNA could reveal far more intimate details too.

3. *The abandonment doctrine does not apply to the collection of DNA involuntarily shed in the custodial context.*

Because the district court held that Leslie had no reasonable expectation of privacy in her DNA, it did not resolve whether she “voluntarily abandoned” her

DNA on the cup “upon exiting the interview room.” SPA 41 n.10.⁷ Should this Court address that question, it should hold that the abandonment doctrine has no application here, where the NYPD prevents suspects from retaining items containing their involuntarily and uncontrollably shed DNA.

The abandonment doctrine recognizes that “recoveries of abandoned property” generally are “not protected by the Fourth Amendment.” *United States v. McKenzie*, 13 F.4th 223, 232 (2d Cir. 2021). That is so because “[w]hen a person voluntarily abandons property, ... he forfeits any reasonable expectation of privacy that he might have had in the property.” *United States v. Lee*, 916 F.2d 814, 818 (2d Cir. 1990). In other words, that which “a person knowingly exposes to the public ... is not a subject of Fourth Amendment protection.” *California v. Greenwood*, 486 U.S. 35, 41 (1988) (citation omitted). Thus, the contents of garbage bags that a person voluntarily leaves “at the curb for the express purpose of conveying it to a third party” are not protected by the Fourth Amendment, for it is “common knowledge” that such materials “are readily accessible” to any passers-by. *Id.* at 40.

Although a person generally “has no legitimate expectation of privacy in information he voluntarily turns over to third parties,” *Carpenter*, 585 U.S. at 308

⁷ Contrary to the district court’s understanding, Leslie does not assert an expectation of privacy “in the disposable cup from which she drank,” but rather in her DNA; the cup was just the vessel by which the NYPD extracted a sample of her DNA, akin to a buccal swab or a blood draw.

(quoting *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979)), the Supreme Court “has been careful not to uncritically extend” such rules, particularly “[w]hen confronting new concerns wrought by” technological advances, *id.* at 318. Indeed, in *Carpenter* and in *Chatrue*, the Supreme Court declined to extend the third-party doctrine to cell-site location data and location history data both because of the deeply sensitive nature of that information and because that information is not voluntarily shared in any meaningful sense. *See Carpenter*, 585 U.S. at 311, 314-15; *see also Chatrue*, 2026 WL at *14-16. Even though cell-site location data in *Carpenter* was “continuously reveal[ed]” to the phone carrier, *Carpenter*, 585 U.S. at 309, the Court nevertheless understood that cell-site location information “is not truly ‘shared’ as one normally understands the term,” *id.* at 315. Likewise, in *Chatrue*, the Court held that the location history “information is ‘not truly shared,’ in the normal sense of wanting a third party to see or use it” because the exposure of that information “is the automatic price of conventional cell-phone usage.” *Chatrue*, 2026 WL 1855568, at *15 (citation omitted). Carrying a cell phone is “indispensable to participation in” daily life, and a cell phone logs its location “by dint of its operation, without any affirmative act on the part of the user.” *Carpenter*, 585 U.S. at 315; *see also Chatrue*, 2026 WL 1855568, at *15. Accordingly, “in no meaningful sense does the user voluntarily” turn these data over to the phone company. *Carpenter*, 585 U.S. at 315; *Chatrue*, 2026 WL 1855568, at *16 (“A cell-phone user is not to be viewed as sharing

private information with third parties ... just by doing the ordinary things cell-phone users do.”).

The same logic applies here. Just as a person cannot “avoid leaving behind a trail of location data” while carrying a cell phone, *Carpenter*, 585 U.S. at 315, neither can a person avoid leaving behind their DNA—and all the intimate information that DNA contains—particularly while held in a controlled environment like an interrogation room. “[N]early every minute of every day,” people “unconsciously and uncontrollably shed[] DNA into their environment,” including on the items they touch and the cups from which they drink. JA 629 ¶ 152. In no meaningful sense does that conduct amount to a “disavow[al of] any expectation of privacy” in DNA. *United States v. Torres*, 949 F.2d 606, 608 (2d Cir. 1991). Indeed, the abandonment rule is even less sensibly applied here than the third-party rule in *Carpenter* and *Chatrue*. The owner of a cell phone could avoid detection of his movements by turning the phone off, leaving it behind, or declining to share location history with third-party apps. But a person cannot avoid shedding DNA unless she wears a sealed biohazard suit. JA 632 ¶ 158.

Further, the abandonment rule is an especially poor fit here, where Leslie and other arrestees are powerless to safeguard their own DNA. To determine whether there has been a voluntary and knowing abandonment, courts “focus on the intent of the person who is purported to have abandoned the property” which can be inferred

from “objective facts,” such as “acts done” or “words spoken.” *Lee*, 916 F.2d at 818 (cleaned up). Here, Leslie and other New Yorkers did not give up their DNA “voluntarily” in any meaningful sense.

When a person is in custody, the NYPD exercises control over the length of their custody and their access to food or drink. Further, it is undisputed that the NYPD prevents New Yorkers from taking the partially consumed items out of the interrogation room. Indeed, the NYPD trains its personnel that people “are not allowed” to bring soda cans back to their cells because they could be used as a weapon, JA 574-75 ¶ 25, and officers must “handcuff all [people in its custody] with hands behind their back,” as they did with Leslie, when moving them between different areas of a precinct. JA 575, 625 ¶¶ 26-27, 140. Thus, people cannot “voluntarily” abandon partially consumed items that they are barred from retaining in the first place. *Cf. United States v. Davis*, 624 F.3d 508, 511 (2d Cir. 2010) (abandonment found because no one “prevented” the defendant from retrieving his property). Under these circumstances, where Leslie and other arrestees have no control of their physical movements, “the mere act of setting down a [cup or any other item] would not constitute abandonment.” *United States v. Thomas*, 864 F.2d 843, 846 (D.C. Cir. 1989); *see also Matter of Francis O.*, 208 A.D.3d 51, 57-58 (1st Dep’t 2022) (holding that an arrestee had not abandoned his DNA because he “was unaware that the cup, in which he had been offered a drink of water, would be used

to collect a DNA sample”). To suggest that an arrestee has “abandoned” her DNA under such circumstances would constitute a senseless, “significant extension of” the abandonment rule. *Carpenter*, 585 U.S. at 314.

B. The City’s Analysis, Storage, and Indexing of Leslie’s DNA Was a Fourth Amendment Search.

Separate and independent from the City’s collection of Leslie’s DNA during her interrogation, the City’s subsequent analysis and inclusion of that DNA sample in its Suspect Index was also a Fourth Amendment search.

“It is settled law” in this Circuit that “DNA indexing statutes” are “subject to the strictures of the Fourth Amendment,” not only because they authorize a physical intrusion to obtain DNA but also because they permit “a chemical analysis to obtain private physiological information about a person.” *Amerson*, 483 F.3d at 77. Thus, both the “extraction *and analysis*” of a biological sample “for DNA-indexing purposes constitute[s] a search” under the Fourth Amendment. *Nicholas*, 430 F.3d at 658; *Amerson*, 483 F.3d at 85 (“analysis and maintenance”).

That the City’s subsequent analysis and indexing of Leslie’s DNA is an independent search flows directly from Supreme Court cases addressing the Fourth Amendment implications of biological sample analysis. In *Skinner*, for instance, the Court held that, separate from the drawing of a blood sample, “[t]he ensuing chemical analysis of the sample to obtain physiological data is a further invasion of the tested [person’s] privacy interests,” as it is only through that “chemical analysis”

that intimate details, like whether a person “is epileptic, pregnant, or diabetic,” are disclosed. 489 U.S. at 616-17. The same rule applies to the maintenance and analysis of other kinds of evidence. *See, e.g., Walter v. United States*, 447 U.S. 649, 654 (1980) (“The fact that [officers] were lawfully in possession of the boxes of film did not give them authority to search their contents” because “authority to possess a package is distinct from [the] authority to examine its contents.”) (cleaned up); *Riley*, 573 U.S. at 401 (“[A] warrant is generally required before [a cell phone] search, even when a cell phone is [lawfully] seized incident to arrest”). Like opening a box or a cell phone, unlocking the intimate details held within a drop of saliva delves “beyond mere ‘physical characteristics ... constantly exposed to the public.’” *Cupp*, 412 U.S. at 295 (citation omitted).

In addition to *Amerson* and *Nicholas*, this Court has more recently reaffirmed the principle that the collection of evidence and the subsequent storage and querying of that evidence constitute independent Fourth Amendment searches. In *United States v. Hasbajrami*, 945 F.3d 641 (2d Cir. 2019), this Court addressed the Fourth Amendment implications of the federal government’s collection, storage, and analysis of electronic communications data, acquired under Section 702 of the Foreign Intelligence Surveillance Amendments Act (“FISA”). *Id.* at 645-47. After first analyzing whether the collection of that material comported with the Fourth Amendment, *see id.* at 661-69, the Court separately addressed “the storage of

Section 702 information in databases and the subsequent querying of those databases by the government,” *id.* at 669.

The Court held that “querying that stored data does have important Fourth Amendment implications” independent of collection, which “counsel in favor of considering querying a separate Fourth Amendment event that, in itself, must be reasonable.” *Id.* at 670. Specifically, citing *Riley*, the Court recognized that, with the advance of technology, “courts have increasingly recognized the need for additional probable cause or reasonableness assessments to support a search of information or objects that the government has lawfully collected.” *Id.* The Court acknowledged that “the FBI does not need an additional warrant to go down to its evidence locker and look through a box of evidence it collected from a crime scene.” *Id.* Nevertheless, “lawful collection alone is not always enough to justify a future search,” particularly where the government collection program amasses large quantities of information about the public. *Id.* at 670-71. “If such a vast body of information is simply stored in a database,” available for review “solely on the speculative possibility” that it might yield evidence of interest in a future case, “the program begins to look more like a dragnet, and a query more like a general warrant, and less like an individual officer going to the evidence locker to check a previously-acquired piece of evidence against some newfound insight.” *Id.* at 671.

Hasbajrami’s nuanced analysis reaffirms *Amerson*’s and *Nicholas*’ conclusions that the analysis and indexing of DNA is its own Fourth Amendment search, especially given the absence of meaningful checks on the City’s practice here. As the record demonstrates, the City’s Suspect Index includes more than 34,000 searchable suspect DNA profiles, created from DNA collected at detectives’ unreviewed discretion, which are compared against nearly 65,000 forensic crime scene profiles—numbers that only stand to increase. JA 606 ¶ 92. As in *Hasbajrami*, the City’s storage, analysis, and querying of this well of genetic information bears little resemblance to “an individual officer going to the evidence locker” to reexamine a bag of drugs or an article of clothing. 945 F.3d at 671.

In reaching a contrary conclusion, the district court failed to consider the unique qualities of the City’s sweeping practice, instead comparing it to investigators’ checking a stereo’s serial number against police records of stolen goods, *see* SPA 25-26 (citing *Arizona v. Hicks*, 480 U.S. 321 (1987)), or running a fingerprint through a database, *id.* at 26. Aside from ignoring *Amerson*’s and *Nicholas*’s holdings that the “analysis” and “maintenance” of DNA present independent intrusions into individual privacy, *Amerson*, 483 F.3d at 85, the district court’s reasoning does not account for the fact that both DNA and the City’s practice implicate different privacy concerns than material goods or fingerprints, *see supra* Argument I.A.1. The most that can be gleaned from the analysis of a serial number

or a fingerprint is the matching of one item or print to the record of another. But the analysis of DNA poses a “much more serious invasion of privacy” because of the “vast amount of sensitive information that can be mined from a person’s DNA.” *Amerson*, 483 F.3d at 85. The City’s program here serves as a concrete example of how the “progress of science” can “erode Fourth Amendment protections.” *Chatrie*, 2026 WL 1855568, at *18 (citation omitted).

The district court’s reliance on the Supreme Court’s decision in *Arizona v. Hicks* is also misplaced.⁸ SPA 25. Far from “provid[ing] the governing framework for assessing the constitutionality of DNA profile comparison,” *id.*, *Hicks* has no bearing on whether DNA indexing is a search because it only addressed whether the recording of the serial numbers was a seizure. *Hicks*, 480 U.S. at 324. What’s more, the Supreme Court’s secondary holding in *Hicks* affirmatively undercuts the district court’s conclusion. *Hicks* held that an officer’s “moving of the [stereo] equipment” that was in plain view in a person’s apartment, where the officer was legally present due to exigent circumstances, “did constitute a ‘search’” because it “exposed to view

⁸ The district court also relied on the D.C. Circuit’s decision in *Johnson v. Quander*, 440 F.3d 489 (D.C. Cir. 2006), which held that the federal government’s accessing of records stored in the federal CODIS database was not an independent Fourth Amendment search, *id.* at 498-99; see SPA 26. As already explained, however, that conclusion is contrary to both the Supreme Court’s and this Court’s Fourth Amendment case law, including *Amerson*’s recognition that the “analysis and maintenance” of DNA profiles in CODIS “is, in itself, a significant intrusion” on privacy. 483 F.3d at 85 (citation omitted).

concealed portions of the apartment or its contents,” producing “a new invasion of respondent’s privacy.” *Id.* at 324-35. That is what the City’s analysis of DNA samples accomplishes here. JA 594-96 ¶¶ 67-70. Though the district court viewed the value of the information in such profiles as minimal, *see* SPA 26, *Hicks* rejected that view: “A search is a search,” and “[i]t matters not that the search uncovered nothing of any great personal value.” 480 U.S. at 325. As the Court just recently reiterated, “we have never understood Fourth Amendment protections as kicking in only once an intrusion ‘goes too far.’” *Chatrie*, 2026 WL 1855568, at *13 (citation omitted). “Where the Fourth Amendment applies, it applies—regardless of ‘the quality or quantity of information’ the government obtains.” *Id.* (citation omitted).

II. THE CITY’S WARRANTLESS COLLECTION, ANALYSIS, AND INDEXING OF UNSUSPECTING PEOPLE’S DNA ARE UNREASONABLE SEARCHES IN VIOLATION OF THE FOURTH AMENDMENT.

Because Leslie maintains a privacy interest in her DNA, this Court must determine whether the City’s warrantless collection, analysis, and indexing of that DNA are reasonable. The district court addressed the reasonableness of the City’s practice in a cursory, two-sentence footnote, *see* SPA 41 n.11, relying exclusively on *Maryland v. King*. But the district court’s conclusions that *King* “settled” the constitutional issues presented here and authorized “the creation and indexing of DNA profiles ... in general” are wrong. *Id.* at 22, 25. *King* involved a materially different scheme, governed by a statute, that applied to a narrow, defined group of

individuals and that meaningfully cabined official discretion—restrictions completely absent from the City’s program. Looking beyond *King*, the district court should instead have measured the program’s reasonableness by using the “special-needs” test, which this Court has long applied to warrantless, suspicionless searches, including DNA indexing programs. Applying that test here, the City’s program is unreasonable.

A. *King* Does Not Resolve This Case.

The district court erroneously treated *King* as dispositive of this case. But the Maryland DNA collection scheme at issue in *King* was materially different from the City’s program, and those distinctions require a different result here.

In *King*, Maryland law required that certain arrestees submit to a swab of their mouth as part of their booking procedure. 569 U.S. at 440. That law featured a number of checks on official discretion. *First*, it applied across the board to a narrow group of arrestees charged with serious offenses as part of their booking procedure. *Id.* at 443. *Second*, it forbade processing or indexing of any DNA sample until *after* the arrestee was arraigned, a safeguard requiring that “a judicial officer ensures that there is probable cause” to detain the arrestee on the alleged offense. *Id.* *Third*, the law required that any DNA sample must be “immediately destroyed” if the charges were found unsupported by probable cause, if the prosecution did not result in a conviction, or if the individual was pardoned. *Id.* at 443-44 (citation omitted). And

fourth, the law had express “statutory protections” that restricted the purpose of testing to identification. *Id.* at 444.

The Supreme Court stressed these features of the law in holding that Maryland’s DNA collection was not unreasonable. Observing that the “need for a warrant” is reduced when a search “involves no discretion” to be checked by the “interpo[lation] of a neutral magistrate,” the Court emphasized that Maryland’s collection scheme was “not subject to the judgment of officers whose perspective might be colored by their primary involvement in the often competitive enterprise of ferreting out crime.” *Id.* at 447-48 (cleaned up). The Court further observed that “the circumstances justifying” the testing and “the permissible limits” of such intrusions were “defined narrowly and specifically” in the statute, leaving “minimal discretion” with administrators and, thus, “virtually no facts for a neutral magistrate to evaluate.” *Id.* at 448 (quoting *Skinner*, 489 U.S. at 622). In that sense, Maryland’s DNA searches represented “routine booking procedure[s]” carried out incident to arrest—akin to “fingerprinting and photographing.” *Id.* at 465-66; *see also Pretzantzin v. Holder*, 736 F.3d 641, 649 (2d Cir. 2013) (explaining that *King* involved an “inventory or booking search exception to the Fourth Amendment’s warrant requirement”). And in weighing the privacy intrusion, *King* emphasized the “statutory protections” guarding against unauthorized uses of DNA samples,

expressly declining to “speculate about the risks posed” by a program that lacks “comparable security protections.” *Id.* at 465 (citation omitted).

The City’s practice could not be more different. It does not restrict DNA collection as an across-the-board booking procedure for those charged only with serious crimes of violence, nor does it require a judicial finding of probable cause before analysis can occur. JA 564, 577-85 ¶¶ 1, 31-36, 39-45. To the contrary, it leaves entirely up to detectives’ discretion who is a suspect to target for collection (whether under arrest or not). *Id.* Unlike Maryland’s strict rules about retention of DNA samples, the City’s permits retention of DNA profiles when there has been no judicial determination of guilt or innocence, authorizes discretionary exceptions to removal from the database, and allows retention of the underlying profile and DNA. JA 620-22 ¶¶ 124-31. Consequently, the City can analyze, index, and search a person’s DNA even after their profile is removed from the Suspect Index. JA 637-38 ¶¶ 170-76. And because these policies are self-imposed, self-monitored, and repeatedly violated—operating outside of New York state law governing genetic testing—these superficial protections pale in comparison to the strict statutory limits that were decisive in *King*.

In short, *King* expressly reserved judgment on DNA collection practices that lacked the statutory safeguards at issue there. *See Chatrue*, 2026 WL 1855568, at *26 (Alito, J., dissenting) (noting that the “DNA collection scheme [in *King*] was

constitutional in part because state statute regulated how records could be used”). The district court was therefore wrong to treat *King* as dispositive in this case.

B. The City’s Practice Is Unreasonable Under the Special-Needs Test.

Given that *King* does not resolve the practice at issue here, the district court should have meaningfully assessed the reasonableness of the City’s DNA collection, analysis, and indexing practice. To assess the reasonableness of a warrantless search, the Second Circuit applies either: (1) the “general balancing test,” which accounts for the totality of circumstances; or (2) the “more stringent” “special-needs test,” which applies to “highly disfavored” suspicionless searches and requires the showing of a special need for the intrusion unrelated to ordinary law enforcement objectives. *See Amerson*, 483 F.3d at 77-78, 79 & n.5.

Although the City’s practice is unreasonable under either approach, this Court should apply the special-needs test—as it did when addressing DNA indexing programs in *Amerson* and *Nicholas*. The City’s practice bears the hallmarks of a suspicionless search: the City’s maintenance, indexing, and cross-referencing of individual DNA profiles stored in the Suspect Index is a search distinct from the initial collection, *supra* Argument I.B, and those searches against tens of thousands of crime scene DNA profiles are entirely suspicionless. *See Amerson*, 483 F.3d at 77, 79 n.5, 85 (holding that the special-needs test is “the proper framework” for searches involved in a “DNA indexing” program).

1. *The City has no special need to operate the program.*

Under the special-needs test, courts first assess whether the search “is justified by a special need beyond the ordinary needs of normal law enforcement.” *Amerson*, 483 F.3d at 80. Here, the City cannot satisfy this threshold requirement.

The Supreme Court has recognized that a warrantless, suspicionless search may be justified only “when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.” *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987) (quotations omitted). The inquiry is exacting. The Supreme Court has struck down, for example, an automobile checkpoint program “whose primary purpose was to detect evidence of ordinary criminal wrongdoing,” *City of Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000), and a hospital program that tested patients’ urine for cocaine use, because the search’s objective “was to generate evidence for law enforcement purposes,” *Ferguson v. City of Charleston*, 532 U.S. 67, 83 (2001) (emphasis omitted). A suspicionless search program cannot be aimed at “detect[ing] evidence of ordinary criminal wrongdoing.” *Nicholas*, 430 F.3d at 668 (citation omitted). Thus, this Court has sanctioned DNA indexing programs under the special-needs test only because, in those programs, the “[DNA] samplings were *not* undertaken for the investigation of a particular crime, [and] provided *no* evidence of wrongdoing in and of themselves.”

Lynch v. City of New York, 737 F.3d 150, 158 (2d Cir. 2013) (recounting the holding in *Amerson* and *Nicholas*) (emphasis added).⁹

That, however, is precisely the point of the City’s practice. Here, the City secretly collects DNA samples from some suspects when investigating *specific* crimes and then develops DNA profiles from those samples for inclusion in its Suspect Index. JA 564, 577-78 ¶¶ 1, 31-32. And, OCME will only analyze a suspect’s “abandoned” DNA sample—and add that person’s DNA profile to the Suspect Index—after the NYPD provides DNA evidence from a specific crime to test it against. JA 591-92 ¶ 60. Thus, the City’s DNA sampling is both undertaken to investigate specific crimes and, “in and of itself,” evidence of wrongdoing. *Lynch*, 737 F.3d at 158.

Further, the vast discretion afforded to detectives distinguishes the City’s practice from the indexing programs approved in *Amerson* and *Nicholas* (and *King*). The *Amerson* Court clarified that “implicit” in its approval of the federal DNA indexing statute was “the programmatic nature of” the statutory scheme, which left “no discretion for law enforcement personnel to decide whether to force an

⁹ The district court cited *King* for its claim that the special needs cases have no bearing on the searches of arrestees “who possess diminished expectations of privacy,” see SPA 24, but that claim lacks merit given this Court’s application of the special needs doctrine to convicted felons in *Nicholas* and probationers in *Amerson*, despite both groups having more diminished privacy interests than arrestees.

individual to submit to a taking of a DNA sample or how to use the information collected.” *Amerson*, 483 F.3d at 82. “This lack of discretion,” the Court explained, “removes a significant reason for warrants—to provide a check on the arbitrary use of government power.” *Id.* Here, by contrast, NYPD detectives have unchecked discretion to secretly collect DNA samples from any adult they suspect of a crime, and any child they suspect of certain crimes. JA 577-78, 581-82 ¶¶ 31-32, 39. And unsurprisingly, they abuse this discretion in ways that only a warrant could check, for instance, by secretly collecting DNA samples for misdemeanor crimes where DNA is irrelevant, like turnstile jumping or unlicensed driving. JA 579 ¶ 35.

Because the City secretly collects DNA samples for ordinary crime detection, and detectives have wide discretion in doing so, the City’s collection, analysis, and maintenance of peoples’ DNA in the Suspect Index is not a special need. This practice is thus an unreasonable search in violation of the Fourth Amendment.

2. *The City’s collection and analysis of DNA in the Suspect Index fails the balancing test.*

The City’s practice also fails the second prong of the special needs test—“the balancing of the government interests versus the individual’s privacy interests.” *Amerson*, 483 F.3d at 79 n.6.¹⁰ Under “this balancing test,” courts weigh: “(1) the

¹⁰ Because this analysis is “very similar” to the Court’s general balancing test, *Amerson*, 483 F.3d at 79 n.6, the Court should hold the City’s practice is unreasonable even if it does not apply the special-needs test.

nature of the privacy interest involved; (2) the character and degree of the governmental intrusion; and (3) the nature and immediacy of the government’s needs, and the efficacy of its policy in addressing those needs.” *Id.* at 83-84 (cleaned up). Applying these factors here, the City’s “collection and analysis” of DNA for comparison to specific crime scene evidence is an unreasonable search.¹¹

Both New Yorkers’ significant privacy interests and the degree of the government’s intrusion weigh strongly in favor of plaintiff here. The City can collect and analyze DNA from virtually anyone whom officers, in their unchecked discretion, suspect is involved in any crime. It can do so regardless of whether there has been any judicial finding of probable cause. *Compare King*, 569 U.S. at 443. And it does so for some people who have not been arrested at all, *see* JA 605-06 ¶ 91, thus implicating weightier privacy interests than those possessed by arrestees, *King*, 569 U.S. at 462, probationers, *Amerson*, 483 F.3d at 84-85, or people convicted of felonies, *Nicholas*, 430 F.3d at 671.

The “character and degree” of the City’s intrusion upon plaintiffs’ privacy interests, moreover, is significant in light of the deeply personal information that DNA reveals, and the lack of statutory safeguards mitigating the intrusion. Though

¹¹ As this Court explained, courts “must” “tak[e] the two privacy interests”—both the initial collection and subsequent analysis of DNA—“together” in weighing them against the government’s interest. *Amerson*, 483 F.3d at 87.

the district court noted that the City obtains DNA through “non-intrusive means,” *see* SPA 41 n.11, the analysis of that DNA is nevertheless a “significant intrusion” on individuals’ privacy interests. *Amerson*, 483 F.3d at 85. And while *Amerson*, *Nicholas*, and *King* found that statutory safeguards preventing DNA testing beyond identification purposes mitigated the intrusion on privacy,¹² no such statutory safeguards exist here. Because New York law does not authorize the City’s surreptitious DNA practice, it likewise does not limit the City’s use of DNA collected under that practice. *See supra* at 45. And besides ensuring that OCME abides by basic DNA testing standards, the Commission on Forensic Science has no statutory authority over the City’s Suspect Index. JA 608-09 ¶¶ 99-100; *see also* N.Y. Exec. Law §§ 995-a, 995-b. For these reasons, the district court’s statement that “the non-coding loci analysis revealed no private information” misses the mark. SPA 41 n.11. *Amerson* and *Nicholas* found crucial not only what was revealed by non-coding loci, but also what safeguards existed to prevent further revelations of private information.

¹² *See King*, 569 U.S. at 444, 465 (explaining that the challenged law “provides statutory protections that guard against further invasion of privacy” under which “[n]o purpose other than identification is permissible”); *Amerson*, 483 F.3d at 85 (the statute “severely limits the circumstances and purposes for which the DNA profiles can be released and provides significant penalties for any misuse of the DNA samples or profiles”); *Nicholas*, 430 F.3d at 671 (finding the privacy concerns are mitigated “[g]iven the limits imposed on the collection, analysis, and use of DNA information by the statute”).

With no statutory safeguards present, there is no limit to the information the City can glean from a person’s DNA. OCME holds each suspect’s raw DNA (or extract) for up to five years, and the NYPD holds each suspect’s DNA sample (from which the City can obtain more raw DNA) *indefinitely*. See JA 586, 619, 641 ¶¶ 47, 121-22, 132, 184. Thus, the City’s process of testing DNA to develop a profile “put[s] into the possession of law enforcement authorities a sample from which a wealth of additional, highly personal information could potentially be obtained.” *Birchfield*, 579 U.S. at 463. Even when the City “removes” a DNA profile from the Suspect Index under its self-imposed reforms, it is not required to destroy the person’s DNA sample or extract, which NYPD and OCME retain. JA 619, 621-23 ¶¶ 122, 128-32.

The City’s DNA collection errors only exacerbate the privacy intrusion. *Cf. Amerson*, 483 F.3d at 86 (“[T]he more accurate the identification method the less intrusive it is because of the associated reduced risk that the sample will result in misidentification.”). The NYPD found that 76 percent of all DNA collection errors involve “abandonment suspect samples,” and that the causes of those errors are “human error, policy procedural inadequacies, and the need for more formal training.” JA 587 ¶ 50. The NYPD admits that a consequence of these errors is that someone could be “wrongfully prosecuted and potentially convicted.” JA 586-87 ¶ 49. In 2021, the then-Commanding Officer of the Forensic Investigations Division

recommended three corrective actions to prevent further errors, but the NYPD failed to implement any of them. JA 587-89 ¶¶ 51-52. In fact, the NYPD has no quality assurance measures to ensure that detectives even follow the NYPD’s best practices for DNA collection. JA 589 ¶ 54. That the NYPD continues the same error-prone DNA collection practices, despite the admitted risk of misidentification, cements the significance of the intrusion on New Yorkers’ privacy.

Third, the government’s interest here is the routine law enforcement interest of finding evidence against a suspect or person of interest to prove their criminal wrongdoing. *See supra* at 48-49. While the district court characterizes that interest as “substantial,” *see* SPA 41 n.11, it can be effectively addressed by the government obtaining a warrant or court order grounded in probable cause to collect and analyze a suspect’s DNA. Indeed, “[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the obtaining of a judicial warrant.” *Riley*, 573 U.S. at 382 (cleaned up). And that warrant requirement imposes a “minimal” burden on the police. *Steagald v United States*, 451 U.S. 204, 222 (1981).

Because Leslie’s and other New Yorkers’ privacy interests and the City’s intrusion on those interests significantly outweigh the City’s interest here, the City’s searches of New Yorkers’ DNA absent a warrant or their consent are unreasonable.

As a result, this Court should find that Leslie and the putative class are entitled to judgment as a matter of law on their Fourth Amendment claim.

III. THE DISTRICT COURT ERRED BY DECLINING TO EXERCISE SUPPLEMENTAL JURISDICTION OVER PLAINTIFF’S STATE-LAW CLAIMS.

The district court further erred in declining to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(1) over Leslie’s state-law claims, based on its conclusion that “whether, and to what extent, Article 49-B governs, authorizes, or preempts the operation of OCME’s Suspect Index presents a novel question of New York law.” SPA 43. The relevant underlying questions are not novel, and the district court abused its discretion in failing to analyze adequately the factors set forth in *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966). But should this Court disagree, it should certify the state-law questions to the New York Court of Appeals rather than affirm.

A. The State Law Claims Are Not Novel.

The state-law issues presented to the district court were: (i) whether New York Executive Law Article 49-B authorizes OCME to run a local DNA index, and (ii) whether the statewide DNA database preempts the City’s local Suspect Index. Neither question is novel. Rather, each would require the district court to apply standard tools of statutory construction and analyze court rulings on those issues. *See Stevens v. N.Y. State Div. of Crim. Just. Servs.*, 40 N.Y.3d 505, 546 n.3 (2023)

(noting the scope of an agency’s authority under Article 49-B was “solely [an issue] of statutory interpretation”). Statutory interpretation and preemption inquiries are routine, core judicial functions. *See, e.g., Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 384-96 (2024) (holding that courts must exercise independent judgment to resolve statutory ambiguities and silences). If affirmed by this Court, the district court’s holding that statutory interpretation and state preemption questions are too novel to exercise jurisdiction would close the federal courts to basic state-law questions.

Federal courts routinely address whether state law authorizes an agency’s action. Indeed, the district court explicitly recognized that it was “as competent as its state counterpart” to interpret the state-law issues in this case at the motion to dismiss stage. District Ct. ECF No. 71 at 25. At that time, the court refused to construe Article 49-B as “unclear,” observing that the statute is “clearly worded,” and concluding that lower-court disagreement does not “mean[] that the statute itself is ambiguous.”¹³ *Id.* at 24-25 & n.12. Yet at summary judgment, the district court reversed course, relying on the same lower-court disagreement to classify the issue as “novel.” *See* SPA 42-44 & n.12. A split among state courts does not transform a

¹³ In that decision, the district court explained that Article 49-B “does not expressly authorize the creation of local DNA indexes,” but it stopped short of deciding whether the Suspect Index is unauthorized. *Id.*

routine issue of statutory construction into a novel one; as in diversity cases, federal courts are fully capable of applying the normal tools of judicial analysis to resolve ambiguities. *See Travelers Ins. Co. v. 633 Third Assocs.*, 14 F.3d 114, 119 (2d Cir. 1994).

Similarly, federal courts routinely address state preemption claims. *See, e.g., New York Bankers Ass’n, Inc. v. City of New York*, 119 F. Supp. 3d 158, 193-94 (S.D.N.Y. 2015) (ruling on a question of state preemption); *Ass’n of Home Appliance Mfrs. v. City of New York*, 36 F. Supp. 3d 366, 375-76 (S.D.N.Y. 2014) (same). Here, the district court erred in concluding the state preemption issue is novel simply because it requires interpreting Article 49-B “in a context not explicitly addressed by the Legislature.” SPA 43-44. Navigating legislative silence to determine field preemption is a routine function of statutory interpretation, and the district court’s belated characterization of this task as “novel” was error. *See N.Y. SMSA Ltd. P’ship v. Town of Clarkstown*, 612 F.3d 97, 103-04 (2d Cir. 2010) (treating field preemption, including implied manifestations of legislative intent, as a standard question of law).

B. The *Gibbs* Factors Weigh in Favor of Jurisdiction.

In the Second Circuit, a district court “must still meaningfully balance the supplemental jurisdiction factors” and must not decline to exercise supplemental jurisdiction unless doing so would promote the *Gibbs* values of economy,

convenience, fairness, and comity. *Catzin v. Thank You & Good Luck Corp.*, 899 F.3d 77, 85-86 (2d Cir. 2018). Here, the district court bypassed this required inquiry, failing to consider the *Gibbs* factors, which overwhelmingly favor retaining jurisdiction. *See* SPA 43-44.

Declining supplemental jurisdiction late in a case and forcing the parties to restart in state court stands “judicial economy on its head.” *Motorola Credit Corp. v. Uzan*, 388 F.3d 39, 56 (2d Cir. 2004) (citation omitted). Accordingly, this Court has consistently held that when the dismissal of federal claims occurs “late in the action, after there has been substantial expenditure in time, effort, and money in preparing the dependent claims, knocking them down with a belated rejection of supplemental jurisdiction” may be neither “fair” nor “necessary.” *Id.* The parties here have litigated in federal court for more than four years, completing discovery and fully briefing cross-motions for summary judgment. Discarding that record would “be a waste of judicial resources.” *See Raucci v. Town of Rotterdam*, 902 F.2d 1050, 1055 (2d Cir. 1990). Relatedly, forcing the parties to “expend who knows how much time, legal fees, and distraction” replicating such an extensive record in state court would be manifestly inconvenient and unfair to the parties. *Catzin*, 899 F.3d at 86.

Although Leslie maintains that her state-law claims do not raise novel questions, if this Court concludes otherwise, it should certify the state-law questions

to the New York Court of Appeals rather than affirming the district court's dismissal and discarding years of federal litigation. *See* 2d Cir. R. 27.2; 22 N.Y. Comp. Codes R. & Regs. Tit. 22, § 500.27(a). That solution would satisfy comity concerns without discarding the substantial time and effort the parties have expended litigating the state-law claims in this case. *See Reyes v. City of New York*, 141 F.4th 55, 75-76 (2d Cir. 2025).

CONCLUSION

For the foregoing reasons, the plaintiff respectfully asks the Court to reverse the district court's decision, to remand for the district court to enter the declaratory and injunctive relief requested in Leslie's complaint, and either remand the state-law claims for the district court to address or certify those claims for the Court of Appeals to address.

Date: July 23, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Second Circuit Local Rule 32.1(a)(4)(A). It contains 13,987 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type styles requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Dated: July 23, 2026

/s/ Philip Desgranges
Philip Desgranges

SPECIAL APPENDIX

**SPECIAL APPENDIX
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
SHAKIRA LESLIE, on behalf of
herself and all others
similarly situated,

Plaintiff,

- against -

CITY OF NEW YORK; EDWARD CABAN,
Police Commissioner for the
City of New York, in his
official capacity; JEFFREY
MADDREY, Chief of Department
for the New York City Police
Department, in his official
capacity; JAMES ESSIG, Chief of
Detectives for the New York
City Police Department, in his
official capacity; BRIAN MCGEE,
Deputy Chief in the Forensic
Investigations Division of the
New York City Police
Department, in his official
capacity; and DR. JASON GRAHAM,
Chief Medical Examiner for the
City of New York, in his
official capacity,

Defendants.

-----X

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Named plaintiff Shakira Leslie ("plaintiff" or "Leslie")
brings this action pursuant to 42 U.S.C. § 1983 on behalf of
herself and all others similarly situated against defendants City
of New York (the "City"), New York City Police Department ("NYPD")

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Commissioner Edward Caban, NYPD Chief of Department Jeffrey Maddrey, NYPD Chief of Detectives James Essig, NYPD Deputy Chief in the Forensic Investigations Division Brian McGee, and Chief Medical Examiner for the New York Office of Chief Medical Examiner ("OCME") Dr. Jason Graham (collectively, "defendants"). Plaintiff seeks injunctive and declaratory relief for defendants' alleged violations of the Fourth Amendment to the United States Constitution and New York Executive Law Article 49-B. Presently before the Court are the parties' cross-motions for summary judgment. See ECF Nos. 128 ("Defs. Br."); 141 ("Pl. Br."). For the reasons stated herein, defendants' motion is granted in its entirety and plaintiff's motion is denied. Plaintiff's state law claim is dismissed without prejudice to refiling in the appropriate state forum.

I. Factual Background

The Court's recitation of the pertinent facts is derived primarily from the parties' Rule 56.1 Statements¹ and admissible materials submitted in connection with the present motions.²

a. National and State DNA Indexing Framework

At the direction of Congress in the 1990s, the Federal Bureau of Investigation ("FBI") created the Combined DNA Index System ("CODIS") to facilitate the exchange of DNA identification

¹ Both parties submitted Rule 56.1 Statements in support of their respective cross-motions for summary judgment. See Defs. Local Civil Rule 56.1 Statement ("Defs. 56.1"), ECF No. 132; Pl. Local Civil Rule 56.1 Statement ("Pl. 56.1"), ECF No. 142. Both parties also submitted responses to each other's 56.1 Statements. See Pl. Resp. to Def. Local Rule 56.1 Statement ("Pl. Counter 56.1"), ECF No. 147; Defs. Resp. to Pl. Local Rule 56.1 Statement ("Defs. Counter 56.1"), ECF No. 157. Where the Court relies on facts drawn from any of the 56.1 Statements, it has done so because the record evidence duly supports the statements, no rule of evidence bars admission, and the opposing party has not disputed the facts or has not done so with citations to admissible evidence.

² In support of her cross-motion for summary judgment, plaintiff submitted the declaration of Dr. Leighann Starkey, see ECF No. 145, the Director of Data and Research at The Legal Aid Society and expert in "applied social science research and data analysis," id. at 2. Dr. Starkey's declaration includes an analysis of an "Abandonment Samples Spreadsheet" produced by defendants in discovery in response to plaintiff's request for the number of abandonment samples collected by the City and the number of DNA profiles generated by the OCME from those abandonment samples. See id. at 2-5. In support of their own motion and in opposition to plaintiff's cross-motion, defendants argue that Dr. Starkey's testimony should be precluded because: (i) plaintiff did not disclose Dr. Starkey as an expert witness and did not serve the required expert disclosures; (ii) plaintiff did not list Dr. Starkey as a witness on her Rule 26(a)(1) initial disclosures; and (iii) in any event, Dr. Starkey offers opinions that are based on conjecture or are otherwise irrelevant to the core constitutional issues in this action. ECF No. 151 ("Defs. Reply") at 31-34. On reply, plaintiff argues that Dr. Starkey is an employee of plaintiff's counsel and only "presented calculations of the City's own data, which is not expert opinion evidence and thus not subject to the disclosure requirements." ECF No. 159 ("Pl. Reply") at 10-11. Because Dr. Starkey's testimony does not need to be, and is not, considered in order to resolve the parties' motions for summary judgment, the Court need not rule on defendants' objection.

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information among law enforcement agencies. Defs. 56.1 ¶ 16; Pl. Counter 56.1 ¶ 16. CODIS functions as an umbrella system of interconnected DNA indexes: the National DNA Index System ("NDIS"), maintained by the FBI; State DNA Index Systems ("SDIS"), maintained by all 50 states; and Local DNA Index Systems ("LDIS"), maintained at the city or county level. Defs. 56.1 ¶ 17; Pl. Counter 56.1 ¶ 17. Enacted in 1994, Article 49-B of the Executive Law established New York's SDIS, authorized a regulatory structure for its operation, and imposed certain restrictions on the establishment of DNA laboratories and the collection of New Yorkers' DNA. N.Y. Exec. Law art. 49-B.

New York City's LDIS is maintained by the OCME and is one of nine LDIS laboratories in New York State. Defs. 56.1 ¶ 18; Pl. Counter 56.1 ¶ 18. OCME performs forensic analysis, including DNA testing. Defs. 56.1 ¶¶ 2, 3; Pl. Counter 56.1 ¶¶ 2, 3. DNA analysis at OCME is conducted by the Department of Forensic Biology (the "Laboratory"). Defs. 56.1 ¶ 3; Pl. Counter 56.1 ¶ 3. The Laboratory has conducted forensic DNA analysis since 1992 and is accredited in forensic science testing to analyze biological samples using nuclear and mitochondrial DNA methods, as well as bodily fluid identification. Defs. 56.1 ¶¶ 4, 5; Pl. Counter 56.1 ¶¶ 4, 5. The Laboratory is accredited by (i) the ANSI-ASQ National

Accreditation Board, through the American Society of Crime Lab Directors/Laboratory Accreditation Board ("ASCLD/LAB"), and (ii) the New York State Division of Criminal Justice Services. Defs. 56.1 ¶ 5; Pl. Counter 56.1 ¶ 5. The Laboratory received its first ASCLD/LAB accreditation in 1995 and has remained continuously accredited in forensic science testing since that time. Defs. 56.1 ¶ 6; Pl. Counter 56.1 ¶ 6.

b. NYPD DNA Collection

In connection with criminal investigations, the NYPD routinely collects DNA evidence from both crime scenes and known individuals. Pl. 56.1 ¶¶ 5, 6; Defs. Counter 56.1 ¶¶ 5, 6. DNA samples from known individuals can be obtained through several methods: (i) consent; (ii) court order; or (iii) collection from items that the individual left behind, discarded, or otherwise abandoned. Pl. 56.1 ¶¶ 7, 8, 10, 11; Defs. Counter 56.1 ¶¶ 7, 8, 10, 11. Where the NYPD suspects that a person has committed a crime or is otherwise involved in criminal activity, detectives may provide suspects with items that will be partially consumed, such as cigarettes, water, soda, or coffee, and collect those items after use for DNA testing. Pl. 56.1 ¶¶ 14, 15; Defs. Counter 56.1 ¶¶ 14, 15. The NYPD has an established policy, as set forth in the NYPD Detective Guide, governing the collection of DNA samples

from items that suspects abandon, discard, or leave behind. Pl. 56.1 ¶¶ 12, 14, 15, 16; Defs. Counter 56.1 ¶¶ 12, 14, 15, 16. Such samples are commonly referred to by the NYPD as “abandonment suspect samples.” Pl. 56.1 ¶ 1; Defs. Counter 56.1 ¶ 1.

c. Forensic DNA Testing

After collection, DNA samples are sent to OCME for testing and analysis. Pl. 56.1 ¶ 55; Defs. Counter 56.1 ¶ 55. Forensic DNA testing relies on the analysis of chromosomes, the discrete structures within cells in which DNA is organized. Defs. 56.1 ¶ 7; Pl. Counter 56.1 ¶ 7. Each individual carries 46 chromosomes that together contain that person’s DNA. Defs. 56.1 ¶ 8; Pl. Counter 56.1 ¶ 8. DNA material in chromosomes is composed of genic (“coding”) and non-genic (“non-coding”) regions. Defs. 56.1 ¶ 10; Pl. Counter 56.1 ¶ 10. Only coding regions contain genes. Defs. 56.1 ¶ 11; Pl. Counter 56.1 ¶ 11. Non-coding regions do not contain genes. Defs. 56.1 ¶ 11; Pl. Counter 56.1 ¶ 11.

Forensic laboratories, including OCME, use a process known as PCR/STR testing to create DNA profiles from DNA samples. Defs. 56.1 ¶ 12; Pl. Counter 56.1 ¶ 12. “PCR,” short for polymerase chain reaction, is the process by which analysts copy DNA in order to generate a DNA profile. Defs. 56.1 ¶ 13; Pl. Counter 56.1 ¶ 13. Because many patterns found in DNA are shared among

individuals, forensic analysis focuses on short, repeated DNA segments called short tandem repeats, or “STRs.” Defs. 56.1 ¶ 14; Pl. Counter 56.1 ¶ 14. STR analysis is central to DNA identification and makes it “possible to determine whether a biological tissue matches a suspect with near certainty.” Maryland v. King, 569 U.S. 435, 443 (2013) (citation omitted); see also Defs. 56.1 ¶ 15; Pl. Counter 56.1 ¶ 15.

The FBI standardized DNA profile analysis by requiring that DNA profiles uploaded to CODIS contain results from 20 “core” locations, or loci, within STR regions. Defs. 56.1 ¶¶ 22, 24; Pl. Counter 56.1 ¶¶ 22, 24. These mandated loci (“CODIS loci”) were selected from non-coding regions of chromosomes. Defs. 56.1 ¶ 23; Pl. Counter 56.1 ¶ 23. OCME’s Laboratory uses a commercially produced DNA typing kit to perform DNA testing. Defs. 56.1 ¶ 25; Pl. Counter 56.1 ¶ 25. The Laboratory’s current kit generates data from the 20 CODIS loci, as well as two additional loci drawn from non-coding regions of the chromosome. Defs. 56.1 ¶ 26; Pl. Counter 56.1 ¶ 26.

d. OCME’s LDIS and Suspect Index

OCME’s LDIS contains several indexes used to store forensic DNA profiles that meet different criteria. Defs. 56.1 ¶ 19; Pl. Counter 56.1 ¶ 19. Relevant here are “known” indexes, which store

DNA profiles of identified individuals, and “forensic unknown” indexes, which store DNA profiles developed from evidentiary samples. Pl. 56.1 ¶ 81; Defs. Counter 56.1 ¶ 81. After OCME tests a crime scene DNA sample and generates a DNA profile, that profile is uploaded to the specific forensic index for which it is eligible; a crime scene profile may not be uploaded to more than one forensic index. Pl. 56.1 ¶ 82; Defs. Counter 56.1 ¶ 82. DNA samples collected from known suspects are likewise analyzed by OCME. Pl. 56.1 ¶ 7; Defs. Counter 56.1 ¶ 7. If the resulting profile satisfies certain criteria, it may be stored in a “known” index called the Suspect Index, which was created more than fifteen years ago. Defs. 56.1 ¶ 20; Pl. Counter 56.1 ¶ 20; Pl. 56.1 ¶ 83. DNA profiles uploaded to the Suspect Index are compared against past and future crime scene DNA evidence stored in OCME’s forensic indexes. Pl. 56.1 ¶¶ 84, 85; Defs. Counter 56.1 ¶¶ 84, 85. Profiles uploaded to the Suspect Index are not eligible for upload to SDIS. Pl. 56.1 ¶ 88 Defs. Counter 56.1 ¶ 88.

e. Plaintiff’s Arrest and DNA Collection

At approximately 3:10 a.m. on July 3, 2019, NYPD officers observed a silver sedan driving in a bike lane and running a red light. Defs. 56.1 ¶¶ 28, 29; Pl. Counter 56.1 ¶¶ 28, 29. The officers pulled over the car, which was occupied by five

individuals, including Leslie, who was seated in the middle rear seat between two other passengers. Defs. 56.1 ¶ 30; Pl. Counter 56.1 ¶ 30. The officers ordered the occupants to exit the car one by one, beginning with the driver, Leslie's cousin Kymani Johnson, and the front-seat passenger, Leslie's cousin Tamarc Johnson. Defs. 56.1 ¶ 31; Pl. Counter 56.1 ¶ 31. As Tamarc exited the car, an officer stated that he observed a gun behind her fanny pack and recovered it. Defs. 56.1 ¶ 32; Pl. Counter 56.1 ¶ 32. The firearm was loaded and had a defaced serial number. Defs. 56.1 ¶ 33; Pl. Counter 56.1 ¶ 33. Leslie and the four other occupants were arrested for possessing the loaded firearm with a defaced serial number.³ Defs. 56.1 ¶ 34; Pl. Counter 56.1 ¶ 34.

Following her arrest, Leslie was transported to the 41st Precinct in the back of a police car. Defs. 56.1 ¶ 35; Pl. Counter 56.1 ¶ 35. During booking, officers took Leslie's jewelry and identification and her fingerprints. Defs. 56.1 ¶ 36; Pl. Counter 56.1 ¶ 36. Leslie was then placed in a cell and handcuffed to a bench, where she slept for approximately seven hours. Defs. 56.1 ¶¶ 37, 38; Pl. Counter 56.1 ¶¶ 37, 38. Shortly before 10:10 a.m.,

³ Under New York Penal Law § 265.15, the presence in an automobile of any defaced firearm is "presumptive evidence of its possession by all persons occupying such automobile at the time such weapon [] is found[.]" N.Y. Penal Law § 265.15.

Officer Devernier Smith and Detectives Richard McClain and Ramon Salcedo woke Leslie up and brought her to an interview room. Defs. 56.1 ¶ 38; Pl. Counter 56.1 ¶ 38. When they entered, a white disposable cup was on the table. Defs. 56.1 ¶ 39; Pl. Counter 56.1 ¶ 39. Detective McClain removed Leslie's handcuffs and advised her of her Miranda rights. Defs. 56.1 ¶ 40; Pl. Counter 56.1 ¶ 40. During the ensuing five-minute interview, Leslie answered questions, denied knowing that a defaced firearm was in the car, and stated that she learned of the firearm at the same time the officers did. Defs. 56.1 ¶ 41; Pl. Counter 56.1 ¶ 41.

Near the end of the interview, Detective McClain asked Leslie whether she wanted water, which she initially declined. Defs. 56.1 ¶ 42; Pl. Counter 56.1 ¶ 42. Detective McClain asked again and remarked that it would be some time before she had another opportunity to drink. Defs. 56.1 ¶ 42; Pl. Counter 56.1 ¶ 42. Leslie then drank from the cup, and Detective McClain told her to keep drinking. Defs. 56.1 ¶ 42; Pl. Counter 56.1 ¶ 42. After Leslie placed the cup back on the table, Detective McClain resumed asking questions about her cousin's car. Defs. 56.1 ¶ 42; Pl. Counter 56.1 ¶ 42. Approximately thirty seconds later, the interview concluded. Pl. 56.1 ¶ 140; Defs. Counter 56.1 ¶ 140. Leslie was handcuffed and escorted out of the room. Pl. 56.1 ¶

140; Def. Counter 56.1 ¶ 140. Within one minute, Detective McClain returned to the interview room and recovered the disposable cup from which Leslie drank. Pl. 56.1 ¶ 140; Defs. Counter 56.1 ¶ 140; Defs. 56.1 ¶ 43. The NYPD vouchered the cup as evidence and sent it to OCME for DNA analysis and comparison with DNA recovered from the defaced firearm. Defs. 56.1 ¶ 44; Pl. Counter 56.1 ¶ 44; Pl. 56.1 ¶ 141.

OCME successfully generated DNA profiles from both the firearm and the cup. Defs. 56.1 ¶¶ 45, 46; Pl. Counter 56.1 ¶¶ 45, 46. From a swab of the firearm's trigger and trigger guard, OCME developed a profile reflecting a mixture of DNA from three individuals, with an unknown male profile constituting 76% of the mixture. Defs. 56.1 ¶ 45; Pl. Counter 56.1 ¶ 45. From the disposable cup, OCME generated a DNA profile reflecting two pieces of information about Leslie: (i) a unique identifying number corresponding to her genetic identity, and (ii) her biological sex (female). Defs. 56.1 ¶ 46; Pl. Counter 56.1 ¶ 46; Defs. Br. at 1.

After comparing the profiles, OCME concluded that Leslie was "excluded as a contributor" to the DNA sample recovered from the firearm. Defs. 56.1 ¶ 47; Pl. Counter 56.1 ¶ 47; Pl. 56.1 ¶ 142; Defs Counter 56.1 ¶ 142. OCME uploaded and compared Leslie's DNA profile against profiles in OCME's LDIS, which produced no matches.

Defs. 56.1 ¶ 51; Pl. Counter 56.1 ¶ 51. Following an initial appearance, Leslie appeared in court at least once more before all charges were dropped. Defs. 56.1 ¶ 48; Pl. Counter 56.1 ¶ 48; Pl. 56.1 142; Defs. Counter 56.1 ¶ 142. Leslie's cousin, the driver Kymani Johnson, ultimately pleaded guilty to a crime related to the defaced firearm. Defs. 56.1 ¶ 50; Pl. Counter 56.1 ¶ 50. OCME maintained Leslie's DNA profile in the LDIS Suspect Index from August 21, 2019 until May 13, 2022. Pl. 56.1 ¶ 142; Defs. Counter 56.1 ¶ 142.

II. Procedural Background

This action was initially commenced by two plaintiffs, Shakira Leslie and Shamill Burgos, on March 21, 2022, seeking injunctive and declaratory relief for defendants' alleged violations of the Fourth Amendment and New York Executive Law Article 49-B.⁴ ECF No. 1. Plaintiffs' complaint was accompanied by a motion for class certification. ECF Nos. 9-11. On May 20 and May 25, 2022, the parties exchanged pre-motion letters regarding defendants' proposed motion to dismiss. ECF Nos. 32, 33. On May 31, 2022, the Court permitted defendants to bring their motion without a pre-motion conference. ECF No. 34. The parties

⁴ On July 17, 2023, counsel for plaintiff informed the Court that Mr. Burgos no longer wanted to participate in this action, leaving only Leslie as a plaintiff. ECF No. 82.

proposed a briefing schedule on June 9, 2022, and requested that briefing on class certification be stayed pending resolution of the motion to dismiss. ECF No. 35. The Court endorsed that proposal on June 13, 2022, and denied the class certification motion without prejudice to renewal. ECF No. 36.

Defendants moved to dismiss for lack of subject matter jurisdiction on July 15, 2022. ECF Nos. 45-47. Plaintiffs opposed on August 22, 2022, ECF Nos. 55-56, and defendants replied on September 2, 2022. ECF No. 63. At the Court's request, the parties submitted supplemental briefing in February 2023 concerning the applicability of Pullman abstention. ECF Nos. 64-66, 68-69. The Court denied defendants' motion on March 24, 2023. ECF No. 71.

On April 14, 2023, defendants filed an answer. ECF No. 76. On April 28, 2023, the parties stipulated to defer class certification until after summary judgment. ECF No. 79. Following Mr. Burgos' withdrawal from this action, counsel requested leave to file an amended complaint on July 17, 2023 to remove Mr. Burgos as a plaintiff, which was granted the following day. ECF Nos. 82, 83. Plaintiff filed the Amended Complaint on July 19, 2023, seeking: (i) permanent injunctive relief prohibiting defendants from subjecting plaintiff and the putative class to the

“unconstitutional and unlawful practices” described in the Amended Complaint, and ordering the expungement of all DNA profiles in the Suspect Index; and (ii) a declaration that the taking, analyzing, and maintaining of DNA in the Suspect Index violates the Fourth Amendment; and (iii) a declaration that the Suspect Index violates Article 49-B of the Executive Law. ECF No. 84 (“AC”).

After a period prolonged by extension requests, discovery closed on June 6, 2025. Defendants filed a motion for summary judgment on July 9, 2025, with a supporting memorandum, declarations, and exhibits. ECF Nos. 127-33. Plaintiff opposed and cross-moved for summary judgment on August 8, 2025. ECF Nos. 140-44. Defendants replied and opposed plaintiff’s motion on September 8, 2025. ECF Nos. 151-58. Plaintiff filed a reply in support of her cross-motion on September 22, 2025. ECF No. 159.

On October 14, 2025, plaintiff requested a pre-motion conference to discuss a renewed motion for class certification or, alternatively, a briefing schedule. ECF No. 160. Defendants opposed that request on October 17, 2025, noting that plaintiff had previously stipulated to defer class certification until after summary judgment. ECF No. 161. The Court denied plaintiff’s request on October 28, 2025. ECF No. 162.

III. Legal Standard

a. Summary Judgment

Under Rule 56(a) of the Federal Rules of Civil Procedure, summary judgment is appropriate when the moving party “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine issue of material fact exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Nick’s Garage, Inc. v. Progressive Cas. Ins. Co., 875 F.3d 107, 113-14 (2d Cir. 2017) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). Factual disputes that are irrelevant or unnecessary are disregarded. Anderson, 477 U.S. at 248.

The burden of showing that no genuine factual dispute exists rests on the party seeking summary judgment. Sec. Ins. Co. of Hartford v. Old Dominion Freight Line Inc., 391 F.3d 77, 83 (2d Cir. 2004). When moving against a party who bears the ultimate burden of proof at trial, the movant meets this burden by pointing to an “absence of evidence to support an essential element of the nonmoving party’s claim.” Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, (1986)). In assessing the record,

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courts must resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought. Sec. Ins. Co. of Hartford, 391 F.3d at 83.

Once the moving party has satisfied its burden, to defeat the motion, "the party opposing summary judgment . . . must set forth 'specific facts' demonstrating that there is 'a genuine issue for trial.'" Wright v. Goord, 554 F.3d 255, 266 (2d Cir. 2009) (quoting Fed. R. Civ. P. 56(e)). Conclusory allegations are insufficient to create a genuine issue. Delaware & Hudson Ry. Co. v. Consol. Rail Corp., 902 F.2d 174, 178 (2d Cir. 1990). The opposing party "may not merely rest on the allegations or denials of his pleading[.]" Wright, 554 F.3d at 266; see Havey v. Homebound Mortg., Inc., 547 F.3d 158, 163 (2d Cir. 2008) (stating that a non-moving party must point to more than a mere "scintilla of evidence" to defeat summary judgment) (quoting Anderson, 477 U.S. at 252).

The same standards of review apply when, as here, the court faces cross-motions for summary judgment. Bell v. Pham, 2011 WL 1142857, at *2 (S.D.N.Y. Mar. 24, 2011) (citing Morales v. Quintel Ent., Inc., 249 F.3d 115, 121 (2d Cir. 2001)). Each motion must be reviewed on its own merits, and the Court must draw all

reasonable inferences against the party whose motion is under consideration. Id.

DISCUSSION

Plaintiff alleges that, unlike the established federal and state DNA systems, OCME's Suspect Index violates the Fourth Amendment and New York Executive Law Article 49-B. Specifically, plaintiff argues that (i) defendants' practice of collecting individuals' DNA, maintaining their DNA profiles in the Suspect Index, and comparing those profiles to crime scene evidence constitutes an unreasonable search in violation of the Fourth Amendment; and (ii) Article 49-B prohibits localities such as New York City from maintaining a DNA index comprised of arrestees and suspects, rather than individuals with criminal convictions. See generally Pl. Br. 10-29.

Defendants maintain that: (i) Leslie had no legitimate expectation of privacy in the disposable cup that contained her DNA; (ii) indexing and comparing a DNA profile derived from a lawfully-acquired DNA sample to other DNA profiles does not constitute a "search" under the Fourth Amendment; and (iii) the Court should decline to exercise supplemental jurisdiction over

Leslie's state law claim or, alternatively, reject it as meritless. See generally Defs. Br. 13-28.

Prior to addressing the specific constitutional question before it, we will outline the governing legal framework and controlling precedent covering the creation and use of forensic DNA databases and indexes. First, we will review the constitutional treatment of DNA identification systems maintained by federal and state authorities, which provides the backdrop against which plaintiff's Fourth Amendment challenge must be evaluated. We will then address the specific collection practices challenged here, focusing on whether the collection of Leslie's DNA from the cup constitutes a "search" within the meaning of the Fourth Amendment and, if so, whether such a search was reasonable. Finally, we will consider the contours and applicability of Article 49-B in deciding whether to exercise supplemental jurisdiction over plaintiff's state law claim.

I. Governing Framework for Forensic DNA Databases

a. Applicable Fourth Amendment Standard

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. Const. amend. IV. "The Supreme Court has articulated two tests to determine when a

search occurs within the meaning of the Fourth Amendment.” United States v. McKenzie, 13 F.4th 223, 231 (2d Cir. 2021). The first test, known as the “property baseline test,” tracks the categories listed in the Fourth Amendment and recognizes a search when the government “obtains information by physically intruding on persons, houses, papers, or effects.” Id. at 231. The second test, known as the “legitimate expectation of privacy test,” forbids warrantless searches that violate an individual’s legitimate, or reasonable, expectation of privacy. Id. at 232. Under this second test, courts apply a two-pronged inquiry: (i) an individual must manifest a subjective expectation of privacy in the object of the challenged search, and (ii) that expectation must be one society is prepared to recognize as reasonable. Id. If law enforcement’s conduct “does not intrude upon a legitimate expectation of privacy, there is no ‘search’ subject to the Fourth Amendment.” United States v. Poller, 129 F.4th 169, 174 (2d Cir. 2025) (citing Illinois v. Andreas, 463 U.S. 765, 771 (1983)).

Here, the property baseline test is inapplicable. Leslie’s DNA was not obtained through any physical intrusion into her body. Her blood was not drawn, her fingernails were not scraped, nor was the inside of her cheek swabbed. Instead, Leslie’s DNA was collected from a disposable cup that she sipped from during a post-

arrest interview and left behind upon exiting the room. Compare Cupp v. Murphy, 412 U.S. 291, 295 (1973) (applying the Fourth Amendment to police efforts to scrape an arrestee's fingernails), and Missouri v. McNeely, 569 U.S. 141, 148 (compelled blood draw), and Maryland v. King, 569 U.S. 435, 446 (2013) ("King") (applying the Fourth Amendment to the "gentle" intrusion of a buccal swab), with Raynor v. State, 99 A.3d 753, 767-68 (Md. 2014) (analyzing to DNA left behind on a chair at a police station). The challenged practices here are therefore governed by the legitimate expectation of privacy test.

b. DNA Analysis and CODIS Loci

Because this case turns on whether Leslie's expectation of privacy in the cup containing her DNA was legitimate, the Court first clarifies what forensic DNA analysis does, and does not, reveal about an individual. Modern forensic DNA analysis enables law enforcement to establish with remarkable precision whether a given individual's genetic profile matches evidence recovered from a crime scene and, with equal reliability, to exclude those who played no role in the offense. See King, 569 U.S. at 442 ("[L]aw enforcement, the defense bar, and the courts have acknowledged DNA testing's 'unparalleled ability both to exonerate the wrongly convicted and to identify the guilty.'"") (quoting Dist. Attorney's

Office for the Third Judicial Dist. v. Osborne, 557 U.S. 52, 55 (2009)). DNA testing primarily relies on an analysis of chromosomes, the structures within cells that contain DNA. Id. at 442-43. Chromosomes contain DNA material composed of coding and non-coding regions. Id. Coding regions contain genes that direct the production of proteins. Id. Non-coding regions, by contrast, do not encode proteins and have been referred to as "junk" DNA. Id. These non-coding regions can be "used with near certainty to identify a person," yet they do not "show more far-reaching and complex characteristics like genetic traits." Id.; see also Raynor 99 A.3d at 761.

The FBI standardized DNA profile analysis by requiring that profiles uploaded to CODIS include results from designated core loci. King, 569 U.S. at 445. Currently, the FBI requires analysis from 20 CODIS loci drawn from non-coding regions. Defs. 56.1 ¶ 26; Pl. Counter 56.1 ¶ 26. Because those loci come from non-coding regions, they "do not reveal the genetic traits of the arrestee." King, 569 U.S. at 464. In the Supreme Court's formulation, a CODIS profile therefore functions like a fingerprint: "the only difference between DNA analysis and the accepted use of fingerprint databases is the unparalleled accuracy DNA provides." Id. at 451; accord Williamson v. State, 993 A.2d

626, 639 (Md. 2010) (“[T]he only information collected from testing and storage of DNA profiles is the identity of the person whose DNA is being tested[.]”); United States v. Mitchell, 652 F.3d 387, 410 (3d Cir. 2011) (a DNA profile serves “solely as an accurate, unique, identifying marker -- in other words, as fingerprints for the twenty-first century.”).

**c. Governing Precedent Upholding DNA Profile Creation,
Indexing, and Comparison**

Against this backdrop, the constitutional landscape governing and approving of forensic DNA identification and databases is largely settled. In King, the Supreme Court considered whether a Maryland statute authorizing the collection of DNA via buccal swabs from individuals arrested for serious crimes violated the Fourth Amendment.⁵ The Court upheld the statute, holding that DNA identification of arrestees is a reasonable search under the Fourth Amendment that “can be considered part of a routine booking procedure.” King, 569 U.S. at 465. The constitutional holding of King was not cabined to the particular provisions of the state

⁵ Importantly for purposes of this action, King involved a physical intrusion -- namely, the “gentle rub along the inside of the cheek” required to obtain a buccal swab. King, 569 U.S. at 463-64. That bodily intrusion, the brief and minimal nature of which was emphasized by the Court, was held constitutional because it did not “increase the indignity already attendant to normal incidents of arrest.” Id. at 464.

statute which was broadly the subject of the opinion. Id. at 465-66.

Central to the Court's conclusion was its observation that the CODIS loci do not "intrude on [the arrestee's] privacy in a way that would make his DNA identification unconstitutional." Id. at 464. Specifically, the Court explained that the CODIS loci "do not reveal the genetic traits of the arrestee" and are used "for the sole purpose of generating a unique identifying number against which future samples may be matched." Id. Although the Court acknowledged debate over whether the DNA testing might reveal private medical information, it emphasized that the samples at issue were not, in fact, tested for such information. Id. ("[A]lles at the CODIS loci 'are not at present revealing information beyond identification' . . . And even if non-coding alleles could provide some information, they are not in fact tested for that end."). Accordingly, the Court concluded that the creation and comparison of DNA profiles for identification purposes "is no different than matching an arrestee's face to a wanted poster of a previously identified suspect; or matching tattoos to known gang symbols to reveal a criminal affiliation; or matching the arrestee's fingerprints to those recovered from a crime scene." Id. at 451.

Six years prior to the Supreme Court's decision in King, the Second Circuit likewise endorsed the constitutionality of DNA indexing under a more stringent analytical framework. In United States v. Amerson, the court applied the "special needs" doctrine, typically reserved for "suspicionless" searches under the Fourth Amendment, and upheld the federal DNA indexing statute as applied to convicted felons on probation. 483 F.3d 73, 89 (2d Cir. 2007). The court applied that framework because the statute required individuals to provide a DNA sample for indexing in CODIS without "any suggestion that the individual is being suspected of having committed a crime (other than the one of which he had already been convicted)." Id. at 82; cf. King, 569 U.S. at 463 (explaining special needs cases "do not have a direct bearing" on searches of lawful arrestees, who possess diminished expectations of privacy).

Acknowledging that DNA implicates significant privacy interests because of the sensitive information that could be extracted from genetic material, the Second Circuit nonetheless concluded that those interests were outweighed where the program limited the use of collected samples to identification purposes and served compelling government interests. Amerson, 483 F.3d at 85-88. As in King, the court recognized that DNA databases serve a vital dual function weighing in their constitutional favor:

assisting in the identification of perpetrators while exonerating the innocent. Id. at 87 (“The greater accuracy and speed with which CODIS allows the government to apprehend and convict those guilty of crimes has, as we have seen, an equally important corollary -- its use in exonerating innocent people criminally suspected, convicted, or charged.”).

In light of the foregoing, the creation and indexing of DNA profiles is, in general, constitutionally permissible. A separate but related question remains: whether law enforcement’s comparison of a lawfully obtained DNA profile against other profiles in a database constitutes an independent search requiring its own constitutional justification. Established precedent indicates that it does not.

The Supreme Court’s decision in Arizona v. Hicks, 480 U.S. 321 (1987), provides the governing framework for assessing the constitutionality of DNA profile comparison. There, a police officer lawfully entered an apartment under exigent circumstances and observed stereo equipment he suspected had been stolen. Hicks, 480 U.S. at 323. To confirm his suspicion, the officer moved the equipment to view its serial numbers, recorded those numbers, and relayed them to headquarters, where they were checked against police records and identified as equipment stolen in an armed

robbery. Id. at 323-24. The Court held that moving the equipment to expose the serial numbers constituted a search under the Fourth Amendment, but that comparing the recorded numbers against existing police records did not independently implicate the Fourth Amendment. Id. at 324-25.

The same logic applies to DNA profiles, as the court determined in Johnson v. Quander, 440 F.3d 489 (D.C. Cir. 2006). There, the court held that once an initial DNA sample has been lawfully obtained, "the government's storage and use of it does not give rise to an independent Fourth Amendment claim." Quander, 440 F.3d at 499. That conclusion rested on the recognition that a DNA profile functions like a fingerprint and is akin to a "snapshot," revealing only unique identifying information "at a single point in time." Id.

Thus, whatever constitutional question may attend the initial collection of a DNA sample, comparing the resulting profile to those already in a governmental database is no different from checking a serial number against police records or running a fingerprint through a database. To hold otherwise would defeat, or at least substantially hinder, the dual purposes of DNA databases: identifying perpetrators while exonerating the innocent. As Judge Easterbrook observed in highlighting the

similarities between DNA and fingerprint profiles, the Fourth Amendment “does not control how properly collected information is deployed,” and the “[u]se of DNA is in this respect no different from use of a fingerprint[.]” Green v. Berge, 354 F.3d 675, 680 (7th Cir. 2004). That analogy is apt. Courts have not suggested that law enforcement must obtain a warrant each time a fingerprint is run through a database, and plaintiff identifies no authority to support such a rule. There is no principled basis for treating DNA profiles differently.⁶ Indeed, King recognized and approved of DNA profile comparison and matching, observing that “[i]t is undisputed that law enforcement officers analyze DNA for the sole purpose of generating a unique identifying number against which future samples may be matched,” and that a DNA profile “is useful to the police because it gives them a form of identification to

⁶ The broad consensus of other courts is in accord on the comparison question. See, e.g., Boroian v. Mueller, 616 F.3d 60, 67-68 (1st Cir. 2010) (“[W]e join the other courts to have addressed the issue in holding that the government’s retention and matching of Boroian’s profile against other profiles in CODIS does not violate an expectation of privacy that society is prepared to recognize as reasonable, and thus does not constitute a separate search under the Fourth Amendment.”); Amerson, 483 F.3d at 86 (acknowledging that although offenders’ DNA profiles will be retained and “potentially used to identify” offenders after probation ends, “we do not believe that this changes the ultimate analysis”); Wilson v. Collins, 517 F.3d 421, 428 (6th Cir. 2008) (“[T]o the extent the claim is premised on the retention and disclosure of personal DNA information, it does not implicate the Fourth Amendment[.]”); A.A. ex rel. B.A. v. Att’y Gen. of New Jersey, 914 A.2d 260, 267 (N.J. 2007) (“[I]t would be unreasonable to say that an object or substance could be lawfully searched and seized, but that it could not be used to solve a crime committed prior to the search and seizure.”).

search the records already in their valid possession.” King, 596 U.S. at 464, 451 (emphasis added). Like the creation and indexing of DNA profiles, the comparison of such lawfully obtained profiles is also constitutionally permissible.

II. Leslie’s DNA Profile Is Constitutionally Indistinguishable From That Which Was Upheld in King

At its core, plaintiff’s challenge is an attempt to relitigate King through the lens of Carpenter v. United States, 585 U.S. 296 (2018). Plaintiff does not, because she cannot, dispute that the DNA profile created from the disposable cup revealed the same information at issue in King: a unique numeric identifier and her biological sex, generated from the same non-coding loci that the Supreme Court has held do not intrude on an arrestee’s privacy in a constitutionally significant way. Defs. Br. at 1, 18-19. Instead, plaintiff invokes Carpenter and the evolving capabilities of DNA technology in an attempt to cast King as providing an insufficient answer to the privacy concerns she raises. As explained infra, that effort fails. Critically, plaintiff does not argue that the analysis performed on her DNA revealed anything that King did not contemplate, but rather that King should be read so narrowly as to have little application here. The Court declines to do so.

It is undisputed that OCME uses the standard 20 CODIS non-coding loci, plus two additional non-coding loci, to generate DNA profiles. Defs. 56.1 ¶ 26; Pl. Counter 56.1 ¶ 26. It is similarly undisputed that Leslie's DNA profile was not tested for, and did not reveal, physical traits, medical information, or genetic predispositions. Defs. Br. at 19. In every constitutionally relevant respect, Leslie's DNA profile was therefore the same as the profile upheld in King. That Leslie's DNA might theoretically have been subjected to a more searching analysis capable of revealing more intimate information is simply irrelevant. The Constitution speaks to, and this Court addresses, what the government actually did, not what it could have done. See Mitchell, 652 F.3d at 408 (explaining that courts have "declined to factor [the] future risk" of extracting sensitive information from non-coding loci into the assessment of the "constitutionality of the DNA collection program as it exists at present").

Courts applying King to similar facts are in agreement. In Raynor, the court held that DNA testing of CODIS loci within genetic material not obtained by means of a physical intrusion into an individual's body is no more a search for Fourth Amendment purposes than the testing of fingerprints or the observation of any other identifying feature exposed to the public. Raynor, 99

A.3d at 767-68. The court emphasized the analogy to fingerprinting, explaining that "a fingerprint, like the genetic material swabbed here, has no independent value to the police until it is tested and compared to other, previously collected fingerprints." Id. at 764. Similarly, in Commonwealth v. Arzola, the court held that DNA analysis of a lawfully obtained sample was "no more a search than an analysis of latent fingerprints would be." 26 N.E.3d 185, 191 (Mass. 2015). Here, too, "[a]part from the source's sex," the analysis of Leslie's DNA "revealed nothing more than the identity of the source." Id.

The value of DNA databases is illustrated by the facts of this case. Leslie's DNA profile was compared to DNA recovered from the defaced firearm, and that comparison excluded her as a contributor to a serious crime. Defs. 56.1 ¶ 47; Pl. Counter 56.1 ¶ 47. The DNA process worked precisely as designed, and it worked in Leslie's favor. This exculpatory result reflects the very "equally important corollary" identified in Amerson when discussing the vital investigatory dual function of CODIS. 483 F.3d at 87.

Because Leslie's profile falls squarely within the framework established by King, and because the use of non-coding loci for identification purposes has been expressly sanctioned by the

Supreme Court and the Second Circuit, the constitutional analysis is essentially complete. Plaintiff's effort to reopen what King closed does not alter that conclusion.

a. Plaintiff's Invocation of Carpenter Does Not Disturb the King Analysis

Plaintiff advances two related arguments in an effort to escape the force of King. First, she contends that DNA technology is rapidly evolving and increasingly capable of revealing intimate information about individuals and their relatives. Pl. Br. at 10-15. Second, she argues that Carpenter requires courts to consider the range of privacies a technology could implicate, rather than limiting the inquiry to what information was actually revealed in a particular case. Id.; Pl. Reply at 4-7. On that basis, plaintiff contends that the Court must evaluate the constitutionality of DNA collection by reference to the full range of information that DNA analysis might someday disclose. Id.; Pl. Reply at 4-7. Taken together, these arguments amount to an invitation to revisit King through the lens of Carpenter. The Court sees no reason to do so.

First, federal courts are courts of limited jurisdiction whose function is to resolve the controversy presented by the parties on the record before them. See Lewis v. Cont'l Bank Corp., 494 U.S. 472, 477 (1990) (holding that federal courts may only hear "real and substantial controversies" and may not issue

"opinion[s] advising what the law would be upon a hypothetical state of facts") (citations omitted). It is undisputed that the testing performed on Leslie's sample was limited to 22 non-coding loci and that the profile generated from the cup revealed nothing beyond her biological sex and unique numeric identifier. Defs. 56.1 ¶ 26; Pl. Counter 56.1 ¶ 26; Defs. Br. at 1, 18-19.

Plaintiff attempts to generate a factual dispute on this point by citing to a declaration from Dr. Maher Nouredine referencing a 2022 study and stating that "information contained at these [non-coding] loci may, in fact, reveal personal medical information." Pl. Counter 56.1 ¶¶ 23, 27 (emphasis added). That dispute, to the extent it is genuine, is immaterial. The relevant question under King and its progeny is not what non-coding loci could theoretically reveal, but rather what they revealed here: Leslie's biological sex and unique numeric identifier. And as discussed supra, that information does not implicate privacy concerns under the Fourth Amendment. The fact that Leslie's DNA might have disclosed more intimate information is "of no moment" because there is no allegation that law enforcement tested her DNA for that purpose. See Raynor, 99 A.3d at 768.

Plaintiff's arguments concerning the expectation of privacy in her DNA therefore relate not to the non-coding loci used for

identification but to the hypothetical misuse of DNA. See Pl. Br. at 13 (“[M]odern forensic DNA analysis can reveal myriad personal details[.]”); Pl. Reply at 5 (referring to the “vast information [the City] could extract from DNA”); Pl. Br. at 14 (“[T]echnology may soon enable the NYPD to collect DNA samples from suspects by vacuuming the air in interrogation rooms[.]”) (emphases added). While courts have long acknowledged the possibility of such misuse and technological advancements, those issues are not before the Court. As the Supreme Court explained, “[i]f in the future police analyze samples to determine, for instance, an arrestee’s predisposition for a particular disease or other hereditary factors not relevant to identity, that case would present additional privacy concerns not present here.” King, 569 U.S. at 464-65. In sum, plaintiff raises the specter of privacy harms that might arise if DNA technology were misused in the future, but that specter remains hypothetical.

Plaintiff’s reliance on Carpenter is likewise unavailing. There, the Supreme Court held that the government’s acquisition of cell-site location information (“CSLI”) from a wireless carrier constituted a Fourth Amendment search because CSLI reveals a detailed chronicle of a person’s movements, exposing familial, political, and professional associations continuously and without

any affirmative act by the user. Carpenter, 585 U.S. at 311-15. Plaintiff reads Carpenter to require courts to evaluate government use of technology by reference to the full universe of private information it might reveal. Pl. Br. at 14-15; Pl. Reply at 4-6. Even accepting that reading, it does not assist plaintiff here. The Supreme Court was aware when it decided Carpenter that DNA analysis had the theoretical capacity to reveal sensitive information, yet it had expressly sanctioned the use of non-coding CODIS loci analysis just five years earlier in King. Nothing in Carpenter suggests that it displaced that holding.⁷

Moreover, Carpenter's reasoning does not support plaintiff's position. The Court in Carpenter cabined its holding to the distinctive characteristics of CSLI -- namely, that it automatically generates a comprehensive, retrospective record of an individual's physical movements over a period potentially spanning years. 585 U.S. at 311-13, 316, 320. The DNA testing at issue here shares none of those characteristics. Rather, the testing was limited to 22 non-coding loci from a single sample and produced nothing beyond a numeric identifier and biological sex.

⁷ Plaintiff fails to even mention, let alone grapple with, the fact that Justice Kennedy authored the Court's opinion in King and dissented in Carpenter. King, U.S. 435 at 438; Carpenter, 585 U.S. at 321. It is a fair inference that Justice Kennedy was not of the view that Carpenter raised an issue about the soundness of King, which was not cited in Carpenter.

The breadth and intimacy of the information that made CSLI constitutionally distinctive in Carpenter are absent here, and plaintiff's attempt to invoke Carpenter's framework cannot supply what the facts do not.⁸

III. Leslie Had No Expectation of Privacy in the Disposable Cup

As established supra, the creation of a DNA profile from a lawfully obtained sample, the indexing of that sample, and its comparison to other profiles in a database are all permissible under established precedent. The Court therefore turns to the remaining question of whether the collection of Leslie's DNA from the disposable cup intruded upon a legitimate expectation of privacy and thus constituted a search under the Fourth Amendment. The expectation of privacy test requires Leslie to demonstrate both that she manifested a subjective expectation of privacy in the object of the challenged search and that society would recognize that expectation as reasonable. Poller, 129 F.4th at 174. Leslie cannot satisfy this test.

⁸ Carpenter also cautioned against seismic shifts in Fourth Amendment doctrine. 585 U.S. at 316 ("Our decision today is a narrow one. We do not express a view on matters not before us[.]"). Plaintiff's position, that Carpenter quietly overruled King and requires courts to evaluate the constitutionality of CODIS loci analysis by what it may theoretically reveal, asks for precisely such a shift.

a. Subjective Expectation of Privacy

Turning to the first prong, the question is whether Leslie manifested a subjective expectation of privacy in the object of the challenged search: a disposable water cup containing her saliva. Poller, 129 F.4th at 174. The record shows that Leslie had never considered her DNA prior to her arrest and, like all individuals who inevitably shed DNA in everyday activities, did not assert a privacy interest in that context. Defs. 56.1 ¶ 57; Pl. Counter 56.1 ¶ 57. Moreover, Leslie did not know what information a DNA profile generated from her sample contained, let alone whether such information was private. Defs. 56.1 ¶ 60; Pl. Counter 56.1 ¶ 60.

United States v. Williams, 2026 WL 264736 (S.D.N.Y Feb. 2, 2026) provides useful guidance. There, the court confronted nearly identical facts: a DNA sample from an arrestee who was offered water by the NYPD during a post-arrest interview, drank from the bottle, and, consistent with NYPD policy, was not permitted to take the bottle when leaving the interview room. Williams, 2026 WL 264736, at *1. The court held that the defendant failed to establish a subjective expectation of privacy in the bottle because he did not ask to retrieve it “or otherwise express[] a desire to keep the water bottle private.” Id. at *2. Similarly, Leslie

drank from a cup offered by law enforcement, left it on the table when she exited the room, and did not express a desire to keep the cup private. Accordingly, Leslie did not manifest a subjective expectation of privacy in the disposable cup. See United States v. Hicks, 2020 WL 7704556, at *3 (W.D. Tenn. May 27, 2020) (no Fourth Amendment violation where defendant did not attempt to preserve as private the cigarette from which DNA was collected).

b. Objective Expectation of Privacy

Even if Leslie could establish a subjective expectation of privacy in the cup, she has not demonstrated that any such expectation was objectively reasonable under the circumstances of her detention. This conclusion follows from (i) Leslie's diminished expectations of privacy as a lawful arrestee, (ii) the limited information revealed by the DNA profile, and (iii) the government's legitimate interest in accurately solving crimes.

i. Arrestees Have Diminished Expectations of Privacy

It is well established that "the expectations of privacy of an individual taken into police custody necessarily are of a diminished scope" and that "[o]nce an individual has been arrested on probable cause for a dangerous offense that may require detention . . . expectations of privacy and freedom from police scrutiny are reduced." King, 569 U.S. at 462-63 (internal

quotation marks and citation omitted). Booking procedures routinely involve significant searches of an arrestee's person, and DNA identification fits comfortably within that framework. King itself involved a physical intrusion in the form of a gentle buccal swab, which the Supreme Court upheld as constitutional. Id. at 446 (emphasizing the "gentle" and "negligible" intrusion imposed by a buccal swab). Here, by contrast, the collection of DNA from a disposable cup that Leslie used and left behind involved no physical intrusion at all.⁹

Further, under 34 U.S.C. § 40702, had Leslie been arrested by the FBI rather than the NYPD for the same offense, she would have been required to provide a DNA sample during the booking process. See 34 U.S.C. § 40702(a)(1)(A); 28 C.F.R. § 28.12(b). Adopting plaintiff's position would therefore produce the anomalous result that the Constitution affords greater protection to a state arrestee whose DNA is collected from an object she used than to a

⁹ The Supreme Court's decision in Birchfield v. North Dakota, 579 U.S. 438 (2016) is instructive by analogy. There, the Court held that the Fourth Amendment permits warrantless breath tests incident to arrest but not warrantless blood tests. Id. at 474. The Court grounded that distinction in the degree of physical intrusion and explained that blood tests require piercing of skin and extracting part of a subject's body, whereas breath tests involve no such invasion and, unlike bleeding, breathing is a constant bodily function. Id. at 463-64. Applying that logic here, the collection of DNA shed through natural biological processes falls at the least intrusive end of the constitutional spectrum, well below the breath tests and buccal swabs approved by the Supreme Court.

federal arrestee compelled to provide a DNA sample directly. While a search of an arrestee may require a warrant if privacy concerns are sufficiently “weighty,” Riley v. California, 573 U.S. 373, 392 (2014), the collection of DNA from an arrestee’s beverage container while in custody does not present concerns of that magnitude, even in the absence of an authorizing state statute. Williams, 2026 WL 264736, at *2 (“[T]here is no reason to believe that collection of DNA from an arrestee’s water bottle would present such ‘weighty’ concerns as to require a warrant while in custody.”); Jones v. Meehan, 2018 WL 459662, at *10 n.12 (S.D.N.Y. Jan. 16, 2018) (explaining that, even without an authorizing state statute, “the language of King suggests that this practice [of warrantlessly obtaining DNA samples from arrestees], as applied to the particular facts of this case, would not violate the Fourth Amendment.”).

ii. Leslie’s DNA Profile Revealed No Private Information

As discussed supra, courts have uniformly held that generating a DNA profile from non-coding loci for identification purposes does not meaningfully intrude upon privacy interests. Plaintiff’s attempt to create a factual dispute on this point is unavailing, because the relevant inquiry is what the government actually did, not what technological advances might theoretically permit. Leslie’s own testimony that she did not know what

information a DNA profile reveals underscores the point: a Fourth Amendment claim grounded in hypothetical privacy harms cannot succeed.

iii. The City's Interest Is Legitimate

In addition to considering the degree of intrusion on Leslie's privacy, the Court must consider the countervailing governmental interests. King, 569 U.S. at 449-54. The City has a compelling interest in maintaining DNA-based identity records for investigatory purposes. Amerson, 483 F.3d at 87. Indeed, "DNA identification plays a critical role" in law enforcement efforts to "process and identify the persons and possessions they must take into custody." King, 569 U.S. at 449-50. Here, the NYPD sought Leslie's DNA in connection with a specific investigation into the possession of a loaded firearm with a defaced serial number, a felony designed to obstruct law enforcement's ability to trace the weapon. Defs. 56.1 ¶ 44. Leslie's DNA profile confirmed her identity and cleared her of any wrongdoing, and the possessor was ultimately convicted. Defs. 56.1 ¶¶ 47, 49, 50. The City's interest in identifying perpetrators while excluding innocent individuals such as Leslie is legitimate and substantial.

Accordingly, no Fourth Amendment search occurred because Leslie lacked both a subjective and an objectively reasonable expectation of privacy in the disposable cup from which she drank.¹⁰ Defendants are therefore entitled to summary judgment on plaintiff's Fourth Amendment claim.¹¹

IV. Leslie's State Law Claim

In addition to her Fourth Amendment challenge, plaintiff asserts a state law claim and argues that OCME's Suspect Index is not authorized under, and is preempted by, Article 49-B of the New York Executive Law. Specifically, plaintiff contends that by operating an index containing profiles of individuals not convicted of crimes, defendants run afoul of Article 49-B, which mandates that individuals with convictions provide a DNA sample for inclusion in the New York's statewide DNA identification index

¹⁰ The parties devote substantial briefing to whether Leslie voluntarily abandoned the cup upon exiting the interview room, and specifically whether Leslie could have taken the cup with her given the NYPD's policy prohibiting arrestees from bringing objects back to their cells. The Court need not resolve that question because Leslie had no expectation of privacy in the disposable cup to begin with. See Williams, 2026 WL 264736 at *2 n.1. Accordingly, whether the cup was voluntarily abandoned is immaterial. The Court nevertheless notes that Leslie did not express any intention to retain the cup.

¹¹ Even if the collection of Leslie's DNA from the disposable cup constituted a "search" within the meaning of the Fourth Amendment, the result would be the same. The King balancing framework, which would be applicable here because Leslie was lawfully arrested for possessing the loaded and defaced firearm, would compel a finding of reasonableness: the DNA sample was obtained through entirely non-intrusive means; the non-coding loci analysis revealed no private information; and the City has a substantial interest in identifying arrestees and accurately investigating crimes.

(SDIS). Pl. Br. at 24-29. Defendants maintain that this Court should decline to exercise supplemental jurisdiction over plaintiff's state law claim and, in any event, that Article 49-B does not preclude the operation of the Suspect Index. Defs. Br. at 25-28.

In a March 24, 2023 Memorandum and Order, this Court reserved decision on whether to decline supplemental jurisdiction, explaining that Leslie's state law claim is "analytically independent" of her constitutional claim. Leslie v. City of New York, 2023 WL 2612688, at *11 (S.D.N.Y. Mar. 24, 2023). The Court further observed that although Article 49-B is "clearly worded insofar as it does not expressly authorize the creation of local DNA indexes," there remains an open state law question of whether such local indexes are nevertheless permissible. Id. at *10. As confirmed by the intervening litigation, that observation remains apt. State court decisions addressing the OCME's LDIS and Article 49-B have reached differing results. Some courts have concluded that Article 49-B governs OCME's operations and constrains the information OCME may maintain in its local index, while others have reached the opposite conclusion.¹²

¹² Compare People v. White, 60 Misc. 3d 304, 307 (Sup. Ct. 2018) (holding that "[w]hile the provisions of [Article 49-B] . . . only allow a DNA sample to be included in the New York State DNA data bank upon conviction of a designated offense, they do not explicitly prohibit OCME from entering a lawfully obtained

The Court therefore exercises its discretion under 28 U.S.C. § 1367(c)(1) to decline supplemental jurisdiction. That provision authorizes a district court to decline jurisdiction where a claim “raises a novel or complex issue of State law,” a standard satisfied here. 28 U.S.C. § 1367(c)(1). The question of whether, and to what extent, Article 49-B governs, authorizes, or preempts the operation of OCME’s Suspect Index presents a novel question of New York law.

Article 49-B established New York’s SDIS and provides only for the profiles of individuals convicted of crimes to be uploaded to that system. N.Y. Exec. Law §§ 995-c(1), 995-c(3)(a). It does not expressly address the creation of local indexes or the collection, analysis, and retention of DNA for investigatory purposes. Determining whether a statute regulating a statewide, conviction-based databank occupies the field in which a local investigatory index operates would require the interpretation of

DNA sample into its own local database”), and People v. Belliard, 70 Misc. 3d 965, 970 (Sup. Ct. 2020) (holding that while “nothing in [state law or regulations] authorizes local public DNA laboratories to ‘index’ DNA profiles,” there is “no prohibition against such indexing either”), and People v. Mohammed, 48 Misc. 3d 415, 417 (Sup. Ct. 2015) (Article 49-B “does not prohibit uploading a defendant’s DNA sample into the local OCME DNA database for comparison to DNA profiles in that database”), with People v. K.M., 54 Misc. 3d 825, 830 (Sup. Ct. 2016) (local DNA indexes including individuals not convicted of crimes “run afoul of [state law], which allows inclusion of a DNA profile into a wide-ranging database only after conviction”), and People v. Blank, 61 Misc. 3d 542, 545 (Sup. Ct. 2018) (“OCME’s practice of uploading DNA samples for all purposes runs afoul of the Executive Law.”).

a statute in a context not explicitly addressed by the Legislature, application of state preemption doctrine to a local government practice, and reconciliation of conflicting lower-court decisions. The Court declines to undertake that inquiry here. Plaintiff's state law claim is therefore dismissed without prejudice to refiling in the appropriate state forum.

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment is granted, and plaintiff's cross-motion for summary judgment is denied. The Clerk of Court is respectfully directed to terminate the motions pending at ECF Nos. 127 and 140 and close the case.¹³ The Clerk of Court is also respectfully directed to unseal the filing at ECF No. 128.

Dated: March 20, 2026
New York, New York



NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

¹³ The Court acknowledges that defendants requested oral argument on the cross-motions for summary judgment. ECF Nos. 128, 151. Because defendants were the only ones to do so and the Court is ruling in their favor, and given that the issues presented in this action are resolvable on the basis of established law, the Court has determined that oral argument is not necessary.

SPA-45

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
SHAKIRA LESLIE, on behalf of herself and all
others similarly situated,

Plaintiff,

-against-

22 CIVIL 2305 (NRB)

JUDGMENT

CITY OF NEW YORK; EDWARD CABAN,
Police Commissioner for the City of New York, in
his official capacity; JEFFREY MADDREY, Chief
of Department for the New York City Police
Department, in his official capacity; JAMES
ESSIG, Chief of Detectives for the New York
City Police Department, in his official capacity;
BRIAN MCGEE, Deputy Chief in the Forensic
Investigations Division of the New York City
Police Department, in his official capacity; and DR.
JASON GRAHAM, Chief Medical Examiner for
the City of New York, in his official capacity,

Defendants.

-----X

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons
stated in the Court's Memorandum and Order dated March 20, 2026, defendants' motion for
summary judgment is granted, and plaintiff's cross-motion for summary judgment is denied;
accordingly, the case is closed.

Dated: New York, New York

March 23, 2026

TAMMI M. HELLWIG

Clerk of Court

BY:

K. mango

Deputy Clerk

SPA-46

Amendment IV. Searches and Seizures; Warrants, USCA CONST Amend. IV-Search and Seizure; Warrants

United States Code Annotated
 Constitution of the United States
 Annotated
 Amendment IV. Searches and Seizures; Warrants

U.S.C.A. Const. Amend. IV-Search and Seizure; Warrants

Amendment IV. Searches and Seizures; Warrants

Currentness

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for this amendment.>

U.S. SUPREME COURT OCTOBER TERM 2025

<U.S. Supreme Court, Oct. Term 2025, Oral Argument - Question Presented: >

<Whether law enforcement may enter a home without a search warrant based on less than probable cause that an emergency is occurring, or whether the emergency-aid exception requires probable cause. [State v. Case, 2024 MT 165, 417 Mont. 354, 553 P.3d 985](#), cert. granted, [145 S. Ct. 2749 \(2025\)](#); [2025 WL 2956324 \(U.S.\)](#) (U.S.Oral.Arg.,2025). >

<U.S. Supreme Court, Oct. Term 2025, Oral Argument - Question Presented: >

<Whether the execution of the geofence warrant violated the Fourth Amendment. [United States v. Chatrue, 136 F.4th 100 \(4th Cir. 2025\)](#), cert. granted in part, [223 L. Ed. 2d 553 \(Jan. 16, 2026\)](#). >

U.S.C.A. Const. Amend. IV-Search and Seizure; Warrants, USCA CONST Amend. IV-Search and Seizure; Warrants
 Current through P.L. 119-100. Some statute sections may be more current, see credits for details.

End of Document

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§ 1367. Supplemental jurisdiction, 28 USCA § 1367



KeyCite Yellow Flag

Unconstitutional or Preempted Limitation Recognized by [In re Mid-Continent Electric, Inc.](#), Bkrtcy.M.D.Fla., Apr. 11, 2002

United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1367

§ 1367. Supplemental jurisdiction

Currentness

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under [Article III of the United States Constitution](#). Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on [section 1332](#) of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under [Rule 14](#), [19](#), [20](#), or [24 of the Federal Rules of Civil Procedure](#), or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of [section 1332](#).

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

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§ 1367. Supplemental jurisdiction, 28 USCA § 1367

CREDIT(S)

(Added [Pub.L. 101-650, Title III, § 310\(a\)](#), Dec. 1, 1990, 104 Stat. 5113.)

[Notes of Decisions \(1895\)](#)

O’CONNOR’S CROSS REFERENCES

O’Connor’s Federal Rules Civil Trials:

See *O’Connor’s Federal Rules*, “Supplemental jurisdiction,” ch. 2-F, §6.

28 U.S.C.A. § 1367, 28 USCA § 1367

Current through P.L. 119-100. Some statute sections may be more current, see credits for details.

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§ 79-l. Confidentiality of records of genetic tests, NY CIV RTS § 79-l



KeyCite Yellow Flag
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 7. Miscellaneous Rights and Immunities

McKinney's Civil Rights Law § 79-l

§ 79-l. Confidentiality of records of genetic tests

Effective: January 17, 2002

[Currentness](#)

1. As used in this section, the following terms shall have the following meanings:

(a) “genetic test” shall mean any laboratory test of human DNA, chromosomes, genes, or gene products to diagnose the presence of a genetic variation linked to a predisposition to a genetic disease or disability in the individual or the individual's offspring; such term shall also include DNA profile analysis. “Genetic test” shall not be deemed to include any test of blood or other medically prescribed test in routine use that has been or may be hereafter found to be associated with a genetic variation, unless conducted purposely to identify such genetic variation.

(b) “genetic predisposition” shall mean the presence of a variation in the composition of the genes of an individual or an individual's family member which is scientifically or medically identifiable and which is determined to be associated with an increased statistical risk of being expressed as either a physical or mental disease or disability in the individual or having offspring with a genetically influenced disease, but which has not resulted in any symptoms of such disease or disorder.

(c) “biological sample” shall mean any material part of the human body or of discharge therefrom known to contain DNA, including but not limited to tissue specimen, blood, or urine.

(d) “institutional review board” shall mean a human research review committee established and approved under the provisions of article twenty-four-A of the public health law, or an institutional review board established and approved under the provisions of 45 CFR part 46 or 42 USC 30 V-1, for the purpose of reviewing and monitoring research involving human subjects.

2. (a) No person shall perform a genetic test on a biological sample taken from an individual without the prior written informed consent of such individual as provided in paragraph (b) of this subdivision, except as otherwise provided in paragraph (c) of subdivision two and by subdivision nine of this section.

(b) Written informed consent to a genetic test shall consist of written authorization that is dated and signed and includes at least the following:

§ 79-I. Confidentiality of records of genetic tests, NY CIV RTS § 79-I

- (1) a general description of the test;
- (2) a statement of the purpose of the test;
- (2-a) a statement indicating that the individual may wish to obtain professional genetic counseling prior to signing the informed consent.
- (3) a statement that a positive test result is an indication that the individual may be predisposed to or have the specific disease or condition tested for and may wish to consider further independent testing, consult their physician or pursue genetic counseling;
- (4) a general description of each specific disease or condition tested for;
- (5) the level of certainty that a positive test result for that disease or condition serves as a predictor of such disease. If no level of certainty has been established, this subparagraph may be disregarded;
- (6) the name of the person or categories of persons or organizations to whom the test results may be disclosed;
- (7) a statement that no tests other than those authorized shall be performed on the biological sample and that the sample shall be destroyed at the end of the testing process or not more than sixty days after the sample was taken, unless a longer period of retention is expressly authorized in the consent; and
- (8) the signature of the individual subject of the test or, if that individual lacks the capacity to consent, the signature of the person authorized to consent for such individual.
- (c) A general waiver, wherein consent is secured for genetic testing without compliance with paragraph (b) of this subdivision, shall not constitute informed consent. Notwithstanding the provisions of this section, for purposes of research conducted in accordance with the provisions of subdivision nine of this section, a general waiver for the use of samples for research may be granted which would authorize the use of samples for these research purposes.
- (d) Any further disclosure of genetic test results to persons or organizations not named on the informed consent shall require the further informed consent of the subject of the test.
- (e) Written consent by an individual for tests to be conducted on a biological sample and to the lawful possession and ownership of such sample by a laboratory shall not be deemed written informed consent for the performance of any genetic test on that sample, except as further provided in subdivision four of this section.
- (f) For medical research purposes, with the approval of an institutional review board and the written informed consent of the subject, samples may be kept for longer than sixty days and utilized for scientific research. The requirements of subparagraphs three, four and five of paragraph (b) of this subdivision may be modified by the institutional review board in case the research protocol does not permit such degree of specificity.

§ 79-I. Confidentiality of records of genetic tests, NY CIV RTS § 79-I

3. (a) All records, findings and results of any genetic test performed on any person shall be deemed confidential and shall not be disclosed without the written informed consent of the person to whom such genetic test relates. This information shall not be released to any person or organization not specifically authorized by the individual subject of the test. Unauthorized solicitation or possession of such information shall be unlawful, except for the unintentional possession of such information as part of a health record created prior to the effective date of this section and provided no action adverse to the interests of the subject are taken as a result of such possession. Nothing in this section shall preclude the release of such information, with the subject's consent, to a health insurer or health maintenance organization of any information reasonably required for purposes of claims administration, provided, however, that further distribution within the insurer or to other recipients shall require the subject's informed consent in each case.

(b) No person who lawfully possesses information derived from a genetic test on a biological sample from an individual shall incorporate such information into the records of a non-consenting individual who may be genetically related to the tested individual; nor shall any inferences be drawn, used, or communicated regarding the possible genetic status of the non-consenting individual.

4. (a) Notwithstanding the provisions of subdivision two of this section, genetic tests may be performed on anonymous samples for research or statistical purposes, pursuant to a research protocol approved by an institutional review board which assures the anonymity of the sources of the samples.

(b) Notwithstanding the provisions of subdivision two of this section, genetic tests may be performed without the consent of the person who is the subject of the tests pursuant to an order of a court of competent jurisdiction or as provided pursuant to article forty-nine-B of the executive law or as provided by [section twenty-five hundred-a of the public health law](#).

(c) Notwithstanding the provisions of paragraph (a) of subdivision three of this section, the results of a genetic test may be disclosed to specified individuals without the consent of the subject of the test as provided in an order of a court of competent jurisdiction or as provided pursuant to article forty-nine-B of the executive law or [section twenty-five hundred-a of the public health law](#).

(d) In authorizing a genetic test or the disclosure of genetic test results to specified individuals, the court shall consider the privacy interests of the individual subject of the genetic test and of close relatives of such individual, the public interest, and, in the case of medical or anthropological research, the ethical appropriateness of the research. Disclosure shall be permitted only to individuals or agencies expressly named in court orders.

5. Penalties. (a) Any person who violates the provisions of subdivision two or three of this section shall be guilty of a violation punishable by a civil fine of not more than one thousand dollars.

(b) Any person who willfully violates the provisions of subdivision two or three of this section shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by imprisonment for not more than ninety days or by both such fine and imprisonment.

6. Nothing in this section shall be applicable to an authorized insurer, as defined in [paragraph ten of subsection \(a\) of section one hundred seven of the insurance law](#), or a person acting on behalf of an authorized insurer who is in compliance with [section](#)

§ 79-I. Confidentiality of records of genetic tests, NY CIV RTS § 79-I

twenty-six hundred twelve of the insurance law nor shall anything in this section be deemed to prohibit or limit an authorized insurer from obtaining information pursuant to section twenty-six hundred twelve of the insurance law.

7. Notwithstanding the provisions of subdivision two of this section, genetic testing of newborn infants may be performed as provided pursuant to article twenty-five and section forty-one hundred thirty-five-b of the public health law.

8. Notwithstanding the provisions of subparagraph seven of paragraph (b) of subdivision two of this section, additional genetic testing may be performed on a given sample without additional consent of the person tested provided such testing is necessary and required to demonstrate the integrity of the sample tested or to resolve the analysis of a test with a previously indeterminate result.

9. (a) Notwithstanding the provisions of subdivisions two and ten of this section, samples may be used for tests other than those for which specific consent has been obtained, for purposes of research conducted in accordance with applicable law and regulation and pursuant to a research protocol approved by an institutional review board, provided that the individuals who provided the samples have given prior written informed consent for the use of their sample for general research purposes and did not specify time limits or other factors that would restrict use of the sample for the test, and (1) the samples have been permanently stripped of identifying information; or (2) a coding system has been established to protect the identity of the individuals who provided the samples, and an institutional review board has reviewed and approved the procedures for the coding system.

(b) If consent to storage of the tissue sample is withdrawn at any time, the entity storing the sample shall promptly destroy the sample or portions thereof that have not already been used for research purposes.

(c) In no event shall family members of an individual who provided a stored tissue sample be contacted for clinical, research, or other purposes without consent from the individual who provided the tissue sample with respect to the specific family members who will be contacted and the specific purpose of the contact.

(d) In no event shall any information about an individual derived from genetic tests performed on stored human tissue or information linking an individual with specific results of genetic tests be released to any organization or person without the explicit written consent of the individual who donated the stored tissue to release of the information for the purposes set forth in the written consent document.

(e) Written informed consent for use of stored human tissue for general research purposes shall consist of written authorization that includes at least the following:

(1) a statement that the sample will be used for future genetic tests;

(2) the time period during which the tissue will be stored, or if no time limit is specified, a statement that the tissue will be stored for as long as deemed useful for research purposes;

(3) a description of the policies and procedures to protect patient confidentiality;

§ 79-I. Confidentiality of records of genetic tests, NY CIV RTS § 79-I

(4) a statement of the right to withdraw consent to use of the tissue for future use at any time and the name of the organization that should be contacted to withdraw consent;

(5) a statement allowing individuals to consent to future contact for any or all purposes, including the following: (i) research purposes; (ii) provision of general information about research findings; and (iii) information about the test on their sample that may benefit them or their family members in relation to their choices regarding preventive or clinical care; and

(6) a statement explaining the benefits and risks of consenting to future contact for the purposes set forth in subparagraph five of this paragraph. In no event shall information about specific test results on stored human tissue donated for general research purposes be disclosed to an individual without obtaining informed consent for the disclosure as required by paragraph (b) of subdivision two of this section.

10. Notwithstanding the provisions of subdivision two of this section, DNA samples may be stored for up to ten years in the absence of genetic testing, if authorized in writing by the subject. Prior to the performance of any genetic test upon stored samples, informed consent must be obtained as provided in subdivision two of this section. Retention of a DNA sample past a period of ten years requires explicit consent for a longer or indefinite period of retention.

11. Genetic testing may be performed on specimens from deceased persons if informed consent is provided by the next-of-kin as specified in subdivision two of this section.

Credits

(Added L.1996, c. 497, § 1. Amended L.1997, c. 645, §§ 1 to 6, eff. Dec. 23, 1997; L.2001, c. 342, § 1, eff. Jan. 17, 2002.)

McKinney's Civil Rights Law § 79-I, NY CIV RTS § 79-I

Current through L.2026, chapters 1 to 169. Some statute sections may be more current, see credits for details.

§ 995. Definitions, NY EXEC § 995



KeyCite Yellow Flag
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Executive Law (Refs & Annos)

Chapter Eighteen. Of the Consolidated Laws

Article 49-B. Commission on Forensic Science and Establishment of DNA Identification Index

McKinney's Executive Law § 995

§ 995. Definitions

Effective: September 1, 2022

[Currentness](#)

When used in this article, the following words and terms shall have the meanings ascribed to them in this section:

1. For purposes of general forensic analysis the term “forensic laboratory” shall mean any laboratory operated by the state or unit of local government that performs forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification.
2. For purposes of forensic DNA analysis, the term “forensic DNA laboratory” shall mean any forensic laboratory operated by the state or unit of local government, that performs forensic DNA testing on crime scenes or materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification and the term “forensic DNA testing” shall mean any test that employs techniques to examine deoxyribonucleic acid (DNA) derived from the human body for the purpose of providing information to resolve issues of identification. Regulation pursuant to this article shall not include DNA testing on materials derived from the human body pursuant to title five of article five of the public health law for the purpose of determining a person's genetic disease or medical condition and shall not include a laboratory operated by the federal government.
3. “DNA testing methodology” means methods and procedures used to extract and analyze DNA material, as well as the methods, procedures, assumptions, and studies used to draw statistical inferences from the test results.
4. “Blind external proficiency testing” means a test sample that is presented to a forensic laboratory for forensic DNA testing through a second agency, and which appears to the analysts to involve routine evidence submitted for forensic DNA testing.
5. “DNA” means deoxyribonucleic acid.
6. “State DNA identification index” means the DNA identification record system for New York state established pursuant to this article.
7. “Designated offender” means a person convicted of any felony defined in any chapter of the laws of the state or any misdemeanor defined in the penal law except: (a) a person convicted of prostitution under [section 230.00 of the penal law](#), or

§ 995. Definitions, NY EXEC § 995

(b) a person whose participation in the offense is determined by a court to have been a result of having been a victim of sex trafficking under [section 230.34 of the penal law](#), sex trafficking of a child under [section 230.34-a of the penal law](#), or trafficking in persons under the trafficking victims protection act (United States Code, Title 22, Chapter 78).

8. “DNA record” means DNA identification information prepared by a forensic DNA laboratory and stored in the state DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. A DNA record is the objective form of the results of a DNA analysis sample.

9. “DNA subcommittee” shall mean the subcommittee on forensic DNA laboratories and forensic DNA testing established pursuant to [subdivision thirteen of section nine hundred ninety-five-b](#) of this article.

10. “Commission” shall mean the commission on forensic science established pursuant to [section nine hundred ninety-five-a](#) of this article.

Credits

(Added L.1994, c. 737, § 1. Amended L.1999, c. 560, § 1, eff. Dec. 1, 1999; L.2000, c. 8, § 1, eff. March 6, 2000, deemed eff. Dec. 1, 1999; L.2004, c. 1, pt. A, § 13, eff. July 23, 2004; L.2004, c. 138, § 1, eff. July 6, 2004; L.2004, c. 576, § 1, eff. July 6, 2004; L.2006, c. 2, § 1, eff. June 23, 2006; L.2006, c. 91, § 2, eff. June 7, 2006; L.2006, c. 320, § 26, eff. Nov. 1, 2006; L.2010, c. 405, § 6, eff. Nov. 11, 2010; L.2012, c. 19, § 5; L.2021, c. 92, § 30, eff. March 31, 2021; L.2021, c. 209, § 1, eff. Sept. 1, 2022; L.2021, c. 715, § 1, eff. Dec. 22, 2021.)

Notes of Decisions (14)

McKinney's Executive Law § 995, NY EXEC § 995

Current through L.2026, chapters 1 to 169. Some statute sections may be more current, see credits for details.

§ 995-a. Commission on forensic science, NY EXEC § 995-a



KeyCite Yellow Flag
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Executive Law (Refs & Annos)

Chapter Eighteen. Of the Consolidated Laws

Article 49-B. Commission on Forensic Science and Establishment of DNA Identification Index

McKinney's Executive Law § 995-a

§ 995-a. Commission on forensic science

Currentness

1. There is hereby created in the executive department, the commission on forensic science, which shall consist of the following fourteen members: (a) the commissioner of the division of criminal justice services who shall be chair of the commission and the commissioner of the department of health or his or her designee, who shall serve as an ex-officio member of the commission;

(b) twelve members appointed by the governor.

2. Of the members appointed by the governor,

(a) one member shall be the chair of the New York state crime laboratory advisory committee;

(b) one member shall be the director of a forensic laboratory located in New York state;

(c) one member shall be the director of the office of forensic services within the division of criminal justice services;

(d) two members shall be a scientist having experience in the areas of laboratory standards or quality assurance regulation and monitoring and shall be appointed upon the recommendation of the commissioner of health;

(e) one member shall be a representative of a law enforcement agency and shall be appointed upon the recommendation of the commissioner of criminal justice services;

(f) one member shall be a representative of prosecution services who shall be appointed upon the recommendation of the commissioner of criminal justice services;

(g) one member shall be a representative of the public criminal defense bar who shall be appointed upon the recommendation of an organization representing public defense services;

§ 995-a. Commission on forensic science, NY EXEC § 995-a

(h) one member shall be a representative of the private criminal defense bar who shall be appointed upon the recommendation of an organization of such bar;

(i) two members shall be members-at-large, one of whom shall be appointed upon the recommendation of the temporary president of the senate, and one of whom shall be appointed upon the recommendation of the speaker of the assembly; and

(j) one member, who shall be an attorney or judge with a background in privacy issues and biomedical ethics, shall be appointed upon the recommendation of the chief judge of the court of appeals.

3. Of the members appointed by the governor, each member shall be appointed to serve a three year term. Any member appointed by the governor may be reappointed for additional three year terms.

4. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed by the governor for the unexpired term of the member he or she is to succeed. Any such vacancy shall be filled in the same manner as the original appointment.

5. The commission shall meet at least four times each year and may establish its own rules and procedures concerning the conduct of its meetings and other affairs not inconsistent with law.

6. No member of the commission on forensic science shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment, by reason of his or her appointment hereunder, and members of the commission shall not be required to take and file oaths of office before serving on the commission.

7. Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

Credits

(Added L.1994, c. 737, § 1.)

McKinney's Executive Law § 995-a, NY EXEC § 995-a

Current through L.2026, chapters 1 to 169. Some statute sections may be more current, see credits for details.

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§ 995-b. Powers and duties of the commission, NY EXEC § 995-b



KeyCite Yellow Flag
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Executive Law (Refs & Annos)

Chapter Eighteen. Of the Consolidated Laws

Article 49-B. Commission on Forensic Science and Establishment of DNA Identification Index

McKinney's Executive Law § 995-b

§ 995-b. Powers and duties of the commission

Effective: December 1, 1999

[Currentness](#)

1. The commission shall develop minimum standards and a program of accreditation for all forensic laboratories in New York state, including establishing minimum qualifications for forensic laboratory directors and such other personnel as the commission may determine to be necessary and appropriate, and approval of forensic laboratories for the performance of specific forensic methodologies. Nothing in this article shall be deemed to preclude forensic laboratories from performing research and validation studies on new methodologies and technologies which may not yet be approved by the commission at that time.

In designing a system of accreditation pursuant to this article, the commission shall evaluate other systems of accreditation.

2. The minimum standards and program of accreditation shall be designed to accomplish the following objectives:

(a) increase and maintain the effectiveness, efficiency, reliability, and accuracy of forensic laboratories, including forensic DNA laboratories;

(b) ensure that forensic analyses, including forensic DNA testing, are performed in accordance with the highest scientific standards practicable;

(c) promote increased cooperation and coordination among forensic laboratories and other agencies in the criminal justice system;

(d) ensure compatibility, to the extent consistent with the provisions of this article and any other applicable provision of law pertaining to privacy or restricting disclosure or redisclosure of information, with other state and federal forensic laboratories to the extent necessary to share and exchange information, data and results of forensic analyses and tests; and

(e) set forth minimum requirements for the quality and maintenance of equipment.

2-a. Any program of forensic laboratory accreditation with respect to a DNA laboratory pursuant to this section shall be under the direction of the DNA subcommittee established pursuant to subdivision thirteen of this section. Such subcommittee shall have

§ 995-b. Powers and duties of the commission, NY EXEC § 995-b

the sole authority to grant, deny, review or modify a DNA forensic laboratory accreditation pursuant to this article, provided that such authority shall be effectuated through binding recommendations made by the DNA subcommittee to the commission. In the event the commission disagrees with any of the binding recommendations of the DNA subcommittee made pursuant to this article, the commission may so notify such subcommittee and request such subcommittee to reasonably review such binding recommendations. The DNA subcommittee shall conduct such review and either forward revised binding recommendations to the commission or indicate, with the reasons therefor, that following such review such subcommittee has determined that such binding recommendations shall not be revised.

3. The program of forensic laboratory accreditation shall include, at a minimum, the following requirements:

(a) an initial laboratory inspection, and routine inspections, as necessary, to ensure compliance with accreditation requirements;

(b) routine internal and external proficiency testing of all laboratory personnel involved in forensic analysis, including blind external proficiency testing if the commission, or the DNA subcommittee as the case may be, determines such a blind proficiency testing program to be practicable and appropriate. In determining whether a blind proficiency testing program is practicable and appropriate, the commission, or the DNA subcommittee as the case may be, shall consider such factors as accuracy and reliability of laboratory results, cost-effectiveness, time, allocation of resources, and availability;

(c) quality control and quality assurance protocols, a method validation procedure and a corrective action and remedial program;

(d) annual certification to the commission by the forensic laboratories of their continued compliance with the requirements of the accreditation program which certification, in the case of a forensic DNA laboratory, shall be forwarded to the DNA subcommittee;

(e) the accreditation of a forensic laboratory may be revoked, suspended or otherwise limited, upon a determination by the commission or, in the case of a forensic DNA laboratory, upon the binding recommendation of the DNA subcommittee, that the laboratory or one or more persons in its employ:

(i) is guilty of misrepresentation in obtaining a forensic laboratory accreditation;

(ii) rendered a report on laboratory work actually performed in another forensic laboratory without disclosing the fact that the examination or procedure was performed by such other forensic laboratory;

(iii) showed a pattern of excessive errors in the performance of forensic laboratory examination procedures;

(iv) failed to file any report required to be submitted pursuant to this article or the rules and regulations promulgated pursuant thereto; or

(v) violated in a material respect any provision of this article or the rules and regulations promulgated pursuant thereto; and

§ 995-b. Powers and duties of the commission, NY EXEC § 995-b

(f) no forensic laboratory accreditation shall be revoked, suspended, or otherwise limited without a hearing. The commission shall serve written notice of the alleged violation, together with written notice of the time and place of the hearing, which notice shall be mailed by certified mail to the holder of the forensic laboratory accreditation at the address of such holder at least twenty-one days prior to the date fixed for such hearing. An accredited laboratory may file a written answer to the charges with the commission, not less than five days prior to the hearing.

4. A laboratory director who knowingly operates a laboratory without obtaining the accreditation required by this article, or who, with the intent to mislead or deceive, misrepresents a material fact to the commission or DNA subcommittee, shall be subject to a civil penalty not to exceed seventy-five hundred dollars and such other penalties as are prescribed by the law.

5. The commission and the DNA subcommittee established pursuant to subdivision thirteen of this section may require and receive from any agency of the state or any political subdivision thereof such assistance and data as may be necessary to enable the commission or DNA subcommittee to administer the provisions of this article. The commission or DNA subcommittee may enter into such cooperative arrangements with the division of criminal justice services, the department of health, and any other state agency, each of which is authorized to enter into such cooperative arrangements as shall be necessary or appropriate. Upon request of the commission or DNA subcommittee, any state agency may transfer to the commission such officers and employees as the commission or DNA subcommittee may deem necessary from time to time to assist the commission or DNA subcommittee in carrying out its functions and duties. Officers and employees so transferred shall not lose their civil service status or rights, and shall remain in the negotiating unit, if any, established prior to such transfer.

6. All of the commission's records, reports, assessments, and evaluation with respect to accreditation, implementation of quality assurance standards (including proficiency testing) and monitoring thereof, shall be archived by the commission.

7. The commission and DNA subcommittee may establish, appoint, and set terms of members to as many advisory councils as it deems necessary to provide specialized expertise to the commission with respect to new forensic technologies including DNA testing methodologies.

8. The commission or DNA subcommittee shall designate one or more entities for the performance of proficiency tests required pursuant to the provisions of this article.

9. After reviewing recommendations from the division of criminal justice services, the commission, in consultation with the DNA subcommittee, shall promulgate a policy for the establishment and operation of a DNA identification index consistent with the operational requirements and capabilities of the division of criminal justice services. Such policy shall address the following issues:

(a) the forensic DNA methodology or methodologies to be utilized in compiling the index;

(b) procedures for assuring that the state DNA identification index contains the following safeguards:

(i) that any records maintained as part of such an index are accurate and complete;

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(ii) that effective software and hardware designs are instituted with security features to prevent unauthorized access to such records;

(iii) that periodic audits will be conducted to ensure that no illegal disclosures of such records have taken place;

(iv) that access to record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library is restricted to authorized personnel only;

(v) that operation programs are used that will prohibit inquiry, record updates, or destruction of records from any source other than an authorized source of inquiry, update, or destruction of records;

(vi) that operational programs are used to detect and store for the output of authorized employees only all unauthorized attempts to penetrate the state DNA identification index;

(vii) that adequate and timely procedures exist to insure that any subject of the state DNA identification index has the right of access to and review of records relating to such individual contained in such index for the purpose of ascertaining their accuracy and completeness, including procedures for review of information maintained about such individuals and administrative review (including procedures for administrative appeal) and the necessary documentation to demonstrate that the information is inaccurate or incomplete;

(viii) that access to the index will be granted to an agency authorized by this article to have such access only pursuant to a written use and dissemination agreement, a copy of which is filed with the commission, which agreement sets forth the specific procedures by which such agency shall implement the provisions of subparagraphs (i) through (vii) of this paragraph, as applicable, and which agreement specifically prohibits the redisclosure by such agency of any information obtained from the DNA identification index; and

(ix) such policy shall provide for the mutual exchange, use and storage of DNA records with the system of DNA identification utilized by the federal bureau of investigation provided that the commission determines that such exchange, use and storage are consistent with the provisions of this article and applicable provisions of law.

10. Review, and if necessary, recommend modifications to, a plan for implementation of the DNA identification index submitted by the commissioner of criminal justice services pursuant to [section nine hundred ninety-five-c](#) of this article.

11. Upon the recommendation of the DNA subcommittee established pursuant to subdivision thirteen of this section, the commission shall designate one or more approved methodologies for the performance of forensic DNA testing, and shall review and act upon applications by forensic DNA laboratories for approval to perform forensic DNA testing.

12. Promulgate standards for a determination of a match between the DNA records contained in the state DNA identification index and a DNA record of a person submitted for comparison therewith.

§ 995-b. Powers and duties of the commission, NY EXEC § 995-b

13. (a) The commission shall establish a subcommittee on forensic DNA laboratories and forensic DNA testing. The chair of the subcommittee shall be appointed by the chair of the commission. The chair of the subcommittee shall appoint six other members to the subcommittee, one of whom shall represent the discipline of molecular biology and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall represent the discipline of population genetics and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of laboratory standards and quality assurance regulation and monitoring and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be a forensic scientist and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of population genetics and be appointed upon the recommendation of the commissioner of criminal justice services and one of whom shall be representative of the discipline of forensic science and be appointed upon the recommendation of the commissioner of criminal justice services. Members of the DNA subcommittee shall serve for three year terms and be subject to the conditions of service specified in [section nine hundred ninety-five-a](#) of this article.

(b) The DNA subcommittee shall assess and evaluate all DNA methodologies proposed to be used for forensic analysis, and make reports and recommendations to the commission as it deems necessary. The DNA subcommittee shall make binding recommendations for adoption by the commission addressing minimum scientific standards to be utilized in conducting forensic DNA analysis including, but not limited to, examination of specimens, population studies and methods employed to determine probabilities and interpret test results. The DNA subcommittee may require a demonstration by an independent laboratory of any proposed forensic DNA testing methodology proposed to be used by a forensic laboratory.

(c) The DNA subcommittee shall make binding recommendations for adoption by the commission with regard to an accreditation program for laboratories performing forensic DNA testing in accordance with the provisions of the state administrative procedure act. Such recommendations shall include the adoption and implementation of internal and external proficiency testing programs, including, if possible, a blind external proficiency testing program for forensic laboratories performing forensic DNA testing. The DNA subcommittee shall also provide the commission with a list of accepted proficiency testers.

(d) The DNA subcommittee shall be authorized to advise the commission on any other matters regarding the implementation of scientific controls and quality assurance procedures for the performance of forensic DNA testing, or on any other matters referred to it by the commission.

Credits

(Added [L.1994, c. 737, § 1](#). Amended [L.1999, c. 560, § 2](#), eff. [Dec. 1, 1999](#).)

[Notes of Decisions \(2\)](#)

McKinney's Executive Law § 995-b, NY EXEC § 995-b

Current through L.2026, chapters 1 to 169. Some statute sections may be more current, see credits for details.

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§ 995-c. State DNA identification index, NY EXEC § 995-c



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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated

Executive Law (Refs & Annos)

Chapter Eighteen. Of the Consolidated Laws

Article 49-B. Commission on Forensic Science and Establishment of DNA Identification Index

McKinney's Executive Law § 995-c

§ 995-c. State DNA identification index

Effective: August 1, 2012

[Currentness](#)

1. Following the promulgation of a policy by the commission pursuant to [subdivision nine of section nine hundred ninety-five-b](#) of this article, the commissioner of criminal justice services is authorized to promulgate a plan for the establishment of a computerized state DNA identification index within the division of criminal justice services.

2. Following the review and approval of the plan by the DNA subcommittee and the commission and the filing of such plan with the speaker of the assembly and the temporary president of the senate, the commissioner of criminal justice services is hereby authorized to establish a computerized state DNA identification index pursuant to the provisions of this article.

3. (a) Any designated offender subsequent to conviction and sentencing for a crime specified in [subdivision seven of section nine hundred ninety-five](#) of this article, shall be required to provide a sample appropriate for DNA testing to determine identification characteristics specific to such person and to be included in a state DNA identification index pursuant to this article.

(b)(i) In the case of a designated offender who is sentenced to a term of imprisonment, such sample shall be collected by the public servant to whose custody the designated offender has been committed.

(ii) In the case of a designated offender who is sentenced to a term of probation, including a sentence of probation imposed in conjunction with a sentence of imprisonment when a sample has not already been taken, such sample shall be collected by the probation department supervising the designated offender.

(iii) In the case of a designated offender whose sentence does not include either a term of imprisonment or a term of probation, outside of the city of New York, the court shall order that a court officer take a sample or that the designated offender report to an office of the sheriff of that county, and when the designated offender does so, such sample shall be collected by the sheriff's office. Within the city of New York, the court shall order that the sample be collected by a court officer.

(iv) Nothing in this paragraph shall prohibit the collection of a DNA sample from a designated offender by any court official, state or local correction official or employee, probation officer, parole officer, police officer, peace officer, other law enforcement official, or designated personnel of the division of criminal justice services who has been notified by the division of criminal justice services that such designated offender has not provided a DNA sample. Upon notification by the division of criminal

§ 995-c. State DNA identification index, NY EXEC § 995-c

justice services that a designated offender has not provided a DNA sample, such court official, state or local correction official or employee, probation officer, parole officer, police officer, peace officer or other law enforcement official, or designated personnel of the division of criminal justice services shall collect the DNA sample.

4. The commissioner of the division of criminal justice services, in consultation with the commission, the commissioner of health, the director of the office of probation and correctional alternatives and the department of corrections and community supervision, shall promulgate rules and regulations governing the procedures for notifying designated offenders of the requirements of this section.

5. The sample shall be collected, stored and forwarded to any forensic DNA laboratory which has been authorized by the commission to perform forensic DNA testing and analysis for inclusion in the state DNA identification index. Such laboratory shall promptly perform the requisite testing and analysis, and forward the resulting DNA record only to the state DNA identification index in accordance with the regulations of the division of criminal justice services. Such laboratory shall perform DNA analysis only for those markers having value for law enforcement identification purposes. For the purposes of this article, the term “marker” shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.

6. DNA records contained in the state DNA identification index shall be released only for the following purposes:

(a) to a federal law enforcement agency, or to a state or local law enforcement agency or district attorney's office for law enforcement identification purposes upon submission of a DNA record in connection with the investigation of the commission of one or more crimes or to assist in the recovery or identification of specified human remains, including identification of missing persons, provided that there exists between the division and such agency a written agreement governing the use and dissemination of such DNA records in accordance with the provisions of this article;

(b) for criminal defense purposes, to a defendant or his or her representative, who shall also have access to samples and analyses performed in connection with the case in which such defendant is charged;

(c) after personally identifiable information has been removed by the division, to an entity authorized by the division for the purpose of creating or maintaining a population statistics database or for identification research and protocol development for forensic DNA analysis or quality control purposes.

7. Requests for DNA records must be in writing, or in a form prescribed by the division authorized by the requesting party, and, other than a request pursuant to paragraph (b) of subdivision six of this section, maintained on file at the state DNA identification index in accordance with rules and regulations promulgated by the commissioner of the division of criminal justice services.

8. The defendant, including the representative of a defendant, in a criminal action or proceeding shall have access to information in the state DNA identification index relating to the number of requests previously made for a comparison search and the name and identity of any requesting party.

9. (a) Upon receipt of notification of a reversal or a vacatur of a conviction, or of the granting of a pardon pursuant to article two-A of this chapter, of an individual whose DNA record has been stored in the state DNA identification index in accordance with this article by the division of criminal justice services, the DNA record shall be expunged from the state DNA identification

§ 995-c. State DNA identification index, NY EXEC § 995-c

index, and such individual may apply to the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of the crime which resulted in the conviction that was reversed or vacated or for which the pardon was granted. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that all appeals relating to the conviction have been concluded; that such individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. The division shall, by rule or regulation, prescribe procedures to ensure that the DNA record in the state DNA identification index, and any samples, analyses, or other documents relating to such record, whether in the possession of the division, or any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies thereof, at the discretion of the possessor thereof, are either destroyed or returned to such individual, or to the attorney who represented him or her at the time such reversal, vacatur or pardon, was granted. The commissioner shall also adopt by rule and regulation a procedure for the expungement in other appropriate circumstances of DNA records contained in the index.

(b) As prescribed in this paragraph, if an individual, either voluntarily or pursuant to a warrant or order of a court, has provided a sample for DNA testing in connection with the investigation or prosecution of a crime and (i) no criminal action against the individual relating to such crime was commenced within the period specified by [section 30.10 of the criminal procedure law](#), or (ii) a criminal action was commenced against the individual relating to such crime which resulted in a complete acquittal, or (iii) a criminal action against the individual relating to such crime resulted in a conviction that was subsequently reversed or vacated, or for which the individual was granted a pardon pursuant to article two-A of this chapter, such individual may apply to the supreme court or the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of such crime. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that the individual has satisfied the conditions of one of the subparagraphs of this paragraph; that if a judgment of conviction was reversed or vacated, all appeals relating thereto have been concluded and the individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. If an order directing the expungement of any DNA record and any samples, analyses or other documents relating to the DNA testing of such individual is issued, such record and any samples, analyses, or other documents shall, at the discretion of the possessor thereof, be destroyed or returned to such individual or to the attorney who represented him or her in connection with the application for the order of expungement.

Credits

(Added L.1994, c. 737, § 1. Amended L.1999, c. 560, §§ 3, 4, eff. Dec. 1, 1999; L.2002, c. 524, § 1, eff. Sept. 17, 2002; L.2004, c. 576, § 2, eff. July 6, 2004; L.2010, c. 56, pt. A, § 65, eff. June 22, 2010; L.2011, c. 62, pt. C, subpt. B, § 104, eff. March 31, 2011; L.2012, c. 19, § 6; L.2012, c. 55, pt. A, § 1, eff. Aug. 1, 2012.)

Notes of Decisions (45)

McKinney's Executive Law § 995-c, NY EXEC § 995-c

Current through L.2026, chapters 1 to 169. Some statute sections may be more current, see credits for details.