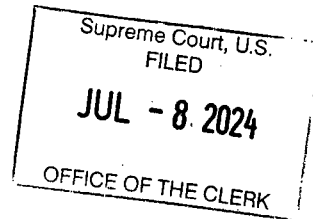


24-5115
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Jima Brown — PETITIONER
(Your Name)

vs.

Gordon Cuffy — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court, County of Onondaga, New York
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jima Brown
(Your Name)

639 Exchange st. P.O. Box 149
(Address)

Albica N.Y. 14011-0149
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the Fourth Amendment permits the States to make a warrantless Codis Database Search of DNA from a [Free] person who has not been arrested for, and not convicted of, a criminal offense, solely for use in investigating other offenses for which there is no individualized suspicion?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

U.S. V Davis No. RWT. 07-0199 U.S. District Court,
D Maryland. Judgment entered Sept. 15 2009

U.S. V Davis No. 09-4890 United States Court of Appeals,
Fourth Circuit. Judgment entered August 16, 2012

Varriale V State No. 1261, Sept. Term, 2013
Court of Special Appeals of Maryland. Judgment entered
July 30, 2014

Varriale V State No. 85, Sept. Term, 2014
Court of Appeals of Maryland. Judgment entered August 11,
2015.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4,5
REASONS FOR GRANTING THE WRIT	6,7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A	Decision of Supreme Court, County of Onondaga, New York trial Court
APPENDIX B	Decision of Supreme Court Appellate Division, Fourth Department Direct (Denying discretionary review)
APPENDIX C	Decision of Supreme Court Appellate Division, Fourth Department (Direct appeal)
APPENDIX D	Decision of New York Court of Appeals
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

U.S. V. Davis 690 F. 3d 226, 230	6
U.S. V. Davis 690 F. 3d 226, 244	6
U.S. V. Davis 690 F. 3d 226, 245	7
U.S. V. Amerson 483 F. 3d 73, 85	7

STATUTES AND RULES

Florida DNA Statue 943.325 6.) c	6
Florida DNA Statue 943.325 12.) 2. c, d, e	7.

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Supreme Court, County of Onondaga court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was April 30, 2024
A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States provides:

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.

The Sixth Amendment to the United States provides:

In all criminal prosecutions, the accused shall enjoy the right... to have Assistance of Counsel for his defence

STATEMENT OF THE CASE

Petitioner, while driving for Lyft ride share services in Tampa F.L., was accused by a Lyft Customer of sexual assault. The Tampa Police Department then collected a sample of petitioners DNA pursuant to a warrant while petitioner was a [free] citizen. After petitioners DNA profile was excluded from that investigation, the Florida Department of Law Enforcement conducted a National Codis Database Search. It is undisputed that the State entered Petitioners DNA profile into Codis not to link Petitioner~~s~~ to the alleged assault but rather to determine whether he was implicated in any other offenses.

Petitioners DNA Profile was matched to a profile from forensic evidence of a previous sexual assault in New York State. Based on that match, Petitioner was arrested in Tampa Florida and extradited to New York State. Petitioner was charged with Rape in the 1st Degree. After being convicted, Petitioner moved to set aside verdict at sentencing based on a fourth Amendment violation. Motion was denied. In a State Collateral proceeding, Petitioner moved on a motion to vacate Judgment, claiming that trial Counsel didn't move to Suppress DNA evidence under the 4th Amendment. The trial Court denied-

Statement of the Case

motion, finding that petitioners DNA was properly obtained under Florida Law, noting that "New York does not Legislate for the State of Florida" and finding that "the procedures done within New York were in Compliance with New York Law". Petitioners motion for leave to appeal to the appellate Court was denied. Petitioner raised this 4th Amendment claim on Direct Appeal which was not ruled upon and also denied.

REASONS FOR GRANTING THE PETITION

Many States have a common practice and/or policy of searching and retaining [free] person's DNA profiles after they have never been charged or arrested. The Florida DNA Statue 943.325 6.)c allows DNA samples lawfully obtained during the Course of a criminal investigation to be entered in a Statewide Database through Codis.

This section of the statue is unconstitutional as applied to petitioner. Petitioner was compelled or forced to give his DNA sample to Law Enforcement pursuant to a warrant. Petitioner, while a [free] citizen, still had a full expectation of privacy after the initial search.

The Fourth and Second Circuit both agree that this type of intrusion is a search under the Fourth Amendment. In U.S. V Davis 690 F.3d 226, 230 the 4th Circuit agreed with the district Court when it concluded that Davis's Fourth Amendment rights were violated when his DNA profile was retained in a local Database after Davis profile did not match the DNA sample from the Neal Murder. The Fourth Circuit noted that it uniformly recognizes that persons who have not been arrested have a greater privacy interest in their DNA than would persons who have been arrested. (U.S. Davis 690 F.3d 226, 244) They additionally recognized that —

Reasons for Granting the Petition

they do not accept even a small level of intrusion [Such as fingerprinting] for free persons without Fourth Amendment constraint. (U.S. Davis 690 F.3d 226, 245)

In U.S. V. Amerson 483 F.3d 73, 85, the Second Circuit noted "There is however, a second and potentially much more serious invasion of privacy occasioned by the DNA Act. As we recognized in Nicholas, the analysis and maintenance of [offenders] information in Codis, the federal database is, in itself, a significant intrusion."

Many states have DNA Statues that violates [Free] individuals 4th Amendment rights. This has been a systematic problem in the United States for more than 20 years and needs to be addressed by the Supreme Court of the United States. This Petition should be granted and the Exclusionary Rule should apply to Petitioners case as a deterrent and precedent to keep the States from enacting laws that violate [Free] individuals Fourth Amendment rights. Not only do these DNA statues violate individuals Fourth Amendment rights, but they prohibit individuals from challenging their Fourth Amendment rights in Court. (Florida DNA Statue (943.325 12.) 2. c, d, e)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jana Braun

Date: July 8, 2024