No. _____

In the

Supreme Court of the United States

ADAM KANUSZEWSKI; ASHLEY KANUSZEWSKI; D.W.L., R.F.K., and C.K.K., minors; SHANNON LAPORTE; M.T.L. and E.M.O., minors; LYNNETTE WIEGAND; L.R.W., C.J.W., H.J.W., and M.L.W., minors,
Petitioners,

v.

SANDIP SHAH, in his official capacity; SARAH LYON-CALLO, in her official capacity; MARY KLEYN, in her official capacity; ELIZABETH HERTEL, in her official capacity; CHRISTOPHER KRAUSE, in his official capacity,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Article III confines federal courts to live cases or controversies. When claims become moot on appeal, this Court has long required vacatur—not a merits decision. *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). The Sixth Circuit defied that rule. The departure clashes with Article III.

The decision below also approves a regime allowing state officials and their partners to indefinitely retain and exploit the genetic and medical data of nearly every newborn without informed consent in perhaps the largest compulsory genetic database ever assembled. That holding cannot be reconciled with this Court's Fourth Amendment jurisprudence recognizing profound privacy interests in such data.

The questions presented are:

1. Whether a court of appeals may issue binding merits precedent on constitutional claims after those claims have become moot during appeal as a result of the government's compliance with a permanent injunction, contrary to Article III and *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

2. Whether the Fourth Amendment permits a State, without informed parental consent, to indefinitely retain and use newborns' highly-private genetic and medical data after the screening for which the samples were involuntarily compelled has concluded.

RELATED PROCEEDINGS

United States District Court (E.D. Mich.):

Kanuszewski v. Mich. Dep't of Health and Human Servs., No. 1:18-cv-10472

United States Court of Appeals (6th Cir.):

Kanuszewski v. Mich. Dep't of Health and Human Servs., No. 23-1733

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PETITION FOR A WRIT OF CERTIORARI

Petitioners seek a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The published opinion of the court of appeals is reproduced at App. 1a-31a and is reported at 141 F.4th 796 (6th Cir. 2025). The district court's opinion and order "finding defendants liable for Fourth Amendment violations" is reproduced at App. 36a-83a and is reported at 684 F. Supp. 3d 637 (E.D. Mich. 2023).

JURISDICTION

The court of appeals entered judgment on June 25, 2025 (App. 1a). A petition for rehearing was denied on August 12, 2025 (App. 84a-85a). On October 15, 2025, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including January 9, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the Constitution provides, in relevant part, "[t]he right of the people to be secure in their persons, houses, papers, and effects,

against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV.

Article III of the Constitution provides, in relevant part, "[t]he judicial Power shall extend to… Cases... [and] Controversies…"

Section 1983 of Title 42, United States Code, 42 U.S.C. § 1983, in relevant part, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

INTRODUCTION

This case presents two constitutional questions of urgent and enduring importance. First, whether a federal appellate court may issue a precedential-merits ruling on claims that became moot during appeal, in direct conflict with *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), and Article III's core limits. Second, whether the Fourth Amendment permits state officials to indefinitely seize, store, and exploit the highly-private genetic and medical data of its newest citizens without informed consent.

The district court, by summary judgment and later after a full bench trial, held that Michigan's newborn screening post-testing retention practices violated the Constitution. It found that indefinite retention of genetic information was unreasonable absent prior informed parental consent, and that Michigan's regime infringed fundamental parental rights as well. It did not end the program. Instead, it corrected the lawlessness by issuing a permanent injunction requiring Defendants to return or destroy samples and data unless consent was obtained. The officials complied with the injunction as to the blood-spot claims by fully returning the blood spots. It rendered the appeal of the blood-spot claims moot.

The government nevertheless appealed and the Sixth Circuit reversed. Despite the fact that the blood spots had been fully disposed of, the Sixth Circuit

panel refused to apply *Munsingwear*, reached the merits of the moot claims, and declared that Michigan's indefinite retention of blood samples was constitutional.

It also held that permanent storage of genetic data did not violate the Fourth Amendment. In doing so, it disregarded this Court's precedents recognizing heightened privacy in blood and medical information, and it created conflicts with other circuits that have treated nonconsensual medical testing and data retention as constitutionally suspect. *Norman-Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269 (9th Cir. 1998) ("One can think of few subject areas more personal and more likely to implicate privacy interests than that of one's health or genetic make-up.").

The stakes could not be higher. Every State collects newborn blood samples. But Michigan's retention practices are the most extreme. Collectively, Michigan's practices form perhaps the largest compulsory genetic database in the nation. Advances in sequencing and re-identification make genetic repositories uniquely vulnerable to misuse by researchers, corporations, and law enforcement. Law enforcement interest in (with warrantless access to) genetic information from screening programs has increased in recent years. Gloria Lyu, Matthew Spero & Connor Henderson, *Navigating Genetic Data Privacy and Law Enforcement Access*, THE REGULATORY REVIEW (Oct. 5, 2024), *available at*

http://olcplc.com/s/gNlqq. Whether the Constitution permits the involuntary seizure, retention, and later government uses of the individual genetic blueprints of nearly every born child indefinitely, without informed consent, is a question that demands this Court's attention now. But even if the Court takes no position on genetic-data retention, the Sixth Circuit's issuance of merits precedent in a moot case independently warrants vacatur.

STATEMENT OF CASE

For more than half a century, Michigan has operated one of the nation's most expansive involuntary and secret newborn screening programs. Within hours of birth, nearly every Michigan infant has his or her heel pricked, and several drops of blood are blotted onto a card known as a Guthrie card. Those blood samples are then analyzed for nearly sixty rare but serious congenital conditions. Petitioners do not challenge the initial screening itself. Testing, unquestionably, is of serious health importance.

This case concerns what happens thereafter. Originally, Michigan simply discarded the samples once testing was complete. But starting in the 1980s, it started keeping the blood spots once the medical testing is complete. Today, Respondents operate a scheme to keep the extra samples – along with the children's demographic details – for as long as a century within the Michigan Neonatal Biobank, a

facility in Detroit that houses millions of blood spots collected since the 1960s. Alongside the physical storage, Respondents also preserve genetic and medical data derived from the screening process. This information, which includes disease markers, test results, and identifying demographics, is entered into a computerized database known as LIMS. That database is accessible not only to state officials but also to thousands of health professionals across Michigan. As the district court found after trial, once entered into the system the data is never deleted. State officials candidly acknowledged that deletion of data stored in the LIMS is not "doable." App. 40a.

Thereafter, these same state health officials then make these biological materials and data available for purposes far removed from just accomplishing newborn health screening. Some samples are used internally to calibrate machines or to develop new tests. Others are provided to private researchers through Michigan's "BioTrust for Health" program. Still others have been accessed in response to law enforcement requests, including court orders seeking to identify suspects or crime victims. The district court found that Michigan's own witnesses acknowledged such uses. Indeed, as the court noted, "the record indisputably demonstrates that the State has used the blood samples to identify victims and perpetrators of crimes." App. 50a.

None of these practices were consented-to by Petitioners. When their children were born, the State

Defendants never sought or secured their informed consent for long-term storage, research use, or law-enforcement availability. For decades Michigan officials did not even attempt to obtain parental permission for secondary uses. A nominal consent process was not implemented until 2010 – long after some of the petitioner children were born – and even then the consent forms were presented to mothers within hours of labor, when they were least able to make informed decisions. The district court found that these forms fell far short of meaningful informed consent. Parents were never told that their children's genetic material would be kept for a century, or that law enforcement or unknown medical professionals could access it, or that private researchers could use it for studies unrelated to newborn health.

Petitioners – four families with nine Michigan-born children – filed suit under 42 U.S.C. § 1983. They alleged that the indefinite retention and use of both their children's blood spots and genetic data violated the Fourth Amendment rights of the children and the Fourteenth Amendment rights of the parents to direct their children's medical care. After years of discovery, the district court conducted a full bench trial. It made detailed findings of fact and concluded that Michigan's conduct violated both Amendments. App. 36a-83a.

On the Fourth Amendment claims, the district court emphasized that compelled blood draws and chemical analysis of blood are among the most

intrusive government actions. Citing this Court's decisions in *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602 (1989), *Missouri v. McNeely*, 569 U.S. 141 (2013), and *Birchfield v. North Dakota*, 579 U.S. 438 (2016), the district court held that retaining blood samples and genetic data without consent is a "seizure" and that later analyzing such material is a "search." The district court rejected the proffered characterizations that retention was minimal, administrative, and purely medical as defenses. It found that the retention was neither minimal nor narrowly tailored, that it served purposes beyond medical care, and that it occurred in the absence of any individualized suspicion. The trial court concluded that Michigan's "keep mum" approach (App. 38a) violated the Fourth Amendment and could not be justified under any exception to the warrant requirement

On the Fourteenth Amendment claims, the district court followed the Sixth Circuit's earlier ruling in *Kanuszewski v. MDHHS*, 927 F.3d 396 (6th Cir. 2019), which had already recognized that parental rights were implicated and that strict scrutiny applied to post-screening retention and use without consent. Applying that framework, the trial court correctly found that the officials' practices failed strict scrutiny because they were not narrowly tailored to achieve compelling interests.

As relief, the district court entered a narrow and well-crafted permanent injunction. App. 82a-83a. It

ordered Michigan to send the suing parents notice and give them the option to demand return or destruction of samples and data. It required the state health officials to seek informed consent if it wished to retain or use samples. And it directed that, absent consent, all samples and data must be destroyed within one year. App. 82a-83a, 32a-35a. The district court stressed that the Constitution requires meaningful parental choice and that indefinite, nonconsensual retention of blood and genetic data cannot stand.

Respondents voluntarily complied with the injunction regarding Petitioners' blood spots by returning as directed. At that point, the claims concerning physical retention of samples were moot. Yet when the case reached the Sixth Circuit three-judge panel, it did not follow the established procedure under *Munsingwear*. Rather than vacating the moot claims, the panel issued a precedential merits ruling against Petitioners, declaring that retention of blood spots was constitutionally permissible. The panel also reversed the district court on the Fourth Amendment data claims, holding that indefinite retention of genetic data without informed consent was not unreasonable.

The decision thus accomplished two remarkable results: it entrenched binding constitutional precedent in the absence of a live controversy, and it held that States may indefinitely retain and exploit the genetic blueprints of their citizens without

informed consent. It is from that judgment that Petitioners now seek review.

REASONS FOR GRANTING THE PETITION

I. The Sixth Circuit Violated *Munsingwear* and Article III by Issuing Merits Rulings on Moot Claims.

Mootness, whenever it reveals itself, ends adjudication of the merits wherever it stands and whether in the trial court or on appeal. This is because this Court has made clear that federal courts may not issue advisory opinions when Article III limits federal judicial power to actual "cases" or "controversies." When a case becomes moot during the course of litigation – whether because of voluntary compliance, happenstance, or events outside the parties' control – the proper course is to vacate the judgment below and dismiss the case. *Munsingwear*, 340 U.S. at 39. That procedure prevents unreviewable judgments from hardening into precedent. When appellate courts disregard the doctrine, the harm is not abstract. It is immediate, structural, and severe.

After years of discovery, motion practice, and a full bench trial, Petitioners prevailed. The district court entered a permanent injunction holding that Michigan's post-testing retention of newborn blood spots violated the Constitution. The officials then appealed. However, they complied with the samples retention portion of the injunction by returning the

blood spots without reservation. That compliance rendered the sample claims moot. There was nothing left for any court to order concerning the physical samples. At that moment, *Munsingwear* required vacatur – not further adjudication – by the Sixth Circuit. Yet the panel plowed forward and rendered a published decision on merits anyway, reversing the district court and holding that Michigan's retention of blood spots would have been constitutional. However, the permanent injunction had already been fully complied with as to the blood-spot claims, and so no effectual relief remained available on those claims at the time of appellate decision.

Rendering a merits decision squarely contradicts *Munsingwear*. Once mootness attaches, courts lack jurisdictional authority to affirm, reverse, or modify prior judgments at all; the only permissible course is vacatur. Many courts of appeals faithfully apply the rule, routinely vacating moot claims to avoid advisory precedents. See, e.g., *Am. Civil Liberties Union of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 53-54 (1st Cir. 2013); *United States v. Payton*, 593 F.3d 881, 884 (9th Cir. 2010); *Nat'l Black Police Ass'n v. Dist. of Columbia*, 108 F.3d 346, 351 (D.C. Cir. 1997). This Court has also routinely vacated decisions when mootness occurs. E.g. *Biden v. Feds for Medical Freedom*, 144 S. Ct. 480 (2023); *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220 (2021); *Azar v. Garza*, 584 U.S. 726, 729-730 (2018); *Chapman v. Doe by Rothert*, 143 S. Ct. 857 (2023).

By refusing to follow this orderly required step, the Sixth Circuit entrenched precedent without authority and without federal jurisdiction. It acted outside the limits the Constitution dictates under Article III. The faithful and appropriate disposition was vacatur of the moot portions of the judgment and dismissal of those claims for lack of jurisdiction.

The purpose of vacatur is structural. It protects the limits of judicial power by ensuring that courts do not issue – or leave standing – merits decisions once jurisdiction has evaporated. Vacatur is therefore not an "extraordinary remedy." It is the ordinary consequence of mootness. If left unreviewed, the decision below invites appellate courts to sidestep *Munsingwear* and to announce constitutional rules in the absence of live controversies. That threatens not only the stability of constitutional law, but also the separation of powers. The Court should reaffirm that federal courts have no authority to issue merits rulings once claims have become moot.

A. The Sixth Circuit Has Repeatedly Resisted This Court's *Munsingwear* Doctrine, Warranting Supervisory Correction

The Sixth Circuit's refusal to vacate moot judgments under *Munsingwear* also reflects a broader and recurring pattern as one that has required this Court's intervention before and now warrants it again.

Most recently, in *Kendall v. Doster*, this Court granted certiorari, vacated the Sixth Circuit's judgment, and remanded with explicit instructions to direct vacatur of moot preliminary injunctions under *Munsingwear*. 144 S. Ct. 481 (2023). The Court's decision was unambiguous. It cited *Munsingwear* explicitly: when intervening events moot a case on appeal, vacatur is required to prevent unreviewable decisions from having continuing legal effect. Importantly, *Doster* did not announce a new rule; it reaffirmed settled practice.

Yet the decision below demonstrates ongoing uncertainty of what this Court teachings in *Doster* requires. Despite clear guidance from this Court from a judgment issued less than two years ago, the Sixth Circuit again declined to follow the "established practice" of vacatur. Instead, it repeated the same structural error: adjudicating moot claims, issuing binding precedent without jurisdiction, and leaving binding constitutional precedent in place without the possibility of further review.

That repetition matters. *Munsingwear* is not a mere housekeeping rule. It is the mechanism by which this Court enforces Article III's limits and preserves hierarchical judicial discipline. When a court of appeals repeatedly declines to apply it – particularly after prior direct corrective action from this Court – the problem ceases to be case-specific. It becomes institutional.

The Sixth Circuit's post-*Doster* conduct illustrates the point. In *Doster* itself, the Sixth Circuit denied rehearing and declined vacatur even after the case mooted when plaintiffs secured fulfilled relief, prompting this Court's intervention. Here, the appellate court again refused vacatur after mootness arose from compliance with a permanent injunction. In both instances, the Sixth Circuit treated vacatur as an "extraordinary remedy" rather than the ordinary and required disposition. That framing is incompatible with *Munsingwear* and with this Court's repeated admonitions that federal courts may not decide cases once jurisdiction has evaporated.

This pattern has concrete consequences. It allows the Sixth Circuit to entrench constitutional precedent in the absence of a live controversy. It invites strategic mootness by government defendants. And it deprives prevailing civil-rights plaintiffs of the settled expectations that follow from final judgments – including the availability of attorney fees – by retroactively erasing their success while preserving adverse precedent.

Most importantly, it undermines this Court's supervisory authority. When a court of appeals continues to disregard a doctrine after this Court has expressly corrected it, summary reversal or vacatur is not merely appropriate – it is necessary to maintain uniformity and constitutional discipline within the federal judiciary.

This case therefore presents an opportunity not only to correct the error below, but to again reaffirm that *Munsingwear* is mandatory, not optional. Absent this Court's intervention, there is every reason to believe the Sixth Circuit will continue to treat mootness as a merits-adjacent speedbump rather than a jurisdictional stop sign. Article III does not permit that approach. Neither does this Court's precedent.

B. This Court's Supervisory Authority Is Needed to Enforce Article III and Uniform Vacatur Practice

Article III's case-or-controversy requirement is not self-executing. It depends on disciplined adherence by the lower courts and, when that discipline falters, on this Court's supervisory authority to restore it. *Munsingwear* is the mechanism by which that authority is exercised. It is the ordinary means by which federal courts avoid issuing advisory precedent once jurisdiction has lapsed.

This case presents a textbook occasion for supervisory correction. The Sixth Circuit did not merely misapply *Munsingwear* in an isolated instance. It declined to apply a settled jurisdictional rule after this Court had recently intervened to correct the same error. That repetition elevates the problem from ordinary legal error to institutional noncompliance that suggests the need for reaffirmation.

When a court of appeals adjudicates moot claims, the harm is not limited to the parties. Advisory constitutional rulings distort the law for everyone. They bind district courts. They influence other courts. See *Lovaglio v. Baston*, 2025 U.S. Dist. LEXIS 153686; 2025 WL 2268133 (D.N.J., Aug. 8, 2025) (similar pending case which relies heavily on *Kanuszewski II*). They harden legal rules without the crucible of an actual dispute. Article III forbids that result, and *Munsingwear* exists to prevent it.

This Court has not hesitated to act when lower courts treat jurisdictional limits as optional. Vacatur in such circumstances is not punitive. It is corrective. It preserves the proper hierarchy of the federal judiciary and ensures that constitutional law develops only through live controversies, decided by courts with then-existing authority to decide them.

Absent intervention here, the message to the Sixth Circuit (and to other courts watching) will be unmistakable: that mootness is a mere speedbump to work around. Moreover, it suggests that serious constitutional precedent may issue in the absence of jurisdiction. This Court's has repeated insisted that federal courts without jurisdiction "have no business deciding" a case "or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006).

This Court's supervisory authority exists to prevent precisely that erosion. It should be exercised

here. If left standing, the published decision below teaches governments that compliance after trial is a tool not of accountability, but of erasure.

C. Failure to Adhere to *Munsingwear* Injures Petitioners and Civil Rights Plaintiffs

The Sixth Circuit's refusal to apply *Munsingwear* inflicted concrete and irreversible harms on Petitioners: it complicates their status as prevailing parties after they had already secured court-ordered relief that was fulfilled by the government. The failure to adhere to *Munsingwear* rewards strategic mootness and punishes constitutional plaintiffs for succeeding.

Petitioners litigated this case *for years*. They overcame dispositive motions, proceeded through discovery, and proved constitutional violations at trial. The district court entered a permanent injunction requiring the State to return or destroy Petitioners' children's blood spots absent informed consent. App. 82a-83a. Respondents complied. The blood spots were returned and disposed of completely. Petitioners obtained exactly the relief they sought – complete cessation of the challenged conduct and elimination of the unlawfully retained samples. Nothing remained to be done. The victory was total.

Civil-rights enforcement depends on fee-shifting statutes. Congress enacted 42 U.S.C. § 1988 precisely

because constitutional litigation is expensive, protracted, and often pursued against well-resourced government defendants. When plaintiffs secure permanent injunctive relief on the merits, they are prevailing parties entitled to attorney's fees. Petitioners satisfied that standard here.

But the Sixth Circuit erased that victory with an advisory opinion when adjudicating claims after jurisdiction had lapsed. Once the sued officials returned the blood spots, the claims concerning physical retention were moot. The court of appeals nevertheless then issued a precedential decision declaring that the very conduct the district court had enjoined was constitutional, thereby retroactively stripping Petitioners of the judgment that made them prevailing parties. This was despite the fact that Petitioners that sued officials had already complied.

That maneuver has no analogue in ordinary appellate practice. It allows a court of appeals to do what Article III forbids: reach back into completed claims, decide moot issues, and deprive successful civil-rights plaintiffs of the legal consequences of their success. The injury is not abstract. It is financial, structural, and systemic. Petitioners bore the full cost of vindicating constitutional rights, obtained court-ordered relief, and then had taken from them the statutory compensation Congress promised because the court of appeals acted without jurisdiction.

That result is problematic. It telegraphs to civil-rights plaintiffs that even total success and government compliance might not secure reimbursement if the government later moots the case and persuades an appellate court to disregard *Munsingwear*. It turns years of successful constitutionally necessary litigation into an uncompensated public service. And it invites state officials to delay compliance until the moment it becomes most strategically advantageous.

Munsingwear exists to prevent precisely this outcome. Vacatur ensures that when mootness arises through compliance or happenstance, unreviewable judgments do not "spawn legal consequences." 340 U.S. at 41. Attorney-fee entitlement is one of those consequences. When a lower court refuses to vacate and instead issues an advisory merits ruling, it does more than distort precedent – it nullifies the economic incentives Congress created to ensure private enforcement of constitutional rights.

This Court has repeatedly recognized that *Munsingwear* protects not only judicial integrity, but litigants' reliance interests. When a case becomes moot through no fault of the prevailing party, vacatur preserves the fairness of the system by preventing the losing party from rewriting history. The Sixth Circuit's refusal to apply that rule destabilizes civil-rights enforcement nationwide.

Article III does not permit that result. Neither does § 1988. When plaintiffs prevail and secure complete completed relief, courts may not retroactively convert their success into a nullity by deciding moot claims. This Court should grant certiorari to reaffirm that when a case becomes moot on appeal (especially by the government's own actions) the only lawful course is vacatur. Anything less rewards gamesmanship, punishes constitutional plaintiffs, and denies Congress's promise that those who vindicate fundamental rights will not be left to bear the cost alone.

D. This Case Presents a Clean Jurisdictional Question With No Vehicle Obstacles

This case presents an unusually clean vehicle for enforcing and correctly applying *Munsingwear* and Article III's limits.

The mootness of the blood-spot claims is undisputed. Respondents complied with a permanent injunction and returned the samples. No further relief was possible on appeal. No factual development remains. No party contests that jurisdiction had lapsed as to those claims.

The Sixth Circuit nevertheless issued a published merits decision. That act alone frames the question presented. No interlocutory posture complicates review. No standing dispute clouds the record. No

waiver or forfeiture issues are present. The jurisdictional defect arose after final judgment, in the ordinary course of appellate proceedings, and was fully preserved.

Just as importantly, this Court need not reach any underlying constitutional merits to resolve the case. The Court may grant certiorari, vacate the judgment below, and remand with instructions to vacate as moot – thereby restoring Article III's boundaries without opining on the Fourth Amendment question at all.

That procedural clarity matters. It allows this Court to correct a recurring jurisdictional error decisively and efficiently. It avoids advisory dicta. And it provides clear guidance to lower courts that *Munsingwear* is not a matter of discretion, but of duty.

Cases that permit such a narrow and complete resolution are rare. This is one of them.

II. The Sixth Circuit's Approval of Indefinite Retention of Genetic Data Conflicts with This Court's Fourth Amendment Precedents and Endangers the Privacy of All Americans.

The District Court judge in this case observed that "[i]t is the duty and privilege of federal courts to maintain vigilance over the liberties afforded to the people by the Fourth Amendment." App. 69a. He met it. The Sixth Circuit failed.

Every year, more than 98 percent of the nearly four million American newborns undergo newborn screening. Yet the rules governing those repositories vary widely. Some States destroy samples within weeks; others, like Michigan, retain them for life. Many have secured these spots and private data without knowledge of the individual. The constitutional stakes are immense: whether States may involuntarily warehouse the genetic blueprints of their populations without informed consent.

Absent this Court's immediate guidance, the privacy of genetic information – perhaps the most intimate information of all – will depend on geography. Only this Court can establish a clear national standard to govern the government's role in what has effectively become involuntary and secret genetic databanking. Natalie Ram, *America's Hidden National DNA Database*, 100 TEX. L. REV. 1253 (2021). Despite these dystopian concerns, this case

does not turn on speculative future misuse; it presents the threshold question whether indefinite, nonconsensual retention itself constitutes an unreasonable seizure once the medical justification has ended.

The Fourth Amendment's "basic purpose," this Court has said, is "to safeguard *the privacy* and security of individuals against arbitrary invasions by governmental officials." *Camara v. Mun. Ct. of San Francisco*, 387 U.S. 523, 528 (1967); U.S. Const. amend. IV. Few invasions are more arbitrary – or more far-reaching – than the State's decision to involuntarily seize every newborn child's genetic information and private medical data to retain it indefinitely, for whatever purposes state officials may later find useful.

A. This Court's Precedents Establish That Genetic Data Is Protected.

This Court has consistently held that compelled blood draws and analysis of such are searches subject to the strictest constitutional limits. In *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 616 (1989), the Court explained that "the ensuing chemical analysis of the sample to obtain physiological data is a further invasion of the tested employee's privacy interests." In *Missouri v. McNeely*, 569 U.S. 141, 148 (2013), the Court emphasized that "any compelled intrusion into the human body implicates significant, constitutionally protected

privacy interests." And in *Birchfield v. North Dakota*, 579 U.S. 438, 455 (2016), the Court reiterated that the human body's contents implicate privacy in ways far beyond ordinary searches of property.

Michigan's practices go even further. It does not merely test for limited, statutorily enumerated diseases. It permanently retains the genetic data revealed. It maintains the ability to access, analyze, and distribute those samples decades later, long after the medical need for screening has passed. As the district court found, "deletion of data stored in the LIMS is not doable," and the State intends to keep such data for the life of each child, if not longer. That is not a temporary, narrowly tailored intrusion. It is an indefinite seizure, with perpetual searchability built into the system.

This Court has never allowed such an open-ended, warrantless seizure of intimate personal information without informed consent. The touchstone of the Fourth Amendment is reasonableness, and "reasonableness" requires tailoring the government's actions to the purposes that justify them. See *United States v. Jacobsen*, 466 U.S. 109, 124-125 (1984). Once Michigan completed the initial newborn screening, its justification ended. Any further use or retention requires either a warrant or informed parental consent. The district court properly so held. The Sixth Circuit's contrary conclusion cannot be reconciled with this Court's precedents.

B. The Sixth Circuit Misapplied the Fourth Amendment by Substituting Property Concepts for Privacy Protections.

Rather than applying the privacy or liberty-centered Fourth Amendment analysis, the Sixth Circuit required Petitioners to demonstrate *property* interests in the blood data. That misstep undermines decades of constitutional doctrine development. The Fourth Amendment protects "people, not places," and its protections extend to information in which individuals have an expectation of *privacy* – even absent traditional property rights. E.g. *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018).

Genetic information is paradigmatic private information. It reveals ancestry, predispositions to disease, kinship, and countless other details about a person's identity, background, and associations. Unlike a cell phone's contact list or a GPS record, which are external artifacts, genetic material is inextricably tied to the individual. More than twenty years ago, DNA was already described as the ultimate identifier – our biological code that can uniquely distinguish nearly every person. Eric Lander, *DNA Fingerprinting: Science, Law and the Ultimate Identifier, The Code of Codes* (Harvard Univ. Press 1992). To condition constitutional protection on property ownership of blood spots is to ignore the very nature of the Fourth Amendment's privacy guarantee.

By adopting a property rather than a privacy-based framework, the Sixth Circuit aligned itself with an outdated approach this Court rejected in *Katz*[1] and departed from circuits that recognize medical and genetic privacy as protected interests. See *Norman-Bloodsaw*, 135 F.3d 1260 (unauthorized genetic and medical testing violates Fourth Amendment rights); *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1214 (10th Cir. 2003) (medical examinations of children without parental consent implicate the Fourth Amendment); *Ferguson v. City of Charleston*, 308 F.3d 380, 397 (4th Cir. 2002) (repurposing medical tests for law enforcement requires informed consent).

C. The Stakes for Genetic Privacy Could Not Be Higher.

Every American has a genome, and every American's genome contains information far beyond ordinary health data. A single sample can reveal not just whether a child carries a congenital condition, but whether she is predisposed to cancer, Alzheimer's, or mental illness; whether she may respond to particular drugs; even whether she is biologically related to other individuals in state databases. State programs have already provided blood spots to law enforcement. Dana DiFilippo, *Judge Orders State to Release Information About Police Use of Baby Blood Spots*, N.J. MONITOR (Jan. 4, 2023), *available at* http://olcplc.com/s/cMmnF. Researchers can link "de-

[1] *Katz v. United States*, 389 U.S. 347 (1967)

identified" samples to cancer registries, immunization databases, and vital records, making re-identification trivial. As the district court observed, Michigan alone has distributed tens of thousands of samples to outside researchers without parents ever knowing of such invasion of privacy.

The consequences extend beyond individual privacy. Without limits, States may build de facto genetic registries of key populations. Those registries could be mined by law enforcement, exploited by hackers, or commercialized by public or private researchers with unknown good or bad intentions. The danger is not speculative: commercial genealogy companies have already turned voluntarily submitted DNA into law enforcement databases. James W. Hazel and Ellen Wright Clayton, *Law Enforcement and Genetic Data*, THE HASTINGS CENTER FOR BIOETHICS (Jan. 20, 2021), *available at* http://olcplc.com/s/ddiv4. A compulsory, state-run repository multiplies those risks exponentially.

This Court has not hesitated to intervene when advancing technologies threaten to transform the relationship between government and citizen. In *Riley v. California*, 573 U.S. 373 (2014), the Court required warrants for searches of cell phones because of their "immense storage capacity" and ability to reveal the "privacies of life." In *Carpenter*, the Court required warrants for cell-site location information because of its power to track a person's every movement. If smartphones and cell towers required

heightened protection, the case for constitutional scrutiny is far stronger where the government holds the literal blueprint of citizen's body and is on path to secure all of them.

The Court's intervention is especially urgent because every State operates a newborn screening program. Michigan's is among the most expansive, but other States also retain millions upon millions of blood spots and related extracted highly-private medical data. Some keep them for months, others for a century or more. At minimum, Michigan's approach is unreasonable. U.S. Const. amend. IV. The lack of constitutional clarity leaves families with children different rights depending on where their newborn arrive in the United States. Without guidance from this Court, States are free to expand genetic repositories indefinitely, unconstrained by meaningful constitutional oversight.

CONCLUSION

For the foregoing reasons, the petition should be granted.

The decision below rests on a clear jurisdictional error. After the State fully complied with the district court's permanent injunction, the claims concerning Petitioners' newborn blood samples were indisputably moot. Under Article III and this Court's practice in *Munsingwear*, the court of appeals lacked authority to issue a merits ruling on those claims. At a

minimum, that portion of the judgment should be vacated and the case remanded with instructions to dismiss the moot claims.

This case also presents an extremely important Fourth Amendment question concerning the governments' indefinite retention and use of compelled genetic data without informed consent – an issue of national importance affecting every newborn screening program in the country.

Accordingly, the Court should grant the petition and either (1) vacate the judgment below and remand for further proceedings consistent with Article III and *Munsingwear*, or (2) grant plenary review to resolve the constitutional questions presented to provide national uniformity on nonconsensual medical genetic data post-test retention in newborn screening programs.

Respectfully submitted,

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