On Submission

No. APL-2022-00075

# COURT OF APPEALS
# STATE OF NEW YORK

In the Matter of the Application of

TERRENCE STEVENS and BENJAMIN JOSEPH,

*Petitioners-Respondents*,

-against-

THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, et al.,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

*Respondents-Appellants*.

## BRIEF OF AMICUS CURIAE DISTRICT ATTORNEYS ASSOCIATION OF THE STATE OF NEW YORK, INC.

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**November 23, 2022**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to 22 NYCRR § 500.1(f), Amicus Curiae makes the following disclosure:

The District Attorneys Association of the State of New York, Inc., is a not-for-profit corporation organized under the laws of the State of New York. It has no parent corporations, and no publicly held corporation owns any of its stock.

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The District Attorneys Association of the State of New York, Inc., respectfully submits this brief, accompanied by its motion for *amicus curiae* relief, under 22 NYCRR § 500.23, in support of respondents-appellants, The New York State Division of Criminal Justice Services, et al., in the above-captioned action.

## INTEREST OF THE AMICUS CURIAE

The District Attorneys Association of the State of New York, Inc. ("DAASNY") is a non-profit corporation with membership comprised of the district attorneys in New York's 62 counties, the New York State Attorney General, the New York City Special Narcotics Prosecutor, and the New York State Justice Center for the Protection of People with Special Needs. Since 1909, the organization has facilitated communication between prosecutors with an eye towards promoting fairness, efficiency, and improvements in the criminal justice system.

As part of its efforts, DAASNY advises state legislators on the impact of proposed legislation to the prosecution of criminal cases. Given its views derived from the experiences of prosecutors across the state, including the handling of tens of thousands of criminal cases in a typical year, DAASNY provides a broad perspective to the practical and policy considerations in this case.

## STATEMENT PURSUANT TO 22 NYCRR § 500.23(A)(4)(iii)

Counsel for respondents-appellants took part in a meeting to discuss this brief before it was filed with the Court. Except as set forth in the preceding sentence, no person or entity, other than *Amicus Curiae* District Attorneys Association of the State of New York, Inc., assistant district attorneys in New York State and the Erie County District Attorney's Office, contributed to the preparation or submission of this brief. Additionally, no party or party's counsel contributed money that was intended to fund preparation or submission of this brief.

## PRELIMINARY STATEMENT

The impact of this case on the investigation of the most heinous crimes in New York State cannot be overstated. The ramifications of extending standing to those who are not investigated or asked to provide a DNA sample would be detrimental to the prosecution of criminal cases. It would essentially impede the use of a lawfully obtained investigatory lead based solely on the indirect effects from its use. While such a view of standing may address matters of public policy, it is not contemplated for those who do not sustain an actual harm. In this brief, *Amicus Curiae* DAASNY respectfully directs the Court to two salient points on the actual harm requirement under standing.

First, the Courts have historically required more than an interest, even one of public concern, to confer standing. To be sure, the petitioners raise an important social issue regarding the disproportionate prison numbers affecting people of color. But, they do not cite to a familial search directly affecting them, and consequently, they fail to identify an actual harm. Additionally, the petitioners' prediction as to its

disproportionate impact belies the verified use of familial searches in extreme cases. Thus, the First Department's extension of the petitioners' interests based on a generalized fear or anxiety from an improbable police investigation falls far short of an actual harm.

Second, the courts have extended standing only in exceptional circumstances provided there was a showing of actual harm. As opposed to a constitutional issue that may allow for greater latitude in standing, the First Department noted that the crux of this case is solely an administrative decision. Thus, there is no basis to expand standing. In any event, familial searches do not violate the Fourth Amendment. Once in the lawful hands of investigating agencies, there is neither a search and seizure nor a reasonable expectation of privacy in someone else's DNA.

## STATEMENT OF FACTS

In this CPLR article 78 proceeding, two relatives of convicted offenders challenged the familial search rule as arbitrary and capricious and adopted without statutory authority. Both petitioners concede that their DNA has never been used as part of a familial search or investigation. Instead, the petition alleges that they are directly affected since they are subject to a familial search. Supreme Court, New York County (Hagler, J.) found standing for the petitioners and upheld familial searches. In explaining standing, the Court held that the petitioners bore a peculiar risk from familial searches not shared by the general population. Additionally, it would be contrary to public interest to deny standing based on the absence of police contact or the use of an investigatory lead generated by a familial search.

The Appellate Division, First Department reversed the lower court by a 3-2

vote. As a result, the familial rule was invalidated. In finding standing, the majority opinion held that the petitioners had sustained an actual harm based on a heightened risk of police encounters and accompanying fear and anxiety.

As noted in the dissenting opinion (Singh, J.), the petitioners' interests were too speculative to meet standing requirements. The dissent observed that familial searches would not affect the petitioners absent the confluence of rare circumstances. The dissent further explained that a familial search did not involve the use of the petitioners' genetic information. Furthermore, even if an investigation ensued, the petitioner may not even learn of the familial search. As such, there was no direct harm to these petitioners for purposes of standing.

## ARGUMENTS

### I. Standing Not Established By Disproportionate Impact Claim

The First Department erred by finding standing based on the petitioners' association in the same class allegedly impacted by familial searches. Without actual harm, this type of "associational standing" is insufficient to confer standing on the petitioners. Likewise, the Court's finding of standing based on the petitioners' "fear or anxiety" resulting from the "heightened risk of police encounters" is too speculative to constitute an actual harm (R 976; numbers in parentheses preceded by "R" refer to pages of the Record on Appeal). As shown below, the minimal impact of familial searches does not rise to the level of an actual injury.

Whether or not standing is established depends on whether the petitioner is the object of the action at issue. When the petitioners' asserted harm arises from the

government's allegedly unlawful regulation of someone else – in this case the use of the convicted offender's DNA – much more is needed for the claimants to establish standing (*see Lujan v. Defenders of Wildfire*, 504 U.S. 555, 561-562 [1992]). Actual harm requires that the claimant be directly affected apart from the special interest in the subject (*id.* at 563). Here, the petitioners have never submitted their DNA or been part of a familial search. Thus, their cognizable interest is not enough for standing (*id.* at 562-563).

The New York courts have required a showing of an "injury in fact" that falls within the zone of interests protected by the statute (*see Matter of Mental Hygiene Legal Serv. v. Daniels*, 33 N.Y.3d 44, 51 [2019]). An injury-in-fact is an actual harm that is sufficiently concrete. Any harm that is "tenuous," "ephemeral," or "conjectural" is outside the harm required to show that a party has an actual stake in the matter (*id.* at 50). In other words, it must be more than a guess or supposition (*see* Black's Law Dictionary [11th ed. 2019], conjecture or supposition). An assumption that something is true without proof of its veracity is not an actual harm (*id.*).

Here, the petitioners' standing is based on layers of supposition: that they will be subjected to familial searches at some point in the future; that they were aware of the regulations dealing with familial searches outside of this proceeding; that there will be a heightened risk of police encounters directed at them; and as a result, that they will experience fear and anxiety from a familial search and investigation. This is the definition of a tenuous harm, which is insufficient for standing (*id.*).

## A. Associational or Individual Standing Requires Actual Harm

Here, the majority connects standing to the disproportionate impact from the

use of the DNA Databank. According to the Court, "[p]etitioners have standing because the regulation subjects them to the peculiar risk that they will be targets of criminal investigations for no other reason than that they have close biological relatives who are criminals. They claim that because they are persons of color, their risk of being investigated is greater than the general population, based upon the disproportionate number of people of color in the databank" (R 975-976). Since there was no actual familial search involving these petitioners, the majority applies standing based on their membership in a group allegedly affected by familial searches. As such, this argument is more akin to "associational standing," where the party seeking relief is a group challenging an administrative action based on a broader harm to certain members of the public (*see Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 774-775 [1991]).

Whether by association or otherwise, the key consideration for standing remains a showing of "direct harm, injury that is in some way different from that of the public at large" (*id.* at 774). In more than a century of cases involving issues of public interest, the New York courts have repeatedly required this type of special injury as part of standing *(see 532 Madison Ave. Gourmet Foods v. Finlandia Ctr*, 96 N.Y.2d 280, 293 [2001] [public nuisance claim]; *Rice v. Van Vranken*, 225 A.D. 179, 180-181 [3rd Dept 1929] [zoning ordinance claim]; *Empire City Subway Co. v. Broadway & S.A.R. Co.*, 87 Hun. 279, 67 N.Y.St.Rep. 741, 33 N.Y.S. 1055, 1057 [1st Dept 1895], *aff'd* 159 N.Y. 555 [1899] [subway statutes claim]). While the petitioners allege a disproportionate impact against members of the same class based on either race or familial relations, they have not been personally aggrieved by a familial search.

The *Matter of Dairylea Coop. v. Walkley* (38 N.Y.2d 6 [1975]) is particularly applicable on this point. In *Dairylea*, the petitioner was a milk dealer licensed to sell milk in certain parts of New York State. The Commissioner of Agriculture and Markets granted the application submitted by the respondents, Glen and Mohawk, to extend their license into the same areas as the petitioner. After granting this request without a hearing, Dairylea commenced an Article 78 proceeding to challenge the Commissioner's action (*id.* at 8-9).

Even while expanding the boundaries of standing under a zone of interests inquiry, this Court has noted that the indirect consequences from regulatory action are not enough. "Of course, competitive injury, of itself, will not confer standing" (*id.* at 11). Instead, the Court based standing on an actual dispute between two milk dealers (*id.*; *see also* Siegel, New York Practice § 136 [6th ed. 2022]). The Court was aware that standing could not be extended to matters of public policy. Otherwise, it would create an avalanche of potential claimants ranging from farmers, consumers, and other milk dealers who could bring a claim based on the collateral economic effects of the Commissioner's decision.

While the courts have been mindful to avoid being overly restrictive, the actual harm requirement has remained vital to standing (*Matter of Sierra Club v. Village of Painted Post*, 26 N.Y.3d 301 [2015]). In *Sierra Club*, the Court made a significant distinction between claimants with a general harm and those with an actual harm. In a dispute involving the construction of a water transloading facility, the court observed that those affected by disrupted traffic patterns, noise levels, and water quality were no different than the general public. This was considered a general harm insufficient for standing (*id.* at 309). In contrast, standing was granted to the

petitioner, John Marvin, based on an actual harm. Marvin resided less than a block from the proposed transloading facility, which could be seen from his doorstep (*id.* at 308). As a result, the allegation of train noise was different than the noise affecting the public in general (*id.* at 309).

The contrary view, rejected in *Dairylea* and *Sierra Club*, is the basis of the petitioners' standing in this case. Here, the gravamen of the petition is one of public policy. In its exhibits, including articles from law journals, law reviews, and newspapers, the petitioners question the use of familial searches from a public policy standpoint (R 107-149, 162-220, 284-312). The extent of the petitioners' harm lies in the possibility that they may become more susceptible to a criminal investigation at some point in the future. Without more, this theory fits squarely as a tenuous harm.

Furthermore, it should be noted that the petitioners challenge more than just familial searches in this proceeding. They essentially challenge the manner in which genetic information is collected in the DNA Databank. Pursuant to the New York State DNA Databank statute, offenders convicted of a felony or misdemeanor are required to provide a sample of biological material for analysis. These samples are subsequently used in comparison to evidence collected from crime scenes (*see* N.Y. Exec. Law §§ 995[7]; 995-c). By definition, familial searches rely on the use of the established DNA Databank (*see* 9 NYCRR § 6192.3[h]).

In particular, the DNA Databank is the model readily adopted across the nation on the state and federal levels for use in criminal investigations (*see Nicholas v. Goord*, 430 F.3d 652, 655-656 [2d Cir 2005]). In 2012, when the New York State Assembly had discussed the importance of DNA as an investigatory lead, the DNA Databank had been used in over 13,565 investigations in New York State. Of those

investigations, the DNA Databank had helped law enforcement agencies and prosecutors "obtain nearly 2,900 convictions including 48 murders and 220 sexual assaults and... exonerate 27 innocent New Yorkers" (R 280).

It is evident that the DNA Databank offers an important tool for investigatory leads. Similar to familial searches, "[t]he DNA indexing program's potential for solving even some very small number of crimes is sufficient to support the government's strong interest in the continued operation of the databank" (*Nicholas v. Goord*, No. 01 Civ. 7891 [RCC] [GWG], 2003 WL 256774, at *19 [S.D.N.Y. Feb. 6, 2003]). Indeed, familial searches become even more crucial to the investigation of cold cases. The petitioners, in effect, seek to dismantle the sample collections contained in the DNA Databank without demonstrating an actual harm. As a result, this would mark a significant setback to criminal investigations.

**B. Actual Harm Not Established by Remote Factors**

Likewise, the majority finds standing based on two primary, but ultimately speculative, considerations: the heightened risk of police encounters and a general fear and anxiety (R 976). In theorizing about the heightened risk of police encounters, the majority ignores the investigatory process and assumes that familial searches will be conducted as a matter of routine. But, a closer look at the familial search process demonstrates a minimal effect, if any, on the petitioners.

While it is conceivable that the petitioners may be the subject of an investigation – as any member of the public – they must allege "that [they have] been or will in fact be perceptibly harmed by the challenged agency action, not that [they] can imagine circumstances in which [they] could be affected (*Independent Investor*

*Protective League v. Securities and Exchange Commission*, 495 F.2d 311, 312 [2d Cir 1974), quoting *United States v. SCRAP*, 412 U.S. 669, 688-689 [1973]).

As noted by the majority, familial searches are extremely rare. "Here, the regulation was promulgated October 18, 2017. Respondents admit that as of April 2018 (which was beyond the statute of limitations) only nine familial DNA applications had been approved. We do not know if any of them resulted in matches that were leads in any criminal investigation in that period. We do not know if anyone, as a result of a familial match, was ever approached by law enforcement during the applicable period" (*see Matter of Stevens v. New York State Division of Criminal Justice Services*, 206 A.D.3d 88, 100 [1st Dept 2022]; R 977). In the hundreds of thousands of criminal cases prosecuted since the institution of familial searches, a heightened risk of police contact does not comport with the actual number of familial searches.

Similarly, the alleged fear and anxiety must flow from the actual search itself, not the regulation that allows it (*Cf. Lino v. City of New York,* 101 A.D.3d 552, 555-556 [1st Dept 2012]). For instance, in *Lino*, the plaintiffs feared the adverse effect of unsealed criminal records *after* they had been subject to a stop and frisk search (*id.*) (*emphasis added*). Here, the petitioners allege a fear from a search that has never occurred.

Moreover, the majority fails to fully account for the underlying factors in this type of investigatory lead. Familial searches are limited to specific violent offenses under detailed criteria after layers of review. Before a familial search is even considered, the investigating agency and prosecutor must demonstrate reasonable investigative efforts and exigent circumstances in dealing with a violent felony

offense. There must also be a partial match or no match found during a previous search (*see* 9 NYCRR § 6192.3[h]). Under these constraints, familial searches are steps of last resort.

For instance, in any given case, the initial steps may involve the pursuit of different investigatory leads, including those who have no relation to a convicted offender, come from different ethnic backgrounds, or have varying criminal histories. The familial search is implemented only after the completion of the preliminary investigation (*id.*). Contrary to the petitioners' assertions, a typical investigation cannot work by singling out those who may be related to convicted violent offenders or have no prior criminal record. As a result, the expansion of standing cannot be justified on these remote factors.

## II. Fourth Amendment Considerations Do Not Trigger Standing

While doubting whether familial searches violate Fourth Amendment privacy concerns, the First Department concluded that these constitutional concerns had no bearing on standing (R 978-979). The majority noted that the petitioners "are not arguing that the regulation either on its face or in its application violates the Fourth Amendment" (R 979). Instead, the petitioners "argue that the regulation was promulgated in violation of administrative procedures" (R 979). Accordingly, while standing can be expanded in the face of an important constitutional issue, the petitioners' claims do not trigger a Fourth Amendment claim (*see generally Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 814 [2003]).

Nonetheless, the First Department erred by expanding standing. In relying upon *Saratoga County*, the majority concluded that the petitioners should have

standing because it would otherwise "pose an impenetrable barrier to judicial scrutiny of governmental action" (*id.*; R 976). But, such extension of standing does not apply for two reasons. First, in *Saratoga County*, the Court expanded standing to give the plaintiffs an opportunity to be heard on a constitutional issue, not an administrative one. "Standing is properly satisfied here, lest procedural hurdles forever foreclose adjudication of the underlying constitutional issue" (*id.* at 815). Since the First Department acknowledged that the crux of the case is not premised upon a constitutional issue, such an expansion of standing is not justified.

Even if the Court were to find a constitutional concern, the point is moot without at least some exception for standing. In *Saratoga County*, the Court addressed the constitutional issue only after noting that the State Finance laws permitted standing without an actual harm. Specifically, the "citizen-taxpayer may bring suit to prevent the unlawful expenditure of state funds 'whether or not such person is or may be affected or specially aggrieved' by the challenged action" (*id.* at 813). As a result, "it was not necessary to address the State's challenge as to the other plaintiffs" (*id.*). Here, there is no such exception to standing without actual harm.

In addressing these challenges, the petitioners could have identified those with actual harm from a Freedom of Information Law request (Public Officers Law §§ 87, 89). They could have pleaded associational standing to include the convicted offenders whose DNA was subject to a familial search (*Cf. Nicholas v. Goord*, 430 F.3d 652 [2d Cir 2005]). They could have premised their claim primarily on constitutional issues (*see Saratoga County* at 814). Instead, two petitioners filed an Article 78 proceeding to contest the scope of a regulatory action (R 45, ¶8). And, therefore, this petition does not merit the loosening of standing requirements.

### A. Familial Searches Do Not Violate Fourth Amendment Protections Against Unreasonable Searches and Seizures

In any event, familial searches pass constitutional muster. In order to establish a violation of the search and seizure protections under the Fourth Amendment, there must first be a search and seizure resulting from a familial search. There is none. Additionally, the petitioners have not shown a privacy interest giving rise to a constitutional claim (R 74, 471). In particular, familial searches do not violate the Fourth Amendment's protections against unreasonable searches and seizures for two reasons.

First, there is no collection or extraction of the petitioners' DNA. The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" (US Const Amend IV; *see also* NY Const art 1, § 12). In order to give rise to a search, the courts have focused on the taking of the sample, not simply its use. It is well settled that "rights such as those conferred by the Fourth Amendment are personal in nature, and cannot bestow vicarious protection on those who do not have a reasonable expectation of privacy in the place to be searched" (*Steagald v. U.S.*, 451 U.S. 204, 219 [1981]).

Thus, "the process of matching one piece of information against government records does not implicate the Fourth Amendment" (*Johnson v. Quander*, 440 F.3d 489, 498 [D.C.Cir. 2006], citing *Arizona v. Hicks*, 480 U.S. 321 [1987]). "DNA testing of the 13 identifying junk loci within genetic material, not obtained by means of a physical intrusion into the person's body, is no more a search for purposes of the Fourth Amendment, than is the testing of fingerprints, or the observation of any other identifying feature revealed to the public - visage, apparent age, body type, skin color" (*Raynor v. State*, 440 Md. 71, 96 [2014]).

Here, familial searches do not involve the taking of DNA from the petitioners. They involve no pain, physical discomfort, or inconvenience. Instead, they compare crime scene evidence to lawfully obtained samples in the DNA Databank. Even if familial searches were conducted in a case, the familial search may rule out the petitioners as an investigatory lead or lead to no investigation at all. As a result, the petitioners would not experience the alleged fear or anxiety of an investigation.

In this regard, a familial search is not unlike showing a photograph to a witness. It is an investigatory lead that shows identifying information "at a single point in time" (*A.A. ex. Rel. B.A. v. Attorney General of New Jersey*, 189 N.J. 128, 139 [2007], quoting *Johnson v. Quander*, 440 F.3d at 499). A witness may look at a photograph and identify the person as showing a resemblance to another person, perhaps a brother. Thus, it would not be unreasonable for the police to use this investigative lead to interview the brother. If there is no resemblance in the photograph, there is less basis for a police encounter.

Second, familial searches do not involve the exposure of the petitioners' personal information. Familial searches are conducted solely for identification purposes (*see* N.Y. Exec. Law § 995[8]). They do not reveal information regarding race, ethnicity, or health conditions (R 461). Given its limited purpose under regulatory safeguards, there is no privacy interest sufficient to constitute a Fourth Amendment search (*see People v. Mendez*, 73 Misc.3d 715, 719-720 [Sup Ct, Bronx County 2021), citing *Raynor*, 440 Md. at 90; *see also Commonwealth v. Arzola*, 470 Mass. 809, 820 [2015]). As noted by this Court, "a statutory or regulatory duty to avoid unwarranted disclosures generally allays ... privacy concerns" (*People v. Goldman*, 35 N.Y.3d 582, 592 [2020], quoting *Maryland v. King*, 569 U.S. 435, 465

[2013]).

### B. Petitioners Do Not Have a Reasonable Expectation of Privacy in Familial Searches

DNA Databanks are well accepted across the country as an invaluable tool in law enforcement. Since the convicted offender's DNA profile is already in the possession of law enforcement, there is no reasonable expectation of privacy by the convicted offenders or their relatives. Similarly, the petitioners cannot create a de facto privacy right in their relative's DNA. Thus, the petitioners have failed to show a reasonable expectation of privacy in their relative's partial DNA profile.

As an initial matter, the test for determining whether there was a Fourth Amendment search and seizure is determined in two steps. "[F]irst that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable'" (*U.S. v. Agapito*, 620 F.2d 324, 329 [2d Cir 1980], quoting *Katz v. United States*, 389 U.S. 347, 361 [1967]).

While DNA profiles involve a subjective expectation of privacy, there is no objective expectation of privacy once the police are in possession of the DNA sample. As such, it would be unreasonable to require the police to obtain consent or a search warrant to conduct a familial search on a lawfully obtained DNA profile (*see Varriale v. State*, 444 Md. 400, 416 [2015]; *see also Maryland v. King*, 569 U.S. at 451 [DNA like fingerprints, only more accurate]; *People v. King*, 232 A.D.2d 111, 117-118 [2nd Dept 1997]). Since convicted offenders do not have a privacy interest in their own DNA, petitioners enjoy no greater rights after the convicted offender's DNA is obtained by law enforcement.

Similarly, the subsequent retrieval of the DNA profile does not trigger a new intrusion of the petitioners' privacy interest, and therefore, is not a search (*Johnson v. Quander*, 440 F.3d at 498-499). The key distinction is whether the DNA has been lawfully obtained by the police in the first place (*see People v. King*, 232 A.D.2d at 117-118). In *King*, a blood sample had been drawn from the defendant during the investigation of a 1991 rape case. This sample was also employed in another rape case that year. The Court held that once the blood sample had been lawfully taken, there was no need to re-establish probable cause for its subsequent use (*id.*).

Additionally, the petitioners do not acquire de facto legal rights in their relative's DNA from a familial search, anymore than they do in their relative's health records by reference to their family histories or genetic information (*see generally Gunn v. Sound Shore Med. Ctr. of Westchester*, 5 A.D.3d 435, 437 [2nd Dept 2004] [protection of patient's privacy through HIPAA]). As acknowledged by the majority, "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted" (*Rakas v. Illinois*, 439 U.S. 128, 133-134 [1978], quoting *Brown v. United States*, 411 U.S. 223, 230 [1973]; R 978).

Here, familial searches would not involve any of the petitioners' genetic material. There is no privacy interest implicated beyond identity. And, the convicted offender's DNA in the Databank is no longer private. Therefore, there is no standing under constitutional considerations (*id.*).

## CONCLUSION

For the foregoing reasons, *Amicus Curiae* District Attorneys Association of the State of New York, Inc. respectfully requests that the Court reverse the decision and order of the Appellate Division, First Department and dismiss the petition based on standing.

Dated: Buffalo, New York
November 23, 2022

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

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COURT OF APPEALS
STATE OF NEW YORK

TERRENCE STEVENS and BENJAMIN JOSEPH,

Petitioners-Respondents,

-against-

The NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES, the NEW YORK STATE COMMISSION ON FORENSIC SCIENCE, MICHAEL C. GREEN, in his official capacity as Executive Deputy Commissioner of the Division of Criminal Justice Services and Chairman of the Commission on Forensic Science, and the NEW YORK STATE COMMISSION ON FORENSIC SCIENCE DNA SUBCOMMITTEE,

Respondents-Appellants.

**AFFIDAVIT OF SERVICE**

**No.: APL-2022-00075**

STATE OF NEW YORK )
COUNTY OF ERIE ) SS:
CITY OF BUFFALO )

KRISTY A. DULAK, being duly sworn, deposes and says:

That she is over the age of twenty-one (21) years and is employed by the County of Erie at the Erie County District Attorney's Office; that on January 10, 2023, she served two copies of the Brief for District Attorneys Association of the State of New York as Amicus Curiae upon Letitia James, New York State Attorney General, attorney for Respondents-Appellants, addressed to Letitia James, Attorney General, State of New York, located at 28 Liberty Street, New York, New York 10005-1400 and upon Joseph Evall, Esq., Gibson, Dunn & Crutcher LLP, attorney for Petitioners-Respondents, addressed at Joseph Evall, Esq., Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166-0193, by depositing a true copy of same, securely enclosed in a postpaid wrapper, in a Post Office box regularly maintained by the United States Postal Service at the Erie County Hall in the City of Buffalo, New York in the above-captioned matter.

KRISTY A. DULAK

Subscribed and sworn to before
me on January 10, 2023.

ELAINE J. WILLIAMS
Notary Public, State of New York
Qualified in Erie County
My commission expires on 9/4/2025.