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Say Aah! Maryland v. King Defines Reasonable Standard for DNA Searches

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Comment

SAY AAH! *MARYLAND V. KING* DEFINES REASONABLE STANDARD FOR DNA SEARCHES[Ψ]

I. INTRODUCTION

Maryland law allows the collection and testing of DNA on persons arrested, but not yet convicted of serious crimes.[1] Whether the enacted legislation is constitutionally sound presents the central issue for the Supreme Court to decide.[2] The Fourth Amendment has stood guard against unreasonable search and seizures since its construction.[3] In determining what constitutes a search, the Supreme Court has responded that "any intrusion into the human body" will suffice.[4] Currently, twenty-eight states and the federal government have adopted some version of a DNA Collection Act that permits the state to obtain a DNA sample from a selected group of individuals.[5] For example, in Maryland, persons convicted of "a crime of violence or an attempt to commit a crime of violence" are subject to provide DNA to law enforcement authorities.[6] While the Fourth Amendment allows lawful search and seizures of individuals, the Supreme Court has developed a

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[1] *See* MD. CODE ANN., PUB. SAFETY § 2–504 (West 2009) (stating guidelines for when the collection of DNA samples may be collected in Maryland). The state statute notes that individuals charged with a crime of violence, or an attempt to commit a crime of violence, may have their DNA collected. *Id.*; *see also* MD. CODE ANN., CRIM. LAW § 14–101 (West 2013) (defining crimes of violence in Maryland); Nina Totenberg, *Supreme Court Rules DNA Can Be Taken After Arrest*, NPR (June 3, 2013, 3:00 PM), http://www.npr.org/2013/06/03/188397999/supreme-court-rules-arrest-dna-collection-reasonable, *archived at* http://perma.cc/2GBR-ZNR7 (reviewing the *Maryland v. King* decision and the standard for allowing DNA collection of persons arrested, but not yet convicted of felony crimes based on the Maryland DNA Collection Act).

[2] Maryland v. King (*King II*), 133 S. Ct. 1958, 1965–66 (2013). The Court granted *certiorari* to address whether the Fourth Amendment prohibits collection and analysis of DNA samples from persons arrested, but not yet convicted on felony charges. *Id.*

[3] *See* U.S. CONST. amend. IV (providing, in 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").

[4] *See King II*, 133 S. Ct. at 1969 (quoting Schmerber v. California, 384 U.S. 757, 770 (1966)) (internal quotation marks omitted).

[5] *See* Totenberg, *supra* note 1 (reporting over half of the states, in addition to the federal government, have enacted laws for DNA withdrawal on arrested individuals).

[6] *See* PUB. SAFETY § 2–504(3)(i) (explaining that a DNA sample may be collected from an individual charged with a crime of violence or an attempt to commit a crime of violence).

totality of the circumstances test to assist in determining the reasonableness of such a search.[7] Part II first introduces the facts in *Maryland v. King*.[8] Next, Part III of this Comment discusses the legal background of search and seizures under the Fourth Amendment with emphasis on the Court's procedure for determining reasonableness and law enforcement's application of DNA sampling.[9] Finally, Part IV presents the Court's holding in *King*, arguing the appropriateness of the majority opinion, and discussing future consequences of its application on DNA search and seizures.[10]

II. STATEMENT OF THE FACTS IN *MARYLAND V. KING*

On April 10, 2009, in Wicomico County, Maryland, Alonzo King ("King") was arrested and charged with first- and second-degree assault for menacing a group of individuals with a shotgun.[11] The Maryland DNA Collection Act ("Act"), in accordance with the Maryland Public Safety Act, obtained a sample of King's DNA through the use of a buccal swab to the inside of his cheek.[12] The DNA sample was processed and generated a match to a DNA sample from an unsolved rape case six

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7 *See* U.S. CONST. amend IV (providing pertinent language regarding the constitutionality of search and seizures); *see also* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 652 (1995) (discussing "reasonableness" as the "ultimate measure of [Fourth Amendment] constitutionality"); Wyoming v. Houghton, 526 U.S. 295, 299–300 (1999) (stating a court must weigh "the promotion of legitimate governmental interests" against "the degree to which [the search] intrudes upon an individual's privacy"); Illinois v. McArthur, 531 U.S. 326, 331 (2001) (explaining the use of a balance test between "privacy-related and law enforcement-related concerns" rather than a *per se* rule to determine the reasonableness of intrusion); Schmerber v. California, 384 U.S. 757, 768 (1966) (noting that not all intrusions are restricted, but those unjustified or conducted improperly are constrained under the Fourth Amendment).

8 *See infra* Part II (providing the factual background of *Maryland v. King*).

9 *See infra* Part III (reciting the legal history of search and seizures as they relate to the *Maryland v. King* decision).

10 *See infra* Part IV (analyzing the Supreme Court's ruling in *Maryland v. King*).

11 King v. State (*King I*), 42 A.3d 549, 553 (Md. 2012), *rev'd* 133 S. Ct. 1958 (2013).

12 *See id*. at 553 (stating personnel at the Wicomico County Central Booking facility obtained King's DNA). The Maryland DNA Collection Act authorized the sampling of King's DNA because he was charged with first- and second- degree assault. *Id.*; *see also* MD. CODE ANN., CRIM. LAW § 14–101 (West 2013) (outlining crimes of violence in Maryland); MD. CODE ANN., PUB. SAFETY § 2–504 (West 2009) (stating Maryland's guidelines for when DNA samples may be collected).

years prior.[13] Based on the match, the circuit court for Wicomico County tried and convicted King for the 2003 rape.[14]

On appeal, following the denied motion to suppress evidence, King argued the constitutionality of the Act as it applies to search and seizures under the Fourth Amendment.[15] The Court of Appeals reversed the judgment finding the collection of King's DNA to be an unlawful seizure in violation of the Fourth Amendment.[16] The Supreme Court granted *certiorari* to consider whether the search using a buccal swab to obtain King's DNA sample after arrest for a serious offense was reasonable under the Fourth Amendment.[17]

III. LEGAL BACKGROUND OF *MARYLAND V. KING*

The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."[18] Primarily the function of the Fourth Amendment is to constrain against unjustified intrusions or those conducted improperly.[19] Perhaps the greatest measure of

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13 *King I*, 42 A.3d at 553. The Maryland State Police Forensic Sciences Division processed and analyzed King's DNA sample. *Id.* On July 13, 2009, King's DNA record was uploaded to the Maryland DNA database and less than a month later, on August 4, 2009, the database produced a "hit" on King's DNA to an unsolved 2003 rape case. *Id*.

14 *Id.* at 552, 554. The hit on King's DNA matched the DNA taken from Vonette W., a fifty-three year old female who was the victim of an unsolved rape case. *Id.* at 554. Vonette underwent an examination for sexual assault, which included a vaginal swab. *Id*. Semen was collected from Vonette's exam and was uploaded to the Maryland DNA database. *King I*, 42 A.3d at 554. At the time it was processed, no matches were generated. *Id.* However, a detective on the case later presented the August 4 hit on King's DNA to a Wicomico County grand jury, who returned an indictment against King. *Id.* The DNA hit "was the only evidence of probable cause supporting the [October 13, 2009] indictment" against King for the unsolved rape of Vonette W. *Id*.

15 *Id.* at 555.

16 *Id*. at 555–56. The Court of Appeals held the DNA search of King was unconstitutional under the Fourth Amendment "totality of the circumstances balancing test." *King*, 42 A.3d at 555–56. The court stated "King's expectation of privacy [was] greater than the State's purported interest." *Id*. at 556. In considering King's situation, the court concluded the evidence against him at trial "should have been suppressed as 'fruit of the poisonous tree.'" *Id*.

17 Maryland v. King (*King II*), 133 S. Ct. 1958, 1966 (2013).

18 U.S. CONST. amend IV.

19 *See* Schmerber v. California, 384 U.S. 757, 768 (1966) ("the Fourth Amendment's proper function is to constrain, not against all intrusions as such, by against intrusions which are not justified . . . or which are made in an improper manner").

constitutionality in regard to searches is ascertained in asking whether the search was "reasonable."[20]

Traditionally, the Court employed a balance test between governmental concerns and those of individuals, measured by the degree of the intrusion on a person's privacy.[21] In *Bell v. Wolfish*, the Court noted one's expectation of privacy is of a "diminished scope" when taken into police custody.[22] Furthermore, cases of special law enforcement needs have been introduced in which the Court deemed certain circumstances reasonable even though warrantless.[23]

Law enforcement's implementation of DNA testing has an undisputed potential to improve investigative practices and the criminal justice system.[24] The Supreme Court has long held the buccal swab

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20 *See* Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 652 (1995) (citing Fourth Amendment text, which states "reasonableness" is the ultimate measure of constitutionality with regard to governmental searches).

21 *See* Katz v. United States, 389 U.S. 347, 360–61 (1967) (Harlan, J., concurring) (reviewing an individual's expectation of privacy and a physical intrusion of that individual's home). In *Katz*, the Court held that a person's reasonable expectation of privacy is constitutionally protected and that an intrusion into a person's home and space may constitute a Fourth Amendment violation. *Id.*; *see also* Wyoming v. Houghton, 526 U.S. 295, 300 (1999) (evaluating a search by "assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests"); Illinois v. McArthur, 531 U.S. 326, 331 (2001) (implementing a balance test to determine if a search is reasonable under the Fourth Amendment). *See generally* Shane Crotty, Note, *The Aerial Dragnet: A Drone-ing Need for Fourth Amendment Change*, 49 VAL. U. L. REV. 219, 233–37 (2014) (providing an expanded explanation of *Katz*, specifically how the decision effected searches and seizures associated with drones).

22 *See* 441 U.S. 520, 557 (1979) (stating a detainee's reasonable expectation of privacy while residing in institutional confinement is of a "diminished scope"); *see also* Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington, 132 S. Ct. 1510, 1517 (2012) (explaining that searches within correctional facilities may be considered reasonable as part of the facilities' effort to deter and detect contraband from entering the facility). The Court in *Florence* stated "[m]aintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of retained constitutional rights of both convicted prisoners and pretrial detainees." *Id.* (quoting Bell v. Wolfish, 441 U.S. 520, 546 (1979)).

23 *See* Maryland v. Buie, 494 U.S. 325, 328, 334 (1990) (discussing a protective sweep of an individual's home, who is suspected of committing armed robbery, does not require police to obtain a warrant where reasonable suspicion is present, therefore allowing the search of the individual's home, including closets); *see also* Chandler v. Miller, 520 U.S. 305, 313–14 (1997) (providing searches based on individualized suspicion generally do not violate the Fourth Amendment, however, "special needs" exceptions exist which require the Court to "undertake a context-specific inquiry"). *But see* Indianapolis v. Edmond, 531 U.S. 32, 36 (2000) (noting the city's narcotic checkpoints did not violate the Fourth Amendment).

24 *See* Dist. Attorney's Office for the Third Judicial Dist. v. Osborne, 557 U.S. 52, 55 (2009) (suggesting DNA testing has an "unparalleled ability" to significantly improve investigative practices, the criminal justice system, and exonerate the wrongly convicted); *see also* Robert Barnes, *Supreme Court Upholds Maryland Law, Says Police May Take DNA*

method, one technique exercised by law enforcement to obtain DNA samples, constitutes a search under the Fourth Amendment.[25] The technique is one performed in a variety of settings and has proven to be quick and painless—factors of key importance in the determination of its reasonableness.[26]

Before the Court's decision in *King*, federal and state courts have reached conflicting opinions on the constitutionality of DNA collection among those convicted, but not yet sentenced for felony crimes.[27] In 2011, the Court of Appeals found in *People v. Buza* that the seizure of DNA from someone who is entitled to the presumption of innocence violated the Fourth Amendment.[28] However, in 2013 the Supreme Court granted *certiorari* in *King* to determine whether the Fourth Amendment prohibits collection and analysis of a DNA sample from persons arrested, but not yet convicted on felony charges.[29]

Samples from Arrestees, WASH. POST (June 3, 2013), www.washingtonpost.com/politics/supreme-court-upholds-maryland-law-says-police-may-take-dna-samples-from-arrestees/2013/06/03/0b619ade-cc5a-11e2-8845-d970ccb04497_story.html, *archived at* http://perma.cc/X6VA-TPJ9 (discussing DNA as a "powerful tool" for law enforcement to solve cold cases).

25 *See* Maryland v. King (*King II*), 133 S. Ct. 1958, 1968–69 (2013) ("[i]t can be agreed that using a buccal swab on the inner tissues of a person's check in order to obtain DNA samples is a search"); *see also* Schmerber v. California, 384 U.S. 757, 769–70 (1966) (establishing that any intrusion into the human body is a search for purposes of the Fourth Amendment).

26 *Compare King II*, 133 S. Ct. at 1969 (noting the process of obtaining a DNA sample using a buccal swab is a "gentle" method that can be completed with a light touch inside the individual's cheek), *with* Winston v. Lee, 470 U.S. 753, 759–60 (1985) (discussing a surgical intrusion beneath an individual's skin as a search in which reasonableness is determined on a "case-by-case" basis), *and* Skinner v. Railway Labor Executives' Assn., 489 U.S. 602, 616–17 (1989) (determining a breathalyzer test that requires "deep lung" production is a search), *and* Missouri v. McNeely, 133 S. Ct. 1552, 1564, 1568 (2013) (reviewing the withdrawal of blood on an individual by police officers as a search requiring a "totality of the circumstances" approach).

27 *King II*, 133 S. Ct. at 1966. The question of whether the Fourth Amendment prohibits DNA collection and analysis of individuals arrested, but not yet convicted, has resulted in different conclusions between state and federal courts. *See generally* State v. Raines, 857 A.2d 19, 43–44 (Md. Ct. Spec. App. 2004) (holding the Maryland DNA Collection Act, which requires DNA collection and analysis from certain convicted individuals, does not violate the Fourth Amendment). *But see* People v. Buza, 129 Cal. Rptr. 3d 753, 782–83 (Ct. App. 2011) (finding that the DNA and Forensic Identification Data Base and Data Bank Act of 1998 violated the Fourth Amendment because it required felony arrestees to give a DNA sample).

28 *See Buza*, 129 Cal. Rptr. 3d. at 755 (holding that the seizure of DNA from someone arrested, but not yet convicted, violates the Fourth Amendment because the individual is entitled to presumed innocence).

29 *See supra* Part II (providing the factual background of *Maryland v. King*).

IV. ANALYSIS OF THE DECISION IN *MARYLAND V. KING*

A. The Maryland v. King *Decision*

In a five-to-four decision, the Supreme Court held that DNA identification of arrestees on serious criminal offenses is a reasonable search under the Fourth Amendment that can be considered part of routine booking procedures.[30] Writing for the majority, Justice Kennedy began by promoting an educational understanding of DNA followed by language pulled from Maryland law outlining specific situations for approved DNA collection.[31] Justice Kennedy ensured the application of the Fourth Amendment was a "beginning point" in the Court's analysis of the presented issue.[32] To support his argument, Justice Kennedy articulated five principle interests the Act serves to promote: (1) properly identifying the arrested individual; (2) ensuring the detainee does not present risks for himself or others; (3) ensuring the accused is available for trial; (4) reviewing arrestee's past conduct to assess potential danger; and (5) possibly freeing the wrongfully convicted.[33]

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30 *See King II*, 133 S. Ct. at 1965, 1980 (finding that DNA identification of an arrested individual is considered part of "routine booking procedure[s]"). The Court compared DNA sampling to fingerprinting and photographing. *Id.* The majority in *King* consisted of Justice Kennedy, who delivered the opinion of the Court, Chief Justice Roberts, and Justices Thomas, Breyer, and Alito. *Id*. Justice Scalia filed a dissenting opinion with whom Justices Ginsburg, Sotomayor, and Kagan joined. *Id.* at 1980.

31 *See id.* at 1966–67 (reciting the procedures for DNA collection and analysis); MD. CODE REGS. 29.05.01.04 (2014) (outlining when DNA collection may occur and supplemental guidelines for the process of obtaining a DNA sample); *Frequently Asked Questions (FAQs) on the CODIS Program and the National DNA Index System*, FBI, http://www.fbi.gov/about-us/lab/codis/codis-and-ndis-fact-sheet (last visited Mar. 4, 2015), *archived at* http://perma.cc/K36E-KKEN (discussing the background of CODIS and NDIS and providing general information on DNA). According to the FBI, "CODIS was designed to compare . . . DNA records." *Id.* After an identified match, the laboratories that are involved in the process exchange information for the purpose of verifying the match. *Id.*

32 *King II*, 133 S. Ct. at 1969.

33 *See id.* at 1971–75 (explaining the Court's reasoning on each of the five principle interests). The Court explained with the first principle that "[i]n every criminal case, it is known and must be known who has been arrested and who is being tried." *Id.* at 1971 (quoting Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cnty., 542 U.S. 177, 191 (2004)); *see also* Jones v. Murray, 962 F.2d 302, 307 (4th Cir. 1992) (discussing the steps an individual engaged in criminal conduct will take to conceal his identity, such as, providing false information about his identity and criminal records).

Justice Kennedy, while discussing the second principle, stated, "law enforcement officers bear a responsibility for ensuring that the custody of an arrestee does not create inordinate 'risks for facility staff, for the existing detainee population, and for a new detainee.'" *King II*, 133 S. Ct. at 1972 (quoting Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington, 132 S. Ct. 1510, 1518 (2012)). For safety reasons, among others, law enforcement officers must know the type of individual he or she is dealing with during detainment so the officer is able to make critical choices on how to proceed. *Id.* DNA

The Court promptly affirmed the use of a buccal swab on an individual's cheek to obtain a DNA sample does constitute a search under the Fourth Amendment.[34] Rather than evaluate an individualized suspicion, the Court applied the test set forth in *Illinois v. McArthur* balancing privacy-related and law enforcement-related concerns.[35] Abrogating *Buza*, Justice Kennedy discarded King's argument that the search was unreasonable.[36] For support, Justice Kennedy compared the buccal method to more invasive means of obtaining a sample, such as surgical intrusion beneath the skin or blood withdrawal.[37] Additionally, the Court supported its decision by identifying "the need for law

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identification is one way that an officer can attain that critical information. *Id.* The Court went on to recognize "that a name alone cannot address this interest in identity." *Id.*

The Court further discussed the third principle by analyzing *Bell v. Wolfish*, where "the Government has a substantial interest in ensuring that persons accused of crimes are available for trials." *Id.* at 1972–73 (quoting Bell v. Wolfish, 441 U.S. 520, 534 (1979)). In *Bell*, the Court acknowledged the interest of the state in making persons available for trials was an undisputed issue. *Bell*, 441 U.S. at 534.

For support for the fourth principle, Justice Kennedy relied on both Maryland rules and the United States Code, stating "the history and characteristics of the person, including the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings" are taken into consideration in determining whether the individual may be released. 18 U.S.C. § 3142(g)(3)(A) (2006 ed. & Supp. V); *King II*, 133 S. Ct. at 1973.

Finally, the Court noted that the identification of an arrestee may free a person wrongfully imprisoned. *King II*, 133 S. Ct. at 1973; *see also* JIM DWYER, PETER NEUFELD & BARRY SCHECK, ACTUAL INNOCENCE 245 (2000) ("Prompt [DNA] testing . . . would speed up apprehension of criminals before they commit additional crimes, and prevent the grotesque detention of . . . innocent people.").

[34] *See King II*, 133 S. Ct. at 1968–69 (acknowledging that a buccal swab to collect DNA does constitute a search under the Fourth Amendment).

[35] *See* 531 U.S. 326, 331 (2001) (discussing a balancing test of private-interests and government-interests to determine if a search is reasonable under the Fourth Amendment). In *McArthur*, the Court addressed the issue of whether the defendant's Fourth Amendment rights were violated when a police officer refused to allow the individual into his home unaccompanied by another officer until a search warrant was obtained. *Id.* at 329. The Court held the search was a reasonable seizure and that it did not violate the Fourth Amendment. *Id.* at 338.

[36] *See King II*, 133 S. Ct. at 1966, 1979–80 (abrogating *People v. Buza*, the Court held that the California statute requiring DNA collection of persons arrested, but not yet convicted, with an entitlement of presumed innocence violates the Fourth Amendment).

[37] *See id.* at 1969 (comparing different methods of obtaining DNA). Justice Kennedy explained a buccal swab as compared to a "surgical intrusion beneath the skin" is a search, but unlike that latter, it is far less invasive. *Id.* (quoting Winston v. Lee, 470 U.S. 753, 760 (1985)); *see also Winston*, 470 U.S. at 760 (stating a balancing inquiry must be done to determine the reasonableness of a search where surgical intrusion beneath the skin is performed); Schmerber v. California, 384 U.S. 757, 771 (1966) (finding the blood testing of an individual suspected of drunk driving was reasonable under the circumstances to secure evidence of blood-alcohol content).

enforcement . . . to process and identify the persons and possessions they must take into custody" as the government's primary served interest through the Act.[38]

Justice Kennedy drew additional support, in that like fingerprinting, DNA identification is also part of the booking procedure following a lawful arrest.[39] Citing the *Hodgeman v. Olsen* opinion, Justice Kennedy stated the procedures implemented after arrest were used to "facilitate the recapture of escaped prisoners, to aid the investigation of their past records and personal history, and to preserve the means of identification for . . . future supervision after discharge."[40] Dismissing King's objection, that DNA identification is null compared to fingerprinting due to the time delay in its analysis, Justice Kennedy urged the acceptance of technological advances to speed up and improve DNA identification.[41]

Finally, Justice Kennedy distinguished King's situation from *Chandler v. Miller* and *Indianapolis v. Edmond*—both scenarios the Court has previously referenced as "special needs" searches.[42] Justice Kennedy

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38 *See King II*, 133 S. Ct. at 1970 (stating the government's interest in the Maryland DNA Collection Act is "well established"). Justice Kennedy stated "the need for law enforcement officers in a safe and accurate way to process and identify the persons and possessions they must take into custody" is a legitimate government interest. *Id.; see also* Gernstein v. Pugh, 420 U.S. 103, 112–14 (1975) (discussing how probable cause allows for the arrest of an individual suspected of a crime, as well as time to take administrative steps following arrest).

39 *See King II*, 133 S. Ct. at 1975 (explaining that law enforcement has implemented scientific advancements into routine booking procedures). The Court discussed how DNA identification, similar to fingerprinting, is a "permissible tool" that is used by law enforcement. *Id.* at 1977; *see also* Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 58 (1991) (arguing that one way to reduce the likelihood of an innocent individual spending time in jail is to determine probable cause after "administrative steps incident to arrest"). *See generally* Jessica A. Levitt, Note, *Competing Rights Under the Totality of the Circumstances Test: Expanding DNA Collection Statutes*, 46 VAL. U. L. REV. 117, 121–27 (2011) (comparing DNA to fingerprinting, and discussing the potential expansion of DNA testing).

40 *King II*, 133 S. Ct. at 1975 (citing Hodgeman v. Olsen, 86 Wash. 615, 619 (1915)). The Court stressed that the reasoning behind taking identifying information goes beyond verifying the individual's name. *Id.*

41 *See id*. at 1976–77 (discussing the goals of DNA and recent advances to improve the delay in processing DNA). The Court highlighted the FBI as an indicator that DNA testing will continue to develop allowing for rapid analysis. *Id.*

42 *See id*. at 1978 (distinguishing King's situation from "special needs" searches); *see also* Chandler v. Miller, 520 U.S. 305, 313–14 (1997) (noting that exceptions exist when determining the reasonableness of a search under the Fourth Amendment). *Chandler* explained that when "special needs" are alleged, courts must inquire as to the context of the search, "examining closely the competing private and public interests." *Id.*; *see also* Indianapolis v. Edmond, 531 U.S. 32, 40–42 (2000) (reviewing checkpoint programs). The Court in *Edmond* found that the checkpoints were unconstitutional "[b]ecause the primary purpose of the . . . checkpoint program is to uncover evidence of ordinary criminal wrongdoing, . . . [which] contravenes the Fourth Amendment." *Id.* at 41–42.

supported his decision stating "searches of either the public at large or a particular class of regulated but otherwise law-abiding citizens" as the critical difference between King and the aforementioned.[43] Justice Kennedy announced King's status as a detainee resulted in a reduced expectation of privacy, unlike individuals subjected to special needs searches who have not been suspected of a wrong.[44]

B. Appraisal of the Maryland v. King *Decision*

The Court in *Maryland v. King* reached the correct result.[45] The Maryland DNA Collection Act does not violate the Fourth Amendment because it satisfies the reasonable test set forth under judicial precedent.[46] Adhering to the constraints of the test, King's private interests were of a diminished scope from the moment his lawful arrest was executed.[47] The interests of the government, fully acknowledged by the Court, rise to a level that significantly outweighs an incarcerated individual.[48] Furthermore, the act of acquiring information at the time of booking from an arrested person is one of dated acceptance among society.[49] Because King was convicted of a serious crime, obtaining a sample of his DNA is another necessary step in the procedural aspect of

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43 *King II*, 133 S. Ct. at 1978. The Court directly referred to the situation in *Chandler*, where law-abiding citizens may be searched under cases deemed "special needs" without a warrant. *Id.* (quoting *Chandler*, 520 U.S. at 314).

44 *See id.* at 1978 (discussing the differences in privacy among detainees and individuals who have not been suspected of a wrong). Justice Kennedy noted that individuals in custody have a "diminished scope" regarding their expectation of privacy. *Id.* (quoting Bell v. Wolfish, 441 U.S. 520, 557 (1979)).

45 *See generally* State v. Raines, 383 Md. 1, 43 (2004) (holding that the DNA Collection Act, which allows the collection of DNA samples from certain convicted persons, did not violate the Fourth Amendment).

46 *See King II*, 133 S. Ct. at 1970–75 (weighing the private interests of King as a convicted person with a reduced expectation of privacy against five key governmental interests); *see also supra* note 33 and accompanying text (listing the five factors that the court used to balance the reasonableness of the search in *King*).

47 *See* Bell v. Wolfish, 441 U.S. 520, 534 (1979) (discussing the diminished scope of detainees in regard to their private interests); *see also* Michigan v. DeFillippo, 443 U.S. 31, 35–36 (1979) (stating the lawful arrest of an individual standing alone will authorize a search). The Court in *DeFillippo* acknowledged that an officer is allowed to arrest an individual absent a warrant if probably cause exists. *Id.*

48 *See* 3 WAYNE R. LAFAVE, SEARCH AND SEIZURES § 5.3 (5th ed. 2012) (reviewing the government's interest in knowing, with certainty, the identity of the arrested individual, whether the person is wanted in a different location, and ensuring the individual's identification should he avoid prosecution).

49 *See King II*, 133 S. Ct. at 1976 (noting the practice of photographing and fingerprinting an individual in lawful custody has been widely accepted since the mid-twentieth century); *see also* Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 58 (1991) (discussing fingerprinting and booking procedures as part of "the administrative steps incident to arrest").

processing him that serves to protect the interests of many, present and future.[50]

C. Anticipated Consequences of the Maryland v. King *Decision*

The holding in *King* is one that will rock the foundation of search and seizures jurisprudence.[51] Conflicting conclusions have been drawn amongst federal and state courts regarding the constitutionality of DNA searches of those arrested, but not yet convicted for some time.[52] The Court's liberals joined conservative Justice Scalia in a heated dissent that mocked the majority's ruling.[53] The unexpected division between the Court's justices plays a significant role in framing future consequences.[54] As the dissent noted, the idea that DNA withdrawal from any individual arrested under any line of reasoning will now be deemed permissible based on this Court's ruling; the debate amongst judicial authority and libertarians will only be further enticed.[55] In addition, the holding in *King* will serve as a mere starting point for what will likely become a

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50 *See King II*, 133 S. Ct. at 1973 (stating the importance of knowing with certainty an arrested individual's identification to assess future threat or danger to others); *see also* United States v. Salerno, 481 U.S. 739, 749–50 (1987) (discussing the prevention of crime by an arrestee as both "legitimate and compelling").

51 *See King II*, 133 S. Ct. at 1980 (Scalia, J., dissenting) (disagreeing with the majority decision by stating that "[t]he Fourth Amendment forbids searching a person for evidence of a crime when there is no basis for believing the person is guilty of the crime or is in possession of incriminating evidence"). Justice Scalia passionately asserted the majority's reasoning that DNA is being taken to identify detainees is one that "taxes the credulity of the credulous." *Id.*

52 *See supra* note 27 and accompanying text (discussing the contrasting opinions of courts on matters similarly related to *Maryland v. King*).

53 *See supra* Part IV.A (providing a synopsis of the Court's decision in *Maryland v. King*); *see also* Barnes, *supra* note 24 (discussing the dissent's disagreement with the majority opinion, specifically the use of DNA collection and testing to identify King).

54 *See* Akhil Reed Amar & Neal K. Katyal, *Why the Court was Right to Allow Cheek Swabs*, N.Y. TIMES (June 3, 2013), www.nytimes.com/2013/06/04/opinion/why-the-court-was-right-to-allow-cheek-swabs.html?_r=1&, *archived at* http://perma.cc/2GBR-ZNR7 (reviewing the impact of Justice Scalia, a known conservative, joining the Court's liberals in a heated dissent). Amar and Katyal pointed to the fact that Justice Scalia dissented from the bench—"a race act that signals sharp disagreement." *Id.*

55 *See King II*, 133 S. Ct. at 1989 (Scalia, J., dissenting) (mocking the majority's decision as one that will negatively impact future decisions regarding DNA withdrawal). Justice Scalia, dissenting, predicts that as a result of the Court's decision, DNA sampling and analysis may be taken from any individual arrested and for whatever reason. *Id.; see also* Totenberg, *supra* note 1 (stating civil libertarians were disappointed with the Court's decision).

long era of constitutional questioning in regard to technological advances concerning DNA sampling.[56]

V. CONCLUSION

The idea that certain arrested, but not yet convicted, individuals may be subject to DNA searches that are constitutionally sound is one, that, before *King*, appeared unreasonable. Both state and federal courts alike struggled to agree on an appropriate answer to the Fourth Amendment issue. The Court decidedly advocated for reasonableness as the primary factor in deciding constitutionality. As such, the *King* decision will push future cases to identify the interests of the government and private citizens in a balancing test to determine reasonableness. Based on *King*, law enforcement will reap the benefits of the DNA search method as an investigative tool that continues to grow and develop with technology. Furthermore, like Maryland, states with similar enacted legislation will enable law enforcement to pursue DNA searches as a mere extension of the accepted booking procedures. While Alonzo King was justly arrested for assault, because of the ruling in *King*, both he and future criminals will become residents in a DNA databank.

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[56] *See King II*, 133 S. Ct. at 1989 (Scalia, J., dissenting) (discussing the Court's current position on DNA collection and testing of persons arrested, but not yet convicted of serious crimes, and posing the platform for future discussion in light of the heated debate between the majority and dissent).

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