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FEDERAL COURT IN SACRAMENTO UPHOLDS CONSTITUTIONALITY OF MANDATORY DNA COLLECTION OF ALL INDIVIDUALS ARRESTED ON FEDERAL FELONY CHARGES

United States Magistrate Judge Gregory G. Hollows' Decision Is the First of Its Kind in the Federal Courts

SACRAMENTO, Calif.—Acting United States Attorney Lawrence G. Brown announced today that a federal court in the Eastern District of California has upheld the constitutionality of DNA sample collection from all those arrested upon probable cause for the commission of a federal felony. The court's order, filed in *United States v. Pool*, 09-015-EJG-GGH, rejected a challenge to the constitutionality of DNA sampling and cataloguing of arrestees in federal cases as it has been recently modified by the DNA Fingerprint Act.

"We are very gratified with today's ruling. DNA evidence has proved invaluable in both solving crimes and exonerating the innocent," said Acting United States Attorney Lawrence G. Brown.

According to Assistant United States Attorneys Sean C. Flynn and Russell L. Carlberg, who are handling the matter on behalf of the United States, the DNA Fingerprint Act, enacted in 2006, authorized the U.S. Attorney General to extend the collection of DNA samples for law enforcement purposes to those who are "arrested, facing charges, or convicted" of federal offenses.

Prior to the enactment of the legislation, DNA collection by law enforcement was permitted only for those convicted of crimes. The new legislation brought federal law on par with that of about a third of the states that currently authorize DNA sample collection from arrestees and others similarly situated. The U.S. Department of Justice exercised its authority under the statute earlier this year and issued direction to various federal agencies to begin collecting the DNA of individuals who are arrested or facing charges, as has historically been the case with the collection of fingerprints.

In its decision today, the court held that after a judicial or grand jury determination of probable cause has been made for felony criminal charges against a defendant, no Fourth Amendment or other Constitutional violation is caused by a requirement that the defendant undergo a mouth swab or blood test for the purposes of DNA analysis to be used for criminal law enforcement identification purposes. In so determining, the court recognized that an individual arrested upon probable cause has a "diminished expectation of privacy in his own identity," and that DNA fingerprinting as a law enforcement tool is merely a "technological progression" from photographs and traditional fingerprints, which are a "part of the routine

booking process upon arrest.”

The court found compelling that while the expansion of DNA collection to federal arrestees would aid in solving additional crimes, it would also “help to exculpate” individuals who are serving sentences of imprisonment for crimes they did not commit. The Court also looked favorably upon the protections built into the statute that impose criminal and financial penalties on those who maintain collected DNA samples should those samples be improperly used.

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