

**KAMALA D. HARRIS**  
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**State of California**  
**DEPARTMENT OF JUSTICE**



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July 24, 2012

Molly Dwyer  
Clerk of the Court  
Ninth Circuit Court of Appeals  
95 Seventh Street  
San Francisco, CA 94103-1526

RE: *Elizabeth Aida Haskell, et al. v. Kamala Harris, et al.*  
Case No. 10-15152

Dear Ms. Dwyer:

Appellants' July 10, 2012 letter citing *Mario W. v. Kaipio*, --- P.3d ---, No. 11-0344, 2012 Ariz. LEXIS 153 (June 27, 2012) does not support their petition for rehearing en banc. In that case the Arizona Supreme Court found the processing (but not collection) of DNA database samples from juvenile arrestees unconstitutional, unless a juvenile absconds. As a threshold matter, California's DNA Act is distinguishable from Arizona law because California authorizes samples only from adult felony arrestees (Cal. Pen. Code, § 296(a)(2)) and no presumptions afforded juvenile proceedings would apply.

Moreover *Mario W.* should not influence this Court's determination because *Mario W.* suffers from significant infirmities. First, the notion that analysis of thirteen junk DNA markers "for inclusion in CODIS" reveals intimate private information, *Mario W.* at \*14, \*18-\*19, conflicts with findings that anchor this Court's decisions upholding convicted offender DNA databases. *E.g.*, *United States v. Kincade*, 379 F.3d 813, 837-838 (9th Cir. 2004) (sample collection "can only be described as minimally invasive—both in terms of the bodily intrusion it occasions, and the information it lawfully produces").

Second, the Arizona court's failure to acknowledge any government interest in collecting database samples at arrest—other than for absconding juveniles—is short-sighted and at odds

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with California's documented experience.<sup>1</sup> Collection of DNA database samples at felony arrest has increased the State's crime-solving ability 125 percent over collection from convicted offenders. See California Department of Justice FAQ: *Effects of the All Adult Arrestee Provision, Q2*, <http://oag.ca.gov/bfs/prop69/faqs>. For example, when 15-year-old Sierra LaMar was abducted en route to school there were no leads until a DNA match between crime scene evidence and an arrestee sample from a dismissed felony case became law enforcement's best hope of finding her alive. *Id.* California's fingerprint, palmprint and DNA databases work together to accurately identify arrestees, including any link to an arrestee's past criminal offenses. *Id.* at FAQ 1,3.

Respectfully submitted,

s/ Daniel J. Powell

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<sup>1</sup> The Supreme Court has stayed a Maryland decision reaching a similar conclusion. *Maryland v. King*, No. 12A48, Order dated July 18, 2012 (attached).

**ATTACHMENT**

**Supreme Court of the United States**

No. 12A48

MARYLAND,

Applicant

v.

ALONZO J. KING, JR.

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**ORDER**

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UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the judgment and mandate of the Court of Appeals of Maryland, case No. 68, is hereby stayed pending receipt of a response, due on or before Wednesday, July 25, 2012, by 4 p.m., and further order of the undersigned or of the Court.

/s/ John G. Roberts, Jr.  
Chief Justice of the United States

Dated this 18th  
day of July 2012.

**CERTIFICATE OF SERVICE**

Case Name: **Elizabeth Aida Haskell, et al. v. Kamala Harris, et al.** No. **10-15152**

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I hereby certify that on July 24, 2012, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**Letter dated July 24, 2012 addressed to Molly Dwyer, Clerk of the Court**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 24, 2012, at San Francisco, California.

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J. Wong  
Declarant

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s/ J. Wong  
Signature