The Supreme Court's DNA ruling

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Monday's US Supreme Court ruling approving the seizure of DNA from unconvicted arrestees has important legal implications in the context of the continuing expansion of the powers of the state at the expense of basic democratic rights.

In particular, under the "balancing" theory of democratic rights championed by the Obama administration and adopted by the Supreme Court, basic democratic freedoms once described as "inalienable" are being transformed into mere suggestions that may be "outweighed" by "government interests."

The Fourth Amendment states that the "right of the people to be secure in their persons, house, papers and effects, against unreasonable searches and seizures, shall not be violated." The Fourth Amendment also requires that the police obtain a warrant from a judge, supported by probable cause (to connect a particular person or place with a particular crime), before conducting a search or seizure.

The Supreme Court announced a significant broadening of the concept of "reasonableness" in order to justify cheek swab DNA seizures. In doing so, it proclaimed that "individual suspicion is not necessary" in order for a search to be reasonable. "The routine administrative procedures at a police station house incident to booking and jailing the suspect have different origins and different constitutional justifications than, say, the search of a place not incident to arrest," the Court announced.

The Supreme Court's announcement that "different constitutional justifications" are supposedly attendant upon booking and jailing opens the door to potential further invasions of privacy. If a person is arrested who is carrying a cellphone, can the police download the contents of the phone, including its call history, emails, text messages, and so forth?

The Supreme Court's authorization for the compilation of DNA profiles fits neatly into the massive domestic surveillance apparatus that has been constructed in the recent period, and in particular under the Obama administration. DNA profiles will doubtless be cross-indexed with all of the other information the government has been compiling on the population, including medical records, financial records, criminal records, GPS location data, internet history, text messages, phone calls, Facebook activity, and so forth.

The police-state implications of the DNA ruling are plain. Two years ago, thousands of protesters and young people arrested during the anti-Wall Street demonstrations. If they were arrested today, they could all be forced to open their mouths and submit to the collection of DNA information, to be stored in an FBI database and linked up with all of their other information.

In a "friend of the court" brief filed by the Department of Justice, the Obama administration argued that a person's rights under the Fourth Amendment are not absolute but should be "balanced" against important "state interests," such as solving crimes.

The Obama administration brief stated that the appellate court's ruling against the extraction of DNA had "overflated (sic) an arrestee's interest in privacy and underestimated the State's interest in collecting arrestee DNA."

The Department of Justice brief suggested that the Court focus on "balancing the State's interest in identifying arrestees, solving past crimes, and exonerating innocent individuals against the significantly diminished expectation of privacy attendant to taking a buccal [cheek] swab of an arrestee yields the obvious answer that the search is reasonable."

Carried through to its logical conclusion, this argument would lead to the abolition of all democratic

rights. Obviously, it would be much easier for the state to "solve crimes," or conduct any of its other activities, if the citizens had no rights whatsoever. According to this logic, nothing could be more "efficient" than a police state.

The Supreme Court's ruling relies on a false analogies between DNA profiles and fingerprint databases. The majority opinion states, "the only difference between DNA analysis and fingerprint databases is the unparalleled accuracy DNA provides."

The ruling also compares DNA profiles to sketch artists' depictions of suspects: "the use of DNA for identification is no different than matching an arrestee's face to a wanted poster."

Contrary to the arguments of the Obama administration, the Supreme Court, and the media, the overarching goal of the collection of DNA information is not to "solve crimes" but to further expand the surveillance and law-and-order powers of the state. With its latest decision, the Supreme Court has given the go-ahead for the rapid expansion of the FBI's CODIS (Combined DNA Index System), which currently contains the genetic information of over 10 million Americans.

Not satisfied with this already vast network, the government hopes to collect the information of tens of millions more Americans who can be taken into custody with minimal justification. This category, it must be emphasized, includes every person taken into custody in the course of a demonstration or political protest.

The DNA information may be taken at the time of the arrest and before the person is convicted of any crime—in other words, the DNA information is collected *even if the person is innocent*. This decision will vastly expand the reach of CODIS—the FBI reported that state and federal officials in the US made 12.4 million arrests in 2011 alone.

The decision also provides an incentive for the police to arrest a person that the police do not suspect of any crime, just to obtain that person's DNA information.

Notable in the ruling was erstwhile liberal Justice Steven Breyer's decisive vote in support of the majority, as well as arch-reactionary Justice Antonin Scalia's authorship of the dissenting opinion.

The media generally responded positively to the Supreme Court's ruling. The editorial board of the *Washington Post* published an editorial opinion on Tuesday titled, "In DNA ruling, the Supreme Court makes the right call."

"[A]s the majority pointed out, the rapid advance of DNA identification technology promises to make it as efficient a tool in the administration of criminal justice as fingerprinting has been, serving a variety of legitimate ends at many stages in the system, including identification. The justices were right to allow that process to continue to play out," the editorial read.

The *Washington Post* went on to opine, "This ruling will not create some sort of disturbing database in which every American's risk of developing diabetes or cancer is just a click away from any curious cop." In fact, such a database has already been constructed, and the Supreme Court's opinion gives the green light to its expansion.