



May 6, 2022

Contact:

Redmond Haskins  
The Legal Aid Society  
(929) 441-2384  
[rhaskins@legal-aid.org](mailto:rhaskins@legal-aid.org)

Pearl J. Piatt  
Gibson, Dunn & Crutcher LLP  
[PPiatt@gibsondunn.com](mailto:PPiatt@gibsondunn.com)

**\*\*\*FOR IMMEDIATE RELEASE\*\*\***

***Legal Aid, Gibson Dunn Secure Appellate Ruling Which Strikes Down Law Enforcement's Use of Familial Search in New York State***

(NEW YORK, NY) – The Legal Aid Society and Gibson, Dunn & Crutcher LLP secured a [ruling](#) from the New York State Appellate Division - First Judicial Department which [strikes down regulations](#) promulgated in 2017 by the New York State Commission on Forensic Science (CFS) and the New York State Department of Criminal Justice Services (DCJS) that permit “familial searching” in New York State.

In familial searching, law enforcement scans DNA databases for genetic information about a relative of someone whose genetic information is in the database. When a search for an exact match to a DNA sample comes up without a match, a familial DNA search may bring up information that could pertain to a sibling, child, parent, or other blood relative.

The ruling states: “...we find that the overwhelming policy issues inherent in authorizing the use and limitations upon familial match searches of DNA information collected in the New York State databank warrants a conclusion that it is an inherently legislative function and that the challenged regulation cannot stand.”

“The Commission on Forensic Science and the Department of Criminal Justice Services acted well outside their purview and authority by unilaterally promulgating this far reaching policy, one that should have been left to the Legislature to debate,” said **Jenny S. Cheung, Supervising Attorney of the DNA Unit with The Legal Aid Society**. “We laud this decision which affirms our serious constitutional, privacy and civil rights concerns around familial searching, a technique that disproportionately impacts Black and Latinx New Yorkers.”

“We are very pleased that the appellate court recognized the important privacy rights that the regulations impacted,” said **Joseph Evall, a Gibson Dunn partner who led the firm’s litigation team**.

“I’m glad that the appellate panel took the time to address the complex regulatory, governmental, and scientific issues that this challenge raised,” said **Doran Satanove, the Gibson Dunn attorney who argued the appeal**.

## **Background**

On October 18, 2017, DCJS formally adopted regulations for this technique, causing a *de facto* expansion of the state DNA database which would ensnare unknown numbers of innocent individuals based solely on their genetic kinship with convicted individuals.

Expansion of the DNA database has been the subject of heated debate in the State Legislature in the past, where legislators have been cautious to limit genetic searches to those convicted of crimes.

The New York Commission on Forensic Science is charged with overseeing the proper functioning of state laboratories. It has no authority to make policy that will affect the lives of a great many New Yorkers, or to expand the scope of DNA searches in the New York State DNA Databank beyond that which has been authorized by the Legislature.

These new regulations gave DCJS unprecedented discretion over the scope of law enforcement investigations. At the same time, the regulations contained no mechanisms to restrain police overreach or to give recourse to individuals who will become the subject of suspicion-less searches.

There was also immense concern over how these new regulations will impact communities of color. Because of biased policing methods such as “stop and frisk,” the DNA database contains an overrepresentation of people of color. Familial searching magnifies and enhances that bias by making family members who have no criminal records subject to police investigations.

Legal Aid and Gibson Dunn initially [filed](#) this [lawsuit](#) in February 2018, and then immediately appealed the lower court’s decision.

The government’s use of DNA gathering and storage practices have garnered strict criticism. This past March, Legal Aid [filed](#) a class action lawsuit challenging the City’s practices on this issue.

###

*The Legal Aid Society is a private, not-for-profit legal services organization, the oldest and largest in the nation, dedicated since 1876 to providing quality legal representation to low-income New Yorkers. It is dedicated to one simple but powerful belief: that no New Yorker should be denied access to justice because of poverty. [www.legal-aid.org](http://www.legal-aid.org)*

*Gibson, Dunn & Crutcher LLP is a leading international law firm. Consistently ranking among the world’s top law firms in industry surveys and major publications, Gibson Dunn is distinctively positioned in today’s global marketplace with more than 1,600 lawyers and 20 offices, including Beijing, Brussels, Century City, Dallas, Denver, Dubai, Frankfurt, Hong Kong, Houston, London, Los Angeles, Munich, New York, Orange County, Palo Alto, Paris, San Francisco, São Paulo, Singapore, and Washington, D.C. For more information on Gibson Dunn, please visit our website, [www.gibsondunn.com](http://www.gibsondunn.com)*