

No. S269654

IN THE SUPREME COURT OF CALIFORNIA

ALL OF US OR NONE-RIVERSIDE CHAPTER, JANE ROE, and
PHYLLIS MCNEAL,

Plaintiffs-Appellants,

vs.

W. SAMUEL HAMRICK, JR., EXECUTIVE OFFICER AND
CLERK OF RIVERSIDE COUNTY SUPERIOR COURT; and
RIVERSIDE COUNTY SUPERIOR COURT,

Defendants-Respondents.

After a Decision by the Court of Appeal, Fourth Appellate District,
Division One, May 26, 2021, no. D076524 (San Diego Superior Court
no. 37-20170-00003005-CU-MC-NC); Petition for Rehearing denied
on June 2021

**APPELLANTS' APPLICATION FOR LEAVE TO FILE A
RESPONSE TO AN AMICI LETTER**

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Chapter, Phyllis McNeal, and Jane Roe*

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, rule 8.208, the appellants know of no entity or person that must be listed under rule 8.208(e)(1), (2).

DATED: July 22, 2021 Respectfully submitted,

ROOT & REBOUND REENTRY ADVOCATES

By: /s/ Joshua E. Kim
Joshua E. Kim
*Attorneys for Plaintiffs-Appellants
All of Us or None-Riverside Chapter,
Phyllis McNeal, and Jane Roe*

Document received by the CA Supreme Court.

On July 15, 2021, the Consumer Data Industry Association and the Professional Background Screening Association (collectively the Amici) filed and served via TrueFiling a document titled “Amici Letter of Consumer Data Industry Association & Professional Background Screening Association Re: Petition for Review,” asking the Court for a sua sponte review of the ruling in this case under Rules of Court, rule 8.512(c). The Amici Letter neither supports nor opposes the Appellants’ petition for review, and rule 8.500(g) of the California Rules of Court does not seem to apply. Nor is it officially filed in the present case.

Appellants’ counsel confirmed with a clerk of the Court that the only procedure for Appellants to respond to such an unusual letter by the Amici is via an application for leave to file a response and does so now.

The Amici make a number of misleading statements that, if left unchecked, may exert undue influence on the Court. For instance, most of the examples are, or may be, performed with a fingerprint-based background check using a government database and, therefore, not affected by the ruling at issue.

Accordingly, Appellants respectfully request an opportunity to correct the Amici's misleading statements with the response letter attached to this application.

DATED: July 22, 2021 Respectfully submitted,

ROOT & REBOUND REENTRY ADVOCATES

By: /s/ Joshua E. Kim
Joshua E. Kim
*Attorneys for Plaintiffs-Appellants
All of Us or None-Riverside Chapter,
Phyllis McNeal, and Jane Roe*

Document received by the CA Supreme Court.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am remotely employed in the County of Orange, State of California. My personal address is 113 Marion Blvd., Fullerton, CA 92835.

On July 22, 2021, I served true copies of the following document(s) described as **APPELLANTS' APPLICATION FOR LEAVE TO FILE A RESPONSE TO AN AMICI LETTER** and **Appellants' Response to Amici Letter of Consumer Data Industry Association & Professional Background Screening Association** **Re: Petition for Review** on the interested parties in this action as follows:

See Attached Service List

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 22, 2021, at Fullerton, California.

By: /s/ Joshua E. Kim
Joshua E. Kim

Service List

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Document received by the CA Supreme Court.

ATTACHMENT 1

July 22, 2021

The Honorable Chief Justice Tani Cantil-Sakauye & Associate Justices
Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, California 94102-4797

Via TrueFiling

Re: All of Us or None—Riverside Chapter, et al. v. W. Samuel Hamrick, Jr., et al. (No. S269654);

Appellants’ Response to Amici Letter of Consumer Data Industry Association & Professional Background Screening Association Re: Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Appellants submit this letter in response to misleading statements contained in the letter (“Amici Letter”) submitted by the Consumer Data Industry Association and the Professional Background Screening Association (collectively “Amici”) on July 15, 2021 in connection with the Appellants’ petition for review.

The Amici describe “an utter disaster in nearly every sector of the California economy” precipitated by the Court of Appeal’s ruling in this case. (Amici Letter, at p.1.) The gist of their argument is that the ruling makes it difficult to put together a criminal history report. What the Amici Letter does not mention is that the difficulty applies only to *commercial* reports. As summarized below, each of the cases cited by the Amici comes with an authorization to obtain a federal or state summary criminal history information via a fingerprinted-based background check—and not affected by the ruling at issue.

- The FDIC requires “FBI Fingerprint Identification Checks and FBI Name Checks for all applicable filings” for employees at an FDIC-insured agency. (FDIC Applications Procedures Manual, Section 1.5: Background Investigations, at p.1.5-1 [available at <https://www.fdic.gov/regulations/applications/resources/apps-proc-manual/section-01-05-background.pdf>].)¹

¹ The FDIC mentions commercial background checks (referred to as “consumer reports”) but only as an optional means to “verify[] the applicant’s stated financial position,” where “[t]he information available includes, but may not be limited to, year of birth, current address, previous addresses, place of employment, credit history, and public information such as judgments, bankruptcies, tax and mechanic’s liens, lawsuits, and wage assignments.” (FDIC Applications Procedures Manual, Section 1.5: Background Investigations, at p.1.5-4.) The FDIC does not mandate nor contemplates the use of a commercial criminal history report at issue in the Amici’s letter.

- Public housing agencies, including landlords participating in a public housing program, have access to criminal history records available from the National Crime Information Center and other law enforcement agencies under subsection (q) of 42 U.S.C. section 1437d.
- Subsection (b)(13) of California Penal Code section 11105 requires mandatory disclosure of state criminal history information (an official “rap sheet” available through fingerprint-based identification) to “[a] person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.” Such a statutory requirements exist for the cases cited by the Amici.
 - Licensing agencies are required and so authorized by the Business and Professions Code or the code applicable to each agency. (Bus. & Prof., § 480.)
 - Long-term care facilities are required and authorized by section 1522 or the Health and Safety Code.
 - Ride-sharing companies are required and authorized by the statutes cited by the Amici. (Bus. & Prof. Code, § 7458; Pub. Util. Code, § 5445.2.)

In other words, the Amici’s concern is not with all background checks, but only with *commercial* background checks that are *not required by law*. Even here, the Amici implicitly acknowledge that the real issue is with cost, not availability. For example, the Amici acknowledge that, when a court restricts the number of in-person searches, the restriction applies to an individual, not a consumer reporting agency. (Amici Letter, at p.8.) Nothing prevents them from spending more money to obtain additional records in person or sending more individual runners as necessary to comply with the restriction. The Amici’s real complaint is that the ruling prevents them from continuing to have a cheap internet-based access to local summary criminal history information.

Finally, the Amici’s extensive reference to the U.S. Supreme Court’s recent ruling in *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 throughout their letter is itself misleading. Buried in one of their footnotes is the fact that the issue raised in the Amici Letter “was not strictly speaking before the [United States Supreme Court]” in *Ramirez*. (Amici Letter, at p.10, fn.11.)

Contrary to the Amici’s prediction of “an utter disaster,” all fingerprint-based and statutorily-required background checks will go on as before. Penal Code section 11105 will make sure of that. Where the ruling will have an impact is precisely when a background check lacks statutory requirement. This *limited* impact is precisely the point

of rule 2.507. (*All of Us or None—Riverside Chapter v. Hamrick* (2021) 64 Cal.App.5th 751, 777 (describing “the ‘practical obscurity’ of criminal court records” as “one of the guiding principles underlying the adoption of [rule 2.507]”).)

Nothing in the Amici Letter justifies the highly unusual and extraordinary review that it requests of this Court. Appellants respectfully ask that the Court disregard the letter and limit its review squarely to the issues raised by the Appellants’ petition for review.

Respectfully submitted,

/s/ Joshua E. Kim
Joshua E. Kim
Attorney for Appellants