

Elizabeth Holt Andrews

D 415.477.5762

elizabeth.andrews@troutman.com

Via TrueFiling

15 July 2021

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

Re: *All of Us or None—Riverside Chapter, et al. v. W. Samuel Hamrick, Jr., et al.*
Supreme Court Case No. S269654
Amici Letter of Consumer Data Industry Association &
Professional Background Screening Association Re: Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The Consumer Data Industry Association and the Professional Background Screening Association submit this letter as amici curiae, with regard to the petition for review filed by plaintiffs-appellants All of Us or None—Riverside Chapter, et al.

The petition itself is limited to a narrow question of statutory interpretation on which undersigned amici take no position. Instead of (or in addition to) granting the petition, amici urge the Court to review the Court of Appeal's published opinion as a whole, on its own motion pursuant to California Rules of Court, rule 8.512, subdivision (c)(2).

Amici are making this unusual and urgent request under rule 8.512(c) because the Court of Appeal's opinion is about to precipitate an utter disaster in nearly every sector of the California economy. In fact, it has already begun. **If this Court does not reverse the opinion, criminal background checks—which make most employment in this State possible—will be severely delayed, and in many instances they will no longer be possible at all.** The Court of Appeal's opinion is premised on an incorrect interpretation of Rule of Court 2.507(c). The rule prohibits a superior court from displaying date of birth and driver's license numbers in certain documents, such as calendars. But nothing in the rule's text bars *searches* that employ these identifiers as *filters*. The Court of Appeal misread the rule by collapsing the crucial distinction between displaying and searching, which has resulted in a blanket ban on search fields for date of birth and driver's license number in many counties across the State.

When conducting a search for criminal records, the background screening company uses identifiers provided by the consumer (like date of birth) as an indispensable tool to identify records that pertain to the consumer applicant, and eliminate records of other

persons with the same name. So, contrary to the Court of Appeal’s conclusion, the superior court is not affirmatively *disclosing* any new information merely by offering these identifiers as a filtering option. The opinion simply got this wrong—and the consequences are catastrophic.

The lower court’s opinion creates precedent that makes it nearly impossible for amici’s member organizations to conduct accurate criminal background checks in California on most individuals, for purposes of prospective employment or otherwise—even when such checks are required by law. The resulting negative effects can scarcely be overstated. Criminal background checks are a type of consumer report, and the consequences of consumer reporting agencies’ inability to timely and accurately conduct these checks will carry dramatic statewide, nationwide, and global consequences and will undercut the basic functioning of nearly every sector of the California economy. Healthcare, hospitality, restaurants, travel, ride-sharing, and professional licensing; banking, business, and credit; housing, education, childcare, and retail; law enforcement and state, municipal, and local government—all of these sectors, and many more, depend on properly-conducted criminal background checks to ensure their safe, smooth, and lawful functioning. Without sua sponte action by this Court, it will be nearly impossible to conduct criminal background checks in a volume that is sufficient to keep these sectors functioning.

Recent developments in the current legal landscape also favor this Court’s sua sponte action.¹ After the Court of Appeal issued its opinion and denied appellants’ rehearing petition, the United States Supreme Court issued its seminal opinion in *TransUnion LLC v. Ramirez* (June 25, 2021, No. 20-297) 594 U.S. __ [2021 WL 2599472] (*Ramirez*). That opinion implied that TransUnion, one of America’s major consumer credit reporting agencies, risked exposure to liability under the Fair Credit Reporting Act (“FCRA”) for failing to use reasonable procedures to assure maximum possible accuracy in maintaining credit files (another type of consumer report), because TransUnion cross-

¹ While review under Rule 8.512(c) is a seldom-used tool, precedent exists for this Court to exercise its powers of sua sponte review of a decision of the Court of Appeal, for example in the context of late-breaking new authority from a federal circuit court. In *Borello & Sons v. Department of Industrial Relations*, the Court observed that there was no pending petition for review, but “[b]ecause we considered the issue presented to be of substantial importance, we ordered review on our own motion.” (*Borello & Sons v. Dep’t of Indus. Rel.* (1988) 48 Cal.3d 341, 345 fn. 1 [citing Rule 28(a), Rule 8.512(c)’s predecessor].) The *Borello* docket indicates that the Court’s action was prompted by an amicus letter similar to this one, which alerted the Court to a new Seventh Circuit case that it wound up citing extensively in its opinion, *Sec’y of Labor, U.S. Dept. of Labor v. Lauritzen* (7th Cir. 1987) 835 F.2d 1529. While the amicus letter itself is lost to time, a copy of the docket’s description of the letter is appended hereto as Attachment A.

checked against terrorist watchlists by first and last name only.² This, however, is *precisely* the type of practice necessitated by the Court of Appeal’s opinion in *All of Us or None—Riverside Chapter v. Hamrick* (2021) 64 Cal.App.5th 751 [279 Cal.Rptr.3d 422] (*Hamrick*). If amici’s members can no longer use search filters such as date of birth and driver’s license number in conducting routine criminal background checks, they will be left with nothing but names, and little or no way to associate a criminal record with a specific individual. Hundreds—indeed, thousands—of potential false positives will result, rendering criminal record search results meaningless. The Court of Appeal’s opinion in *Hamrick*, as it currently stands, effectively bars amici’s members from accessing other identifiers, making it impossible for amici’s members to comply with their accuracy obligations under the FCRA as assumed in *Ramirez*. The preparation of background checks using California criminal records, therefore, will essentially grind to a halt absent this Court’s intervention.

1. Interest of Amici³

The Consumer Data Industry Association (“CDIA”) is a century-old international trade association for consumer reporting agencies, and it is the largest trade association of its kind in the world. Among other activities, CDIA provides business and professional education for its members, and produces educational materials for consumers on their credit rights and the role of consumer reporting agencies in the marketplace. CDIA’s members play a vital role in the American economy by creating, maintaining, and communicating consumer reports—including, where applicable, criminal background information—on millions of American consumers to employers, principal and general contractors, landlords, property management companies, nonprofits, government agencies, and law enforcement agencies.

The Professional Background Screening Association (“PBSA”) is an international trade association of over 650 member companies that provide employment, tenant, and volunteer background screening and related services to virtually every industry around the globe. The consumer reports prepared by PBSA’s background screening members are used by employers, property managers, government entities, and volunteer organizations every day to ensure that communities are safe for all who work, reside, or visit there. Among other goals, PBSA members seek to promote the accurate and timely reporting of a variety of consumer-related information for the purpose of empowering employment, housing, volunteering, and other opportunities to individuals nationwide. Consistent with those purposes, PBSA’s members obtain consumer information from thousands of different courts

² The FCRA is located in Title 15 of the United States Code, sections 1681 to 1681x. The specific statute at issue in *Ramirez* was 15 U.S.C. § 1681e(b).

³ In compliance with California Rules of Court, rule 8.500(g)(2), additional signatories to this letter are listed in Attachment B, along with their statements of interest.

and other sources across the country and, in compliance with federal and state laws, produce millions of consumer reports per month.

2. *Hamrick's Holding*

The Court of Appeal in *Hamrick* interpreted Rule of Court 2.507 to forbid superior courts from permitting public users to search for and locate criminal records “by inputting an individual’s known date of birth and driver’s license number.” (*Hamrick, supra*, 64 Cal.App.5th 751, __ [279 Cal.Rptr.3d 422, 435].) In effect, this leaves organizations conducting criminal background checks on known individuals—who, after all, have authorized the criminal background check—with only the individual’s first and last name to conduct their search.⁴ *Hamrick’s* holding is erroneous because Rule 2.507(c) only prohibits the display or publication of date of birth and driver’s license information in a court calendar, register of action, or index. The Rule does not prohibit searches that use these identifiers as filters.

Nothing in Rule 2.507(c) prohibits a person—such as the consumer herself, or a consumer reporting agency—from searching criminal records using the date of birth or driver’s license. The consumer has both authorized the check of her background and provided her name, date of birth, and other identifying information to the consumer reporting agency specifically for the purpose of checking her background, including public records.⁵ Without the ability to use this consumer-provided information, the search results that would be returned are based on a name-only search, which grossly expands the number of search results to include every record in that court for a person with the same name as the consumer being screened.

No consumer reporting agencies were party to *Hamrick*, not even in an amicus capacity, and their important perspective appears entirely absent from the Court of Appeal’s surprising 67-page opinion, which upsets long-standing court and clerk practices in every county in the State. Plaintiffs filed a petition for review in this Court on other grounds. Defendants did not seek review in this Court, and their deadline for doing so has now passed. (Cal. Rules of Court, rule 8.500, subd. (e).)

⁴ The initial search is conducted to identify the actual court records that may have relevant information about the consumer, which consumer reporting agencies may review further to determine if the record is reportable under the FCRA and applicable state law.

⁵ Under the FCRA, a consumer applying for employment must give written authorization for the preparation of the background check. (15 U.S.C. § 1681b(b)(1)(A)(2)(A)(ii).) Similarly, under the California Investigative Consumer Reporting Agencies Act, consumers must provide written authorization for background checks prepared in connection with employment and housing applications. (Civ. Code, § 1786.16, subd. (a)(2)(C).)

3. The Role of Public Record Data in Our Economy

Public record data, including criminal court records, is crucial to the smooth functioning of the U.S. and California economies.⁶ Consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, and background check and residential screening companies, use public record data every day to help consumers achieve their financial and personal goals, and to help businesses, governments, property managers, and volunteer organizations avoid fraud and manage risk. Additionally, other states use public record data to comply with their own internal statutory requirements for a “multi-state,” “multi-jurisdictional,” or “national” criminal state background check using date of birth and driver’s license number.⁷

Thousands of employers in California and across the country, both private and public, use some form of a background check (which is a type of consumer report) to evaluate job applicants or to monitor existing employees for ongoing compliance with job requirements. The results of criminal record searches (often conducted nationwide) are a key component of these reports. Employers of all sizes, across a myriad of industries, are often *required* to conduct these background checks of potential and existing employees. (See, e.g., *NASA v. Nelson* (2011) 562 U.S. 134, 150 [acknowledging the legitimate needs of the government, as an employer, to screen employees for drug use and other elements of their background].)

To take just a few examples, a financial institution subject to FDIC requirements must confirm that the job applicant has not engaged in acts of dishonesty, breach of trust, or money laundering prior to hiring. (12 U.S.C. § 1829.) Similarly, credit unions subject to oversight by the National Credit Union Administration are prohibited from employing “any person who has been convicted of any criminal offense involving dishonesty or a breach of

⁶ As of 2020, 94% of American employers state that their organization conducts one or more types of employment background screening, and 73% of employers have a documented screening policy. (Professional Background Screening Association, *Background Screening: Trends and Uses in Today’s Global Economy* (2020) <<https://pubs.thepbsa.org/pub.cfm?id=459B8AB7-0CEA-625E-0911-A4A089DE5118>> [as of July 13, 2021].)

⁷ See, e.g., Conn. Gen. Stat. Ann. § P.A. 21-23, § 10 (providing that, instead of a criminal history records check, a potential employee may submit to a “national criminal background check that includes a multistate and multijurisdictional criminal record locator”); 40.1 R.I. Gen. Laws Ann. § 40.1-25.1-1 (requiring all persons over the age of 18 who are seeking employment at facilities operated by the department of behavioral healthcare, developmental disabilities, and hospitals, to undergo a national criminal background check); Wyo. Stat. Ann. § 31-20-106 (providing that in order to hire a driver for a transportation network company, the company shall conduct “[a] local and national criminal background check on the individual that shall include review of multistate and multijurisdictional criminal records locators.”).

trust” or has entered into a pretrial diversion program in connection with prosecution for such an offense (12 U.S.C. § 1785(d)(1)).

Individuals who wish to work in California as a ride-share driver for companies like Uber and Lyft, or commercial hauling companies, must pass a satisfactory national criminal record background check prior to being hired or engaged, and must remain violation-free during their tenure. (Bus. & Prof. Code, § 7458; Pub. Util. Code, § 5445.2.)⁸

As of 2014, 41 of 50 states require home health agencies to obtain some form of background check on prospective employees. (U.S. Department of Health and Human Services, *Memorandum Report: State Requirements for Conducting background Checks on Home Health Agency Employees*, OEI-07-13-00131, <<https://oig.hhs.gov/oei/reports/oei-07-14-00131>> [as of May 29, 2014].) Federal regulations prohibit long-term care facilities from employing individuals who “[h]ave been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law.” (42 C.F.R. § 483.12(a)(3).) Moreover, federal regulation prohibits health care providers, suppliers, and others who have been convicted of certain felony offenses within the prior ten years from enrolling in the Medicare program, which necessarily requires the completion of a successful background check. (See 42 C.F.R. § 424.530(a)(3).)

In addition to traditional employers, licensing and professional organizations also require the successful completion of a background check report for admission, such as a state bar association regulating the licensing of attorneys. (See, e.g., Rules of The Virginia Board of Bar Examiners, Section III Character and Fitness Requirements, promulgated pursuant to Va. Code §§ 54.1-3922 & 3925.1) Parents who wish to volunteer at a child’s school or extra-curricular activity often are required to pass a background check before being placed in positions of trust with other people’s children. Failure to successfully complete the background check process in a timely fashion can result in the loss of these opportunities.

⁸ In 2016, California voters adopted these criminal background check requirements in response to crimes committed by drivers who had prior histories of violent criminal offenses. (See, e.g., Kerr, *California Tightens Background Checks on Uber, Lyft Drivers* (Sept. 29, 2016) CNET <<https://www.cnet.com/news/california-law-tightens-background-checks-on-uber-lyft-drivers/>> [as of July 12, 2021].) Notably, a driver subject to these laws must *never* have been convicted of certain serious felonies (as listed in § 7458(c)(1)), a provision that overrides the traditional seven-year limitation for background checks under other California law. (See Bus. & Prof. Code, § 7458, subd. (f) [“Notwithstanding Section 1786.12 of the Civil Code [the California Investigative Consumer Reporting Agencies Act], an investigative consumer reporting agency may furnish an investigative consumer report to a network company about a person seeking to become an app-based driver, regardless of whether the app-based driver is to be an employee or an independent contractor of the network company.”].)

Landlords and rental property managers use consumer reports not only to evaluate the applicant's ability to satisfy their monetary leasing obligations but also to satisfy their obligation to ensure the safety and wellbeing of their employees, residents, and guests. (*See, e.g., Dept. of Housing & Urban Development v. Rucker* (2002) 535 U.S. 125, 134–135 [affirming the ability of public housing authorities to conduct no-fault evictions to protect health and safety interests]; Preventing Crime in Federally Assisted Housing—Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse, 24 C.F.R. §§ 5.850–5.861 (2013) [defining times when public housing authorities may or must terminate tenants involved in particular types of criminal activity].) The responsible use of tenant screening reports advances all of these interests—economic stability, protection from identity theft, and general public safety.

The California legislature and the voters of California have both recognized the critical importance of background screening. Both the California Consumer Protection Act or “CCPA” (which was passed by the legislature and took effect on November 3, 2020) and the California Privacy Rights and Enforcement Act or “CPRA” (which was passed by the voters as a ballot initiative and will become operative on January 1, 2023) included an identical exemption for consumer reporting activity carried out under the Fair Credit Reporting Act. (Civ. Code, § 1798.145, subd. (d)(1).) Both the legislature and the voters recognized that rules about privacy had to bend to allow background screening.

4. The Consequences of *Hamrick*'s Contemplated Restrictions on Access to Public Records

Restrictions on access to public records impair these critical activities to the detriment of consumers and businesses alike. The result of the *Hamrick* decision is that meaningful criminal public records are effectively unavailable to the public, including consumer reporting agencies. Multiple courts, including Riverside County Superior Court, have taken steps in response to *Hamrick* that frustrate the ability of a consumer reporting agency to search for and identify criminal record information. For example, CDIA and PBSA members report that some clerks are now preventing the use of search filters such as a date of birth or a driver's license number on the electronic interface, while at the same time limiting the number of results returned. This causes the criminal record to be, in many instances, completely undetectable by the consumer reporting agency and, by extension, its customers.

Take, for example, a consumer reporting agency tasked with conducting a search for records of a person with a common name such as James Smith.⁹ If, as is likely, the court

⁹ The most common first/last name combination in the United States is James Smith. (Chalabi, *Dear Mona, What's the Most Common Name in America?* (Nov. 20, 2014) FiveThirtyEight < <https://fivethirtyeight.com/features/whats-the-most-common-name-in-america/> > [as of July 13, 2021].) The three most common surnames in the State of California are García, Hernández and López. (Olaya, *García: The Sixth-Most-Common*

limits the number of search results to 100, and the court records contain over 100 criminal records that match “James Smith,” the search tool would only show the first 100 results. If the relevant criminal record is the 101st search result, the consumer reporting agency will not see it, and the result of the search is a ‘no hit’ or ‘clear’ report—even when that may not be factually accurate.

Equally troublingly, the consumer reporting agency may ultimately be forced to review many irrelevant criminal records pertaining to other individuals. Practically speaking, this would skyrocket the privacy violations of the very type *Hamrick* seeks to prevent.

By contrast, allowing the consumer reporting agency to limit the search results using even one known additional identifier—date of birth—results in significantly higher accuracy, fewer search results, and a greater likelihood that the relevant record will be identifiable. It also limits the need to review the irrelevant criminal records of dozens of other individuals.

Underlying *Hamrick* seems to be the assumption that public users may simply appear in person to retrieve the records they need, and thus, the record remains available. (*Hamrick, supra*, 64 Cal.App.5th 751, __ [279 Cal.Rptr.3d 422, 439].) This assumption is invalid and baseless. Many courts, including Riverside County Superior Court, have limited the number of in-person searches that an individual may conduct on any given day, both at in-person terminals and via inquiries through the clerk’s office. So if a consumer reporting agency has twenty individuals to screen on any given day, but it is limited to six inquiries, then it will take at least three days to search for public record data on those individuals. In the meantime, two additional days of twenty more searches per day will be lining up behind those. On top of this, budget constraints have forced numerous courthouses across California to limit hours and services available to the general public. (Judicial Council of California, *Reduced Court Services* <<https://www.courts.ca.gov/12973.htm>> [as of July 12, 2021] [public page providing notice of court closures as required by Gov. Code, § 68106, subd. (b)(1)].) These limited resources will be utterly incapable of handling the hugely magnified demand for clerk assistance arising from name-only searches, particularly when those searches return hundreds of (mostly irrelevant) records that background screeners must request.

The impact on consumers when such data is not readily available is highly detrimental, as recent reporting on gig economy job applicants during the pandemic has

Surname in the United States (Apr. 26, 2021) El País <<https://english.elpais.com/usa/2021-04-26/garcia-the-sixth-most-common-surname-in-the-united-states.html>> [as of July 13, 2021].)

demonstrated.¹⁰ The time necessary to complete a background check during the pandemic has already slowed to a crawl, and it would be rendered even slower by *Hamrick*'s restrictions—in some instances, slow to the point of impossible. For many, this could result in a loss of income due to a delay, or worse, the loss of a job opportunity entirely.

Sometimes, moreover, tragic consequences result when criminal record information is not available and considered. (See, e.g., *Cure v. Pedcor Mgmt. Corp.* (D. Neb. 2016) 265 F.Supp.3d 984, 988–989 [child kidnapped and raped by a fellow resident in a housing community who had been allowed to move in without first passing a background check]; *Galanis v. CMA Management Co.* (Miss. 2015) 175 So.3d 1213 [college student murdered by roommate after student housing management company failed to reveal results of roommate's background check]; Kleinberg, *Lawsuit: Background Check Would Have Averted Boca Hammer Death* (Sept. 27, 2019) The Palm Beach Post <<https://www.palmbeachpost.com/news/20190927/lawsuit-background-check-would-have-averted-boca-hammer-death>> [as of July 14, 2021]; Background Screening Information Center, *Cab Drivers Commit Crimes, Too* (March 23, 2016) Consumer Data Industry Association <<https://www.cdiaonline.org/cab-drivers-commit-crimes-too-2/>> [as of July 14, 2021].) *Hamrick* will prevent consumer reporting agencies from being able to prepare full and complete background checks on applicants nationwide, creating unnecessary risk to our most vulnerable populations. This Court must act to prevent such harm.

5. *Ramirez*'s Holding

In addition to the policy concerns outlined above, an important recent development in the law has occurred that drives home the necessity of this Court's action. On May 26, 2021, the Court of Appeal published its opinion in this matter. On June 17, 2021, the Court denied plaintiffs' rehearing petition. Eight days after that, the United States Supreme Court issued its seminal opinion in *Ramirez* (June 25, 2021, No. 20-297) 594 U.S. __ [2021 WL 2599472]. Due to this quirk of timing, this Court will be the first forum to consider *Ramirez*'s impact on the criminal background check dispute at the heart of this case.

TransUnion, the defendant in *Ramirez*, offered a service to its customers that compared a consumer's name against a list of “specially designated nationals' who threaten America's national security” maintained by the Office of Foreign Assets Control (“OFAC”)

¹⁰ As recently as March of this year, employees report serious delays in the processing of their applications due to the pandemic, making it hard to get (or maintain) a job in the face of the unavailability of public record data. (See Ahearn, *Some Uber Drivers Affected by Background Check Delays Due to COVID-19* (Mar. 11, 2021) Employment Screening Resources News Blog <<https://www.esrcheck.com/wordpress/2021/03/11/uber-background-check-delays-covid-19/>> [as of July 12, 2021].)

in the U.S. Treasury Department. (*Ramirez, supra*, 2021 WL 2599472, p. *4.) “If the consumer’s first and last name matched the first and last name of an individual on OFAC’s list, then TransUnion would place an alert on the credit report indicating that the consumer’s name was a ‘potential match’ to a name on the OFAC list.” (*Ibid.*) As the Court observed, “[t]housands of law-abiding Americans happen to share a first and last name with one of the terrorists, drug traffickers, or serious criminals on OFAC’s list of specially designated nationals.” (*Ibid.*)

Because of this likelihood of name-sharing, the Court held that TransUnion’s provision of these OFAC alerts to third parties, without any cross-check other than first and last names, inflicted on class members “a concrete harm” resembling the tort of defamation. (*Id.* at p. *11; *see also Michaeli v. Kentfield Rehabilitation Hospital Foundation* (N.D. Cal. July 7, 2021, No. 21-cv-03035-EMC) 2021 WL 2817162, *4 [observing that under *Ramirez*, “class members whose credit reports (containing misleading information) were actually disseminated to third-party businesses suffered a concrete harm”].) The Court therefore instructed the Ninth Circuit to consider class certification for the affected individuals under 15 U.S.C. § 1681e(b), a provision of the FCRA that “requires consumer reporting agencies to ‘follow reasonable procedures to assure maximum possible accuracy’ in consumer reports.” (*Ramirez, supra*, 2021 WL 2599472, p. *4.)

6. *Ramirez* and *Hamrick*, Taken Together, Make It Virtually Impossible to Consult California Court Records When Conducting Criminal Background Checks

Ramirez and *Hamrick*, taken together, place amici and their member organizations between a rock and a hard place. *Ramirez* assumes, without deciding, that it is not a “reasonable procedure” under 15 U.S.C. § 1681e(b) to cross-check the OFAC list (and presumably by extension, any criminal records) using only first and last names without further filters, due to the high likelihood of name sharing with “law-abiding Americans.” (*Ramirez, supra*, 2021 WL 2599472, p. *4.)¹¹

But according to *Hamrick*, superior courts in California are forbidden from providing access to the very search tools needed to supplement first and last name searches, thereby locating relevant records, eliminating records belonging to other individuals with the same name, and ensuring a reasonable degree of accuracy. (*Hamrick, supra*, 64 Cal.App.5th 751, __ [279 Cal.Rptr.3d 422, 441] “[O]ur holding does not authorize defendants to permit members of the public to remotely search the Riverside Superior Court’s databases through

¹¹ The precise question whether “TransUnion failed to ‘follow reasonable procedures to assure maximum possible accuracy’ of the plaintiffs’ credit files maintained by TransUnion” was not, strictly speaking, before the Court. (*Ramirez, supra*, 2021 WL 2599472, at p. *10.) Rather, the Court assumed this to be the case, and simply pointed out that if it were true, plaintiffs would suffer a concrete injury in fact if TransUnion provided misleading files to third parties. (*Id.* at p. *11.)

the use of local summary information such as date of birth and driver’s license number pursuant to the rules of court.”].)

Without vital filtering tools such date of birth and driver’s license number, amici’s members have nothing to go on except names—which may not be enough, according to *Ramirez*. Practically speaking, it will no longer be possible to consult criminal records in California for purposes of conducting routine background checks for many or most employment, tenant, and volunteer applicants. This Court should grant review of *Hamrick* in order to restore the effective operation of criminal background checks in California. It can easily do so without invalidating Rule of Court 2.507 itself; rather, this Court can restore the effect of the Rule to its stated terms—prohibiting superior courts from displaying and publishing dates of birth and driver’s license numbers, but not from allowing the public to use that information as a filter or search criterion.

In summary, for both urgent policy reasons and compelling legal reasons, amici urge the Court to order a full review of the Court of Appeal’s published opinion on its own motion pursuant to Rule 8.512(c)(2).

Respectfully Submitted,

TROUTMAN PEPPER HAMILTON SANDERS LLP

/s/ Elizabeth Holt Andrews

Elizabeth Holt Andrews (Cal. Bar No. 263206)

HUDSON COOK LLP

/s/ Dana Frederick Clarke

Dana Frederick Clarke (Cal. Bar No. 228344)

Attorneys for Amici Curiae

Consumer Data Industry Association &
Professional Background Screening Association

Attachment A

Appellate Courts Case Information

Supreme Court

Change court ▼

Docket (Register of Actions)

BORELLO & SONS v. DEPARTMENT OF INDUSTRIAL RELATIONS

Division SF

Case Number S003956

| Date | Description | Notes |
|------------|--|--|
| 01/22/1988 | Request for Depublication filed (case init.) | By Resp |
| 02/11/1988 | Time Extended to grant or deny Petition for Review | On Ct's own motion to 3-17-88 or the Date Upon which Review Is Either granted or denied. Rule 28(A)(1) Crc. |
| 02/17/1988 | Received document entitled: | 2-16-88 letter of Calif. Rural Legal Assistance to support Decertification. |
| 02/26/1988 | Received letter from: | Calif Rural Legal Assistance Citing Recent Federal Appellate Decision (Secretary of Laor V. Lauritzen (7th Cir. 12-15-87) 835 F.2d 1529. (Tct) |
| 03/17/1988 | Review Granted on Court's Own Motion (civil case) | Votes: Lucas C.J., Broussard, Arguelles & Eagleson JJ. |
| 03/18/1988 | Telephone conversation with: | Corrine (6th Dca) Record Inadvertently Shpped Back to 6th Dca. will be Re-Shipped to this Ct this Date. (Rec. Rec'd 3-22-88) |
| 03/30/1988 | Order filed: | Resp State of Cal Is Deemed Petr and Shall Serve & file A brief on the merits on or before 4/28/88. Review Shall Encompass all issues before C/A.Court Requests Petr to Include Suppl P&as directed to A Specific Question (See Ord for Complete Text) |
| 04/14/1988 | Permission to file amicus curiae brief granted | To Cal Applicant's Atty's Assn. Brf Due: 5-16-88. Any Ans: 5-31-88. |
| 04/21/1988 | Application for Extension of Time filed | For State of Calif to file Opening brief on merits |
| 04/25/1988 | Extension of time granted | To 6-27-88 To file Resp's brief on the merits |

Document received by the CA Supreme Court.

| | | |
|------------|--|--|
| 05/09/1988 | Application for Extension of Time filed | Re California Appicants' Attorneys Association to June 16, 1988 to file A/C brief. |
| 05/12/1988 | Extension of Time application Granted | Calif Applicants' Attys Assn to file Amicus Curiae brief To: 6-16-88. Any answer Due: 7-1-88. |
| 06/16/1988 | Amicus Curiae Brief filed by: | Calif Applicants' Attys Assn. |
| 06/27/1988 | Opening brief on the merits filed | By Resp Dept. of Ind Relations |
| 07/18/1988 | Received document entitled: | Appln & A/C Brf of Western Growers Assn in Suppt of Aplt Sg Borello |
| 07/27/1988 | Answer brief on the merits filed | by respondents |
| 07/28/1988 | Permission to file amicus curiae brief granted | By Western Growers Assn in Suppt of Aplt. Ans Due 8-11-88 |
| 07/28/1988 | Amicus Curiae Brief filed by: | By Western Growers Assn in Suppt of Aplt. Ans Due 8-11-88 |
| 08/10/1988 | Motion for leave to intervene filed | Motion to intervene with points and authorities and brief filed, by Cirilo Lopez |
| 08/15/1988 | Filed document entitled: | Opposition to Application of Cirilo Lopez to Intervene in the case by Respondent Dept. of Industrial Relations |
| 08/16/1988 | Reply brief filed (case fully briefed) | By State of Cal. |
| 08/25/1988 | Motion for leave to intervene denied | The 8/10 application of Cirilio Lopez to intervene is denied. The applicant lacks the requisite direct interest in judgment. The brief in intervention is stricken. The application is treated as an amicus curiae request, and as such is granted. The brief-in-intervention is ordered refiled as an amicus curiae brief. Answer due 9-8-88. |
| 08/25/1988 | Amicus Curiae Brief filed by: | Cirilio Lopez. Ans Due 9-8-88 |
| 08/25/1988 | Permission to file amicus curiae brief granted | By Calif Farm Bureau Federation. Ans Due 9-8-88 |
| 08/25/1988 | Amicus Curiae Brief filed by: | Calif Farm Bureau Federation. Ans Due 9-8-88 |
| 10/13/1988 | Case Ordered on Calendar: | Nov 1, 1988 - 1:30 P.M. |
| 11/01/1988 | Cause Called and Argued (not yet submitted) | |
| 01/13/1989 | Received letter from: | Wm Hoerger, C.R.L.A., Atys for A/C Cirilo Lopez dated 1-11-89 Re New Cite. |

Document received by the CA Supreme Court.

| | | |
|------------|-------------------------------------|--|
| 03/22/1989 | Submitted by order | |
| 03/23/1989 | Opinion filed: Judgment reversed | The Court of Appeal judgment directing the Superior Court to grant Borello's petition is reversed. Majority Opinion by Eagleson, J. -- joined by Lucas C.J., Mosk, Broussard & Arguelles JJ. Dissenting Opinion by Kaufman, J. -- joined by Panelli, J. |
| 04/17/1989 | Motion filed (in non-AA proceeding) | Motion to extend finality of decision (filed by attorney Quandt) |
| 04/21/1989 | Received: | Instructions from Court - no Action to be Taken on motion to extend finality |
| 04/26/1989 | Remittitur Issued | |

Click here to request automatic e-mail notifications about this case.

Attachment B

RULE 8.500(G)(2) STATEMENT OF INTEREST

The following organizations support and join in the amici curiae letter filed in this Court on July 15, 2021, by the Consumer Data Industry Association (“CDIA”) and the Professional Background Screening Association (“PBSA”).

1. California Bankers Association
2. California Chamber of Commerce
3. California Credit Union League
4. California Financial Services Association
5. Checkr, Inc.
6. Coalition for Sensible Public Records Access
7. Electronic Security Association
8. Lyft, Inc.
9. Moco Incorporated
10. National Consumer Reporting Association
11. National Public Records Research Association
12. Public Records Retrieval Network
13. Security Industry Association
14. Southern California Rental Housing Association
15. Sue Weaver CAUSE: Commit to Always Using Screened Employees
16. The Monitoring Association
17. Tribal Gaming Protection Network
18. Uber Technologies, Inc.
19. Vector Security, Inc.
20. Western Burglar Alarm and Fire Alarm Association

Each organization has its own unique mission statement, all of which indicate an interest in supporting the amici curiae letter from the CDIA and the PBSA.

California Bankers Association. The California Bankers Association (CBA) is a division of the Western Bankers Association, one of the largest banking trade associations

and regional educational organizations in the United States. CBA advocates on legislative, regulatory, and legal matters on behalf of banks doing business in the state of California.

California Chamber of Commerce. The California Chamber of Commerce (“CalChamber”) is a non-profit business association with more than 13,000 members, both individual and corporate, representing virtually every economic interest in California. CalChamber acts on behalf of the business community to improve the state’s economic and jobs climate by representing business on a broad range of issues.

California Credit Union League. The California Credit Union League (CCUL) is the trade association for California’s credit unions. CCUL provides advocacy, information, education, and business solutions for the benefit of its Members. There are currently 223 member credit unions of CCUL with over \$241 billion in assets serving nearly 12 million Californians. Credit unions are required to conduct background checks in order to comply with the National Credit Union Administration (NCUA) rules and regulations.

California Financial Services Association. The California Financial Services Association represents consumer lenders that rely upon the accuracy of information provided by credit reporting agencies.

Checkr, Inc. As a Consumer Reporting Agency regulated by the Fair Credit Reporting Act, Checkr, Inc. (www.checkr.com) leverages data and technology to compile accurate, transparent, and compliant background checks for its customers. Checkr provides employment screening to a variety of industries and helps its customers—big and small—make safer, more informed hiring decisions in less time. Checkr also promotes fair chance hiring, through customer and consumer education and enablement.

Coalition for Sensible Public Records Access. The Coalition for Sensible Public Records Access is a nonprofit organization dedicated to promoting the principle of open public records access to ensure that consumers and businesses have the freedom to collect and use public record information for legitimate personal and commercial benefit, including access to unique identifiers such as date of birth so that the subject of a record can be accurately and fairly associated with that record.

Electronic Security Association. The Electronic Security Association is a national trade association representing the electronic security and life safety industry.

Lyft, Inc. Lyft is a transportation network company that is legally required to screen drivers for criminal records. Lyft maintains a thorough screening process through its consumer reporting agency partners, which rely on the availability of personal identifiable information (including date of birth and driver's license number) to locate and match criminal records.

Moco Incorporated. Moco Incorporated provides tenant and pre-employment screening services to professional property managers and employers. Moco was established in 1989 and covers a wide geographical range, with concentrations in the Pacific Northwest and Southern California.

The Monitoring Association. The Monitoring Association (TMA) is the trade association representing the professional monitoring industry. Our membership community includes companies spanning all industry sectors, including monitoring centers, systems integrators, service providers, installers, consultants, and product manufacturers. TMA is dedicated to the advancement of the professional monitoring industry through education, advocacy, standards, and public safety relationships. Since its founding in 1950, TMA has worked to foster and improve relations between its members and various related groups—law enforcement and fire officials, the insurance industry, equipment suppliers and government/regulatory agencies. TMA's members, as well as others in the industry, protect people's lives and property. Every day, businesses and families in California, as well in other states, trust that the people working in our industry are reputable and trustworthy people. Anything that would hamper TMA members' abilities to conduct background checks could cause irreparable harm to TMA members' customers. Drivers' licenses are the most commonly used form of identification. Removing date of birth and driver's license numbers as data identifying criminal defendants will handicap TMA members and background check companies from being able to have a complete picture of an individual and be able to screen out those who should not be entrusted with people's lives and property.

National Consumer Reporting Association. Founded in 1992, the National Consumer Reporting Association, (NCRA) is a national trade organization of specialty consumer reporting agencies and associated professionals that provide products and services to hundreds of thousands of property owners or managers and mortgage lenders who use consumer reports to make housing decisions. The NCRA's members include about 80% of the consumer reporting agencies in the United States that can produce a credit report that

meets the requirements of the Department of Housing and Urban Development (“HUD”), the Federal National Mortgage Association (“Fannie Mae”), and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) for mortgage lending, as well as the nation’s leading resident screening firms providing the consumer data required by HUD for the Housing Choice Voucher Program and critical information needs of the multifamily housing industry.

National Public Records Research Association. The National Public Records Research Association is the premier industry resource for businesses engaged in the public record and corporate services industry.

Security Industry Association. The Security Industry Association (“SDI”) is a nonprofit trade association representing businesses providing a broad range of security products and services from home alarm security systems to airport body scanners. The security industry prides itself on having a well experienced and professional workforce that helps people all over the country feel safe and secure in their everyday activities. Background checks on industry personnel are essential to make sure that personal security is not undermined by the people installing a security system or device in a home or a place of business. As such, SDI supports all measures that would make this process as safe, secure, and efficient as possible.

Southern California Rental Housing Association. The Southern California Rental Housing Association is the leading trade association serving individuals and companies who own, manage, or provide services to the rental housing industry throughout Southern California.

Sue Weaver CAUSE: Commit to Always Using Screened Employees. Sue Weaver CAUSE is a nonprofit organization advocating for comprehensive background screening of in-home service workers.

Tribal Gaming Protection Network. The vision of the Tribal Gaming Protection Network (TGPN) is to empower gaming professionals, regulators, and tribal governments to ensure the integrity and professionalism of gaming and the prosperity of tribes. The mission of the Tribal Gaming Protection Network is to provide unique resources, educational materials, and cutting-edge programs to gaming professionals, regulators, and

governments to enhance the integrity and professionalism of gaming and tribal enterprises for the prosperity of tribal communities.

Uber Technologies, Inc. Uber is a technology company building products that are changing how people, food, and things move through cities. Screenings, including background checks, are part of Uber's commitment to help keep its users safe when requesting/providing rides, delivery, or other services with Uber.

Vector Security, Inc. Vector Security, Inc., is a company offering commercial and residential electronic security and automation solutions. The company utilizes background screenings for employees and requires background screenings for temporary contractors and subcontractors.

Western Burglar Alarm and Fire Alarm Association. The Western Burglar Alarm and Fire Alarm Association provides skilled training to those in California who want to deepen their knowledge of the industry. It currently uses driver's license numbers to verify the identity of students.

| | |
|---|--|
| PROOF OF SERVICE (Court of Appeal) <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service | |
| Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read <i>Information Sheet for Proof of Service (Court of Appeal)</i> (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E. | |
| Case Name: ALL OF US OR NONE - RIVERSIDE CHAPTER v. HAMRICK Court of Appeal Case Number: S269654 Superior Court Case Number: 37-2017-00003005-CU-MC-NC | |

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence business address is (*specify*):
 Troutman Pepper Hamilton Sanders LLP, Three Embarcadero Center, Suite 800, San Francisco, CA 94111
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*):
 Amici Letter of Consumer Data Industry Association & Professional Background Screening Association Re: Petition for Review

a. **Mail.** I mailed a copy of the document identified above as follows:

- (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
 - (a) **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
 - (b) **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of 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 U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
- (2) Date mailed: 7/15/2021
- (3) The envelope was or envelopes were addressed as follows:
 - (a) Person served:
 - (i) Name:
 - (ii) Address:
 - (b) Person served:
 - (i) Name:
 - (ii) Address:
 - (c) Person served:
 - (i) Name:
 - (ii) Address:

Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).

- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Francisco, CA

Document received by the CA Supreme Court.

| | |
|---|--|
| Case Name: ALL OF US OR NONE - RIVERSIDE CHAPTER v. HAMRICK | Court of Appeal Case Number: S269654 |
| | Superior Court Case Number: 37-2017-00003005-CU-MC-NC |

3. b. **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(2) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

(3) Person served:

(a) Name:

(b) Address where delivered:

(c) Date delivered:

(d) Time delivered:

Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

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

Date: 7/15/2021

Elizabeth Holt Andrews
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)


(SIGNATURE OF PERSON COMPLETING THIS FORM)

Document received by the CA Supreme Court.

APP-009, Item 3a

Joshua Eunsuk Kim
Root & Rebound Reentry Advocates
1730 Franklin Street, Suite 300
Oakland, CA 94612

Erica Lynn Reilly
Jones Day
555 South Flower Street, 50th Floor
Los Angeles, CA 90071

Peter E. Sheehan
Social Justice Law Project
449 15th Street, Suite 301
Oakland, CA 94612

*Counsel for Defendant and
Respondent:
W. Samuel Hamrick, Jr.; Superior
Court of Riverside County*

Stephanie L. Lin
A New Way of Life Reentry Project
9512 South Central Avenue
Los Angeles, CA 90002

Devin H. Fok
DHF Law, PC
16 North Marengo Avenue,
Suite 403
Pasadena, CA 91101

*Counsel for Plaintiff(s) &
Appellant(s):
All of Us or None - Riverside
Chapter; Jane Roe and Phyllis
McNeal*