

IN THE SUPREME COURT OF FLORIDA

No. SC20-1419

STATE OF FLORIDA

Petitioner,

v.

JOHNATHAN DAVID GARCIA

Respondent.

On Petition for Discretionary Review
from the Fifth District Court of Appeal
DCA No. 5D19-590

**UNOPPOSED MOTION FOR LEAVE TO FILE AS *AMICI CURIAE*
BY THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS AND PROFESSOR LAURENT SACHAROFF**

Pursuant to Florida Rule of Appellate Procedure 9.370, the Florida Association of Criminal Defense Lawyers and Professor Laurent Sacharoff respectfully move for leave to file one joint Amicus Brief in support of Respondent Jonathan David Garcia.

The State does not object.

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1. Statement of Interest of *Amici Curiae*

The Florida Association of Criminal Defense Lawyers (FACDL) is a statewide organization representing more than 1,000 members, all of whom are criminal defense practitioners. FACDL is a not-for-profit corporation whose goal is to assist in the fair administration of the Florida criminal justice system. Among the founding purposes of FACDL are the promotion of study and research in criminal law and related disciplines; the fair administration of criminal justice in the Florida courts; fostering and maintaining the independence and expertise of criminal defense lawyers; and furthering the education of the criminal defense community. FACDL has an interest in this case as the outcome could have a significant impact on the constitutional rights of criminal defendants in Florida.

Laurent Sacharoff is a professor of law at the University of Arkansas School of Law. Professor Sacharoff regularly writes on the topic of compelling disclosure of passwords, including *Unlocking the Fifth Amendment: Passwords and Encrypted Devices*, 87 Fordham L. Rev. 203 (2018), and *What Am I Really Saying When I Open My Smartphone? A Response to Orin S. Kerr*, 97 Texas L. Rev. Online 63 (2019). Professor Sacharoff's interest is in the best interpretation of

the Fifth Amendment and a robust recognition of individual liberties in the digital age. He seeks to join with FACDL in an Amicus Brief in his personal capacity, and the views to be expressed in the brief will not necessarily represent those of the University of Arkansas School of Law.

2. Particular Issues to be Addressed

a. An order compelling an individual under criminal investigation to recall the password to a cell phone and provide the password to law enforcement compels “testimony” protected by the Fifth Amendment.

b. The foregone conclusion doctrine never applies to such compelled testimony.

c. If the foregone conclusion doctrine applies, it requires the State to show, with reasonable particularity, that it knows that the files it seeks are on the device.

3. How Amici Can Assist the Court in Disposing of the Case

FACDL and Professor Sacharoff have a unique combination of real-world experience and a shared depth and breadth of knowledge in the field of criminal and constitutional law.

FACDL’s members are criminal defense attorneys with day-to-

day experience in cases implicating the Fifth Amendment. FACDL has filed numerous Amicus Briefs in this Court in criminal cases.

Formerly a public defender, Professor Sacharoff teaches criminal law and procedure, evidence, and cybercrime, and is an expert in computer crime, digital surveillance, and the law of passwords and encryption.

Together, Amici can assist the Court in its consideration of the constitutional issues raised in this case.

Respectfully submitted,

/s/ Jackie Perczek

Jackie Perczek

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CERTIFICATE OF SERVICE

I certify that on May 13, 2021, the foregoing was furnished via
the e-Filing Portal to:

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