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ACLU of Utah Submits Amicus Brief in *Utah v. Valdez* at Utah Supreme Court

March 14, 2020

FOR IMMEDIATE RELEASE | The American Civil Liberties Union of Utah and the national office of the American Civil Liberties Union (ACLU) has filed an amicus curiae (friend of the court) brief along with the Electronic Frontier Foundation (EFF) in the case of *Utah v. Valdez*, which will be argued in front of the Supreme Court of Utah on March 16, 2022. See details below to attend or watch this proceeding.

The circumstances of this case are unique because they did not exist twenty years ago, let alone in the 1790s when the Fifth Amendment's protection against self-incrimination was added to the U.S. Constitution.

That is because this case involves the question of whether a person's refusal to unlock an encrypted mobile phone can be used by the State to imply guilt against that person in a criminal trial.

Unlike prior cases which focused on the State's authority to compel a person to unlock their mobile phone, the issue in *Valdez* is whether a person's refusal to do so can be cited as evidence of their wrongdoing during a criminal trial against them. In our brief to the Court, the ACLU and EFF argue that the State cannot use a defendant's refusal to provide his phone password against him because his silence functions in the same way as refusing to testify at trial. In short, invoking this right against self-incrimination should not be used to imply guilt.

"The Constitution is clear that people can refuse to be witnesses against themselves," explains John Mejia, ACLU of Utah Legal Director. "Our cell phones contain so much personal information, and we believe the Fifth Amendment does not allow police to compel us to give them access to that information. Allowing the state to argue that a legitimate refusal to give such permission implies guilt would make people feel like they had no choice but to do so, seriously undermining that right."

In their brief, the ACLU and EFF are urging the Utah Supreme Court to uphold the decision by the Utah Court of Appeals establishing that the State violated Mr. Valdez's Fifth Amendment right against self-incrimination.

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Download a copy of the ACLU/EFF amicus brief ([PDF](#))

Download a copy of this press release ([PDF](#))

About the organizations:

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization dedicated to defending the principles embodied in the Federal Constitution and our nation's civil rights laws. The ACLU of Utah is the local affiliate of the ACLU and has a long-standing interest in protecting Utahns' rights to privacy. (www.acluutah.org)

The Electronic Frontier Foundation is a member-supported, nonprofit civil liberties organization that works to protect free speech and privacy in the digital world. Founded in 1990, EFF has over 30,000 active donors and dues-paying members across the United States. EFF represents the interests of technology users in court cases and broader policy debates surrounding the application of law to technology. (www.eff.org/)

Court Hearing Details:

Utah v. Valdez

Wednesday, March 16, 2022

9:00 a.m. MDT

Utah Supreme Court Calendar

<https://www.utcourts.gov/opinions/cal/calendar.php?court=sup&month=3&year=2022>

Utah Supreme Court Live Streaming Oral Arguments

<https://www.utcourts.gov/opinions/streams/?court=sup>