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**Court of the Appeals**  
State of New York

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v.

LEVAN EASLEY,

Defendant-Appellant.

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**NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF  
AMICUS CURIAE ELECTRONIC FRONTIER FOUNDATION IN  
SUPPORT OF DEFENDANT-APPELLANT**

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APL-2020-00144

PLEASE TAKE NOTICE that pursuant to 22 N.Y.C.R.R. §500.23, Hannah Zhao, an attorney duly admitted to practice law before the courts of the State of New York, hereby moves this Court of Appeals, located at 20 Eagle Street, Albany, New York, to grant leave to Electronic Frontier Foundation to file the accompanying Amicus Curiae Brief in Support of Defendant-Appellant, dated November 24, 2021, or to be heard on this motion on December 6, 2021 at 9:30 a.m. or as soon thereafter.

#### **STATEMENT OF INTEREST**

As detailed in the Interest of Amicus Curiae section of the proposed brief, amicus Electronic Frontier Foundation (“EFF) is a nonprofit organization focused on free speech, privacy, and civil liberties with particular interest in the issues surrounding forensic technology arising from Mr. Easley’s appeal. As one of the leading voices regarding issues at the intersection of on civil liberties and technology, amicus is specifically interested in promoting laws and policies that protect the public and private interests in transparency, reliability, and accuracy of forensic algorithms.

Neither party nor their counsel contributed to the brief or participated in the preparation of this brief in any way. EFF is the sole entity that funded the preparation and submission of this brief.

## RELEVANCE OF THE BRIEF

In addition to the particular interest EFF has in this case, amicus additionally possesses special familiarity with the constitutional issues that arise with new forensic technologies, especially probabilistic genotyping software like the Forensic Statistical Tool. EFF has served as amicus in cases regarding a defendant's right to confront forensic DNA software in state and federal courts. *E.g.*, *United States v. Lafon Ellis*, No. 19-369, 2021 WL 1600711 (W.D. Pa. Apr. 23, 2021); *State v. Pickett*, 466 N.J. Super. 270, 246 A.3d 279 (App. Div. 2021); *People v. Johnson*, No. F071640, 2019 WL 3025299 (Cal. Ct. App. July 11, 2019) (unpublished). Additionally, amicus has also participated in the Government Accountability Office's inquiry regarding forensic technology, including probabilistic genotyping, which was prompted by concerns from elected officials about the use of these technologies in criminal proceedings. *See Forensic Technology: Algorithms Used in Federal Law Enforcement*, U.S. Government Accountability Office (May 12, 2020), <https://www.gao.gov/products/GAO-20-479SP>. Amicus's experience and expertise with forensic technology and probabilistic genotyping software like FST can assist this Court in understanding the broader context of the issues raised in this appeal as other amici have done in the past. *See e.g. Myers v. Schneiderman*, 30 N.Y.3d 1, 53 (2017) (citing amici briefs by nonprofit organization Center for Disability Rights and physician groups,

*inter alia*).

In preparing the proposed brief, amicus has reviewed the available filings of both parties and endeavored to raise arguments that incorporate the public's interests including protecting the constitutional rights of criminal defendants and ensuring the reliability of convictions in the criminal justice system. Without this broader perspective, this Court may "be deprived of a resource that might have been of assistance." *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 133 (3d Cir. 2002) (Alito, J.).

### CONCLUSION

Amicus affirms WHEREFORE amicus moves this court to grant leave to Electronic Frontier Foundation to file brief as amicus curiae in support of Defendant-Appellant or for a hearing on this motion on December 6, 2021 at 9:30 a.m. or as soon thereafter.

Dated: November 24, 2021

Respectfully submitted,



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**AFFIDAVIT OF SERVICE**

**STATE OF CALIFORNIA)**

) **SS:**

**COUNTY OF SAN FRANCISCO)**

V PYTHON, being duly sworn, deposes and states as follows:

I am over the age of 18 years and not a party to this action.

On November 24, 2021, I served copies of the I served the within NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE ELECTRONIC FRONTIER FOUNDATION IN SUPPORT OF DEFENDANT-APPELLANT in the case of *People v. Levan Easley*, on the following attorneys:

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by placing the papers in the custody of an overnight delivery service prior to the latest time designated by the overnight delivery service for overnight delivery.

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V Python

Sworn to before me this \_\_\_\_\_  
Day of November, 2021

\_\_\_\_\_  
Notary Public