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February 12, 2016

VIA ELECTRONIC FILING  
The Honorable James Orenstein  
United States Magistrate Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *In re Order Requiring Apple Inc. to Assist in the Execution of a Search Warrant  
Issued by the Court, No. 15-MC-1902*

Dear Judge Orenstein:

We write regarding the government's October 30, 2015 letter to the Court addressing whether the government's application for an All Writs Act Order to Apple was rendered moot by the guilty plea of the defendant in the criminal case for which the evidence was sought. Apple too believes that this matter is not moot, and that a live case or controversy remains before this court for decision.

The government sought in its application an All Writs Act Order requiring Apple to assist law enforcement in its investigative efforts by bypassing the security of an Apple device belonging to a criminal defendant and in the government's possession. After the parties fully briefed and argued whether the government's application had a proper basis in law, the criminal defendant pled guilty to narcotics conspiracy. The Court subsequently directed the government to explain why its application was not moot. In its response, the government took the position that its application was not moot because the government still sought evidence from the device as part of a continuing investigation, and because the criminal defendant had yet to be sentenced or judgment entered. *See* ECF No. 25.

Apple agrees that this matter is not moot. Apple takes no position on whether and to what extent information from the Apple device in the government's possession is relevant to any ongoing investigation, or necessary for the criminal defendant's sentencing. But Apple has received additional requests similar to the one underlying the case before this Court. Apple has also been advised that the government intends to continue to invoke the All Writs Act in this and other districts in an attempt to require Apple to assist in bypassing the security of other Apple devices in the government's possession. To that end, in addition to the potential reasons this matter is not moot that the

government identifies, this matter also is not moot because it is capable of repetition, yet evading review. *See, e.g., United States v. New York Tel. Co.*, 434 U.S. 159, 190 n.6 (1977) (“Although the pen register surveillance had been completed by the time the Court of Appeals issued its decision on July 13, 1976, this fact does not render the case moot, because the controversy here is one ‘capable of repetition, yet evading review.’”)

Resolving this matter in this Court benefits efficiency and judicial economy. The question of whether the All Writs Act can properly compel a third party like Apple to assist law enforcement in its investigative efforts by bypassing the security mechanisms on its device has been fully briefed and argued. The Court is thus already in a position to render a decision on that question. Doing so would be more efficient than starting the debate anew when the government attempts to use the same methods and make the same arguments in another court, particularly where both parties agree that this matter is not moot.

Sincerely,

/s/ Marc J. Zwillinger

Marc J. Zwillinger

cc: All Counsel of Record (via ECF)

**U.S. District Court  
Eastern District of New York (Brooklyn)  
CIVIL DOCKET FOR CASE #: 1:15-mc-01902-JO**

Order requiring Apple, Inc. to assist in the execution of a search warrant issued by the court et al Date Filed: 10/08/2015  
Assigned to: Magistrate Judge James Orenstein

**In Re**

**Order requiring Apple, Inc. to assist in the execution of a search warrant issued by the court**

**Movant**

**United States of America**

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**Interested Party**

**Apple Inc.**

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V.

**Amicus**

**American Civil Liberties Union**  
 TERMINATED: 10/20/2015

represented by **Esha Bhandari**  
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Date Filed	#	Docket Text
10/08/2015	<a href="#">1</a>	MOTION to Compel by United States of America. (Attachments: # <a href="#">1</a> Proposed Order) (Gillespie, Saudia) (Entered: 10/09/2015)
10/09/2015	<a href="#">2</a>	MEMORANDUM AND ORDER: I defer ruling on the application and respectfully direct Apple to submit its views in writing, no later than October 15, 2015, as to whether the assistance the government seeks is technically feasible and, if so, whether compliance with the proposed order would be unduly burdensome. If either the government or Apple wishes to present oral argument on the matter, I will hear such argument on October 22, 2015, at 12:00 noon. Ordered by Magistrate Judge James Orenstein on 10/9/2015. See attached document. (Gillespie, Saudia) (Entered: 10/09/2015)
10/09/2015	<a href="#">3</a>	MEMORANDUM AND ORDER: On October 8, 2015, the government submitted under seal an application for an order pursuant to the All Writs Act, 28 U.S.C. § 1651, directing Apple, Inc. to assist in the execution of a federal search warrant by disabling the security of an Apple device that the government has lawfully seized pursuant to a warrant issued by this court. I respectfully direct the Clerk to maintain that document under seal on the public docket of this matter. I further respectfully direct the Clerk to file on the public docket of the same matter my Memorandum and Order dated October 8, 2015, which ruled on the government's application without referring to any specific information that would compromise a continuing investigation.. Ordered by Magistrate Judge James Orenstein on 10/9/2015. (Gillespie, Saudia) (Entered: 10/09/2015)
10/13/2015	<a href="#">4</a>	Letter <i>Submitting Joint Request for Extension of Time</i> by United States of America (Elbert, Lauren) Modified on 10/14/2015 (Guy, Alicia). (Entered: 10/13/2015)
10/14/2015		ORDER granting <a href="#">4</a> Motion for Extension of Time to File --- The application is GRANTED; Apple, Inc. may submit its views in writing by October 19, 2015. Ordered by Magistrate Judge James Orenstein on 10/14/2015. (Guy, Alicia) (Entered: 10/14/2015)
10/19/2015	<a href="#">5</a>	NOTICE of Appearance by Kenneth M. Dreifach on behalf of Apple Inc. (aty to be noticed) (Dreifach, Kenneth) (Entered: 10/19/2015)
10/19/2015	<a href="#">6</a>	MOTION for Leave to Appear Pro Hac Vice [ <i>Jeffrey Landis</i> ] Filing fee \$ 150, receipt number 0207-8105165. by Apple Inc.. (Attachments: # <a href="#">1</a> Affidavit of Jeffrey Landis in Support of Motion to Admit Counsel Pro Hac Vice, # <a href="#">2</a> Appendix [Certificate of Good Standing Forthcoming], # <a href="#">3</a> Proposed Order) (Dreifach, Kenneth) (Entered: 10/19/2015)
10/19/2015	<a href="#">7</a>	MOTION for Leave to Appear Pro Hac Vice [ <i>Marc Zwilling</i> ] Filing fee \$ 150, receipt number 0207-8105376. by Apple Inc.. (Attachments: # <a href="#">1</a> Affidavit of Marc Zwilling in Support of Motion to Admit Counsel Pro Hac Vice, # <a href="#">2</a> Appendix [Certificate of Good Standing Forthcoming], # <a href="#">3</a> Proposed Order)

		(Dreifach, Kenneth) (Entered: 10/19/2015)
10/19/2015	<a href="#">8</a>	ORDER granting <a href="#">6</a> Motion for Leave to Appear Pro Hac Vice -- Attorney Jeffrey G. Landis, Esq. is permitted to argue or try this case in whole or in part as counsel or advocate. By October 26, 2015, Mr. Landis shall submit a certificate of good standing for each state in which he is admitted. By October 26, 2015, Mr. Landis shall register for ECF. Registration is available online at the EDNY's homepage. Once registered, Mr. Landis shall file a notice of appearance and ensure that he receives electronic notification of activity in this case. Mr. Landis shall also ensure that the \$150 admission fee be submitted to the Clerk's Office. Ordered by Magistrate Judge James Orenstein on 10/19/2015. (Howley, Thomas) (Entered: 10/19/2015)
10/19/2015	<a href="#">9</a>	ORDER granting <a href="#">7</a> Motion for Leave to Appear Pro Hac Vice -- Attorney Marc J. Zwilling, Esq. is permitted to argue or try this case in whole or in part as counsel or advocate. By October 26, 2015, Mr. Zwilling shall submit a certificate of good standing for each state in which he is admitted. By October 26, 2015, Mr. Zwilling shall register for ECF. Registration is available online at the EDNY's homepage. Once registered, Mr. Zwilling shall file a notice of appearance and ensure that he receives electronic notification of activity in this case. Mr. Zwilling shall also ensure that the \$150 admission fee be submitted to the Clerk's Office. Ordered by Magistrate Judge James Orenstein on 10/19/2015. (Howley, Thomas) (Entered: 10/19/2015)
10/19/2015	<a href="#">10</a>	MOTION for Leave to File <i>Brief of Amici Curiae</i> by American Civil Liberties Union. (Attachments: # <a href="#">1</a> Memorandum in Support Brief of Amici Curiae American Civil Liberties Union et al.) (Bhandari, Esha) (Entered: 10/19/2015)
10/19/2015	<a href="#">11</a>	NOTICE by Apple Inc. <i>RESPONSE TO COURTS OCTOBER 9, 2015 MEMORANDUM AND ORDER</i> (Dreifach, Kenneth) (Entered: 10/19/2015)
10/20/2015		ORDER denying <a href="#">10</a> Motion for Leave to File -- I am grateful to the proposed <i>amici</i> for their proffered assistance, but I conclude that it is unnecessary. Although the government filed the pending motion for relief under the All Writs Act <i>ex parte</i> , the entity it seeks to have the court compel has been afforded an opportunity to vindicate its interests by submitting a brief. While the proposed <i>amici</i> , among many others, may have a fresh perspective on a broader policy debate surrounding the instant that the briefs I have already solicited may not fully address, the sole legal issue before the court is a narrow one that directly affects only the government and Apple, Inc. and that they are fully capable of exploring thoroughly in their submissions. I therefore exercise my discretion to deny the motion. <i>Cf. United States v. Yaroshenko</i> , 86 F. Supp. 3d 289, 291 (S.D.N.Y. 2015). Ordered by Magistrate Judge James Orenstein on 10/20/2015. (Orenstein, James) (Entered: 10/20/2015)
10/20/2015		ORDER re <a href="#">11</a> Notice(Other) filed by Apple Inc.: In inviting Apple, Inc. ("Apple") to submit its views on the feasibility and burdensomeness of the government's request, I did not intend to limit its submission to those matters, but rather to focus its attention on particular factual questions. I therefore respectfully invite Apple to supplement its submission by addressing the legal question before the court; namely, whether the All Writs Act empowers the court to compel Apple to provide the technical assistance the government seeks. If Apple can do so in advance of the hearing on October 22, 2015 (at which I would benefit from Apple's participation and availability to answer questions, should they arise, even if Apple does not affirmatively wish to present an oral argument), I request that it do so; otherwise, I respectfully direct the government and Apple to submit a proposed revised schedule. Ordered by Magistrate Judge James Orenstein on 10/20/2015. (Orenstein, James) (Entered: 10/20/2015)
10/20/2015	<a href="#">12</a>	NOTICE of Appearance by Saritha Komatireddy on behalf of United States of America (aty to be noticed) (Komatireddy, Saritha) (Entered: 10/20/2015)
10/21/2015	<a href="#">13</a>	Letter <i>Regarding Schedule</i> by United States of America (Elbert, Lauren) (Entered: 10/21/2015)
10/21/2015		ORDER re <a href="#">13</a> Letter filed by United States of America -- The proposed schedule, docket entry <a href="#">13</a> , is so ordered. The hearing previously scheduled for October 22, 2015 is rescheduled for October 26, 2015 at 11:30 a.m. Apple may submit a supplemental response by October 23, 2015. Ordered by Magistrate Judge James Orenstein on 10/21/2015. (Howley, Thomas) (Entered: 10/21/2015)
10/22/2015	<a href="#">14</a>	NOTICE of Appearance by Ameet B. Kabrawala on behalf of United States of America (aty to be noticed) (Kabrawala, Ameet) (Entered: 10/22/2015)
10/22/2015	<a href="#">15</a>	REPLY in Support of the Government's Application for an All Writs Act Order and in Opposition to Apple Inc.'s Response filed by United States of America. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E) (Komatireddy, Saritha) (Entered: 10/22/2015)
10/23/2015	<a href="#">16</a>	NOTICE by Apple Inc. re Order,,,, <i>Supplemental Response to Court October 9 2015 Order and Opinion</i> (Dreifach, Kenneth) (Entered: 10/23/2015)
10/23/2015	<a href="#">17</a>	NOTICE by Apple Inc. re <a href="#">9</a> Order on Motion for Leave to Appear Pro Hac Vice,, <a href="#">8</a> Order on Motion for Leave to Appear Pro Hac Vice,, of <i>Filing of Certificates of Good Standing</i> (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit

		B) (Dreifach, Kenneth) (Entered: 10/23/2015)
10/26/2015	<a href="#">18</a>	Minute Entry for proceedings held before Magistrate Judge James Orenstein: Motion Hearing held on 10/26/2015 re <a href="#">1</a> MOTION to Compel filed by United States of America. I heard argument on the government's motion and reserved decision. The government and Apple may submit supplemental letters in support of their respective positions by October 28, 2015. (Orenstein, James) (Entered: 10/26/2015)
10/27/2015	<a href="#">19</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 10/26/2015, before Judge James Orenstein. Court Reporter/Transcriber Rudolph, Telephone number 718-613-2538. Email address: GeneRudolph@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. File redaction request using event "Redaction Request - Transcript" located under "Other Filings - Other Documents". Redaction Request due 11/17/2015. Redacted Transcript Deadline set for 11/30/2015. Release of Transcript Restriction set for 1/25/2016. (Rudolph, Gene) (Entered: 10/27/2015)
10/28/2015		UNSEALING ORDER --- The Clerk of Court is respectfully directed to unseal docket entry <a href="#">1</a> MOTION to Compel by United States of America. Ordered by Magistrate Judge James Orenstein on 10/28/2015. (Guy, Alicia) (Entered: 10/28/2015)
10/28/2015	<a href="#">20</a>	NOTICE by Apple Inc. <i>Supplemental Brief pursuant to Courts Civil Conference Minute Order</i> (Zwillinger, Marc) (Entered: 10/28/2015)
10/28/2015	<a href="#">21</a>	REPLY in Support of the Government's Application for an All Writs Act Order (supplemental) filed by United States of America. (Komatireddy, Saritha) (Entered: 10/28/2015)
10/29/2015	<a href="#">22</a>	Letter by United States of America (Elbert, Lauren) (Entered: 10/29/2015)
10/30/2015		ORDER re <a href="#">22</a> Letter filed by United States of America -- In light of the fact that the defendant against whom evidence from the subject telephone was to be used has pleaded guilty, I respectfully direct the government to explain why the application is not moot. To the extent the response requires the disclosure of information occurring before a grand jury, the government may file its response under seal, along with a redacted version suitable for public access. Ordered by Magistrate Judge James Orenstein on 10/30/2015. (Howley, Thomas) (Entered: 10/30/2015)
10/30/2015	<a href="#">23</a>	NOTICE of Appearance by Marc J. Zwillinger on behalf of Apple Inc. (aty to be noticed) (Zwillinger, Marc) (Entered: 10/30/2015)
10/30/2015	<a href="#">24</a>	NOTICE of Appearance by Jeffrey G. Landis on behalf of Apple Inc. (aty to be noticed) (Landis, Jeffrey) (Entered: 10/30/2015)
10/30/2015	<a href="#">25</a>	Letter Responding to the Court's October 30, 2015 Order by United States of America (Elbert, Lauren) (Entered: 10/30/2015)
02/12/2016	<a href="#">26</a>	Letter regarding Court's October 30, 2015 Order by Apple Inc. (Landis, Jeffrey) (Entered: 02/12/2016)
02/16/2016		ORDER re <a href="#">26</a> Letter filed by Apple Inc. -- Because the assertions in its latest letter may affect my analysis of certain arguments made by the government and Apple, Inc. ("Apple"), I respectfully request Apple to provide certain details about the "additional requests similar to the one underlying the case before this Court" it has received during the pendency of this matter. In particular, with respect to each such request, I ask Apple to specify: (1) the jurisdiction in which the request was made, (2) the type of device at issue in the request and the version of iOs being used on that device; (3) whether Apple opposed the request or otherwise sought or obtained an opportunity to be heard on it before it was resolved; (4), the disposition of the request (together with a copy of any opinion or order resolving the request, if materially different from the government's proposed order in this matter); (5) whether Apple tried to unlock the device, either on consent or pursuant to a court order; and (6) a description of the results of any such attempt to unlock the device (including whether usable data was recovered, whether the attempt resulted in the deletion of stored data, or some other result). Apple shall file its response under seal by March 1, 2016. No later than March 4, 2016, the government may request the redaction of any details in the letter that would jeopardize any continuing investigation; after reviewing any such request I will direct Apple to file a properly redacted version of its response on the public record. Ordered by Magistrate Judge James Orenstein on 2/16/2016. (Howley, Thomas) (Entered: 02/16/2016)
02/17/2016	<a href="#">27</a>	Letter in Response to Court's February 16, 2016 Order by Apple Inc. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B) (Landis, Jeffrey) (Entered: 02/17/2016)
02/17/2016		ORDER re <a href="#">27</a> Sealed, Letter filed by Apple Inc. -- I respectfully direct the government to propose any redactions necessary to protect continuing investigations by February 22, 2016. Ordered by Magistrate Judge James Orenstein on 2/17/2016. (Howley, Thomas) (Entered: 02/17/2016)