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CENTRAL DISTRICT OF CALIF.  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

ED No. CM 16-10-SP

IN THE MATTER OF THE SEARCH  
OF AN APPLE IPHONE SEIZED  
DURING THE EXECUTION OF A  
SEARCH WARRANT ON A BLACK  
LEXIS IS300, CALIFORNIA LICENSE  
PLATE 35KGD203

**BRIEF OF *AMICI CURIAE*  
FEDERAL LAW ENFORCEMENT  
OFFICERS ASSOCIATION,  
ASSOCIATION OF  
PROSECUTING ATTORNEYS,  
INC., AND NATIONAL SHERIFFS'  
ASSOCIATION IN SUPPORT OF  
THE GOVERNMENT'S MOTION  
TO COMPEL APPLE, INC. TO  
COMPLY WITH THIS COURT'S  
FEBRUARY 16, 2016 ORDER  
COMPELLING ASSISTANCE IN  
SEARCH**

Hearing Date: March 22, 2016  
Hearing Time: 1:00 p.m.  
Courtroom: 3 or 4  
Judge: Hon. Sheri Pym

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1 **STATEMENT OF INTEREST OF *AMICI CURIAE***

2 The Federal Law Enforcement Officers Association (“FLEOA”), a  
3 volunteer organization founded in 1977, is the largest nonpartisan, nonprofit  
4 professional association exclusively representing federal law enforcement officers.  
5 FLEOA represents more than 26,000 uniformed and non-uniformed federal law  
6 enforcement officers from over 65 different agencies. FLEOA is a charter  
7 member of the Department of Homeland Security Federal Law Enforcement  
8 Advisory Board; holds two seats on the Congressional Badge of Bravery Federal  
9 Board; and serves on the Executive Board of the National Law Enforcement  
10 Officers Memorial Fund and the National Law Enforcement Steering Committee.  
11 FLEOA provides a legislative voice for the federal law enforcement community  
12 and monitors legislative and other legal issues that may impact federal law  
13 enforcement officers.

14 The Association of Prosecuting Attorneys, Inc. (“APA”) is a national not-  
15 for-profit organization headquartered in Washington, D.C. and made up of elected  
16 and appointed prosecuting attorneys from throughout the nation. The APA  
17 provides valuable resources such as training and technical assistance to  
18 prosecutors in an effort to develop proactive and innovative prosecutorial  
19 practices that prevent crime, ensure equal justice, and help make our communities  
20 safer. The APA also acts as a global forum for the exchange of ideas, allowing  
21 prosecutors to collaborate with all criminal justice partners, providing timely and  
22 effective technical assistance as well as access to technology for the enhancement  
23 of the prosecutorial function. The APA serves as an advocate for prosecutors on  
24 emerging issues related to the administration of justice and development of  
25 partnerships.

26 Chartered in 1940, the National Sheriffs' Association (“NSA”) is a  
27 professional association headquartered in Alexandria, Virginia, and dedicated to  
28 serving the Office of Sheriff and its affiliates through police education, police

1 training, and general law enforcement information resources. The NSA represents  
2 thousands of sheriffs, deputies and other law enforcement and public safety  
3 professionals, as well as concerned citizens nationwide. The NSA has provided  
4 programs for sheriffs, their deputies, chiefs of police, and others in the field of  
5 criminal justice in order to enable them to perform their jobs in the best possible  
6 manner and to better serve the people of their cities, counties, or other  
7 jurisdictions. The NSA has worked to forge cooperative relationships with local,  
8 state, and federal criminal justice professionals across the nation to network and  
9 share information about homeland security programs and projects.

10 *Amici* members are called upon on a daily basis to protect and serve the  
11 public by investigating criminal activity and wrongdoing and ensuring that the  
12 individuals responsible for it pay the penalty for their crimes. In order to fulfill  
13 their duties, *Amici* members must have access to all reasonable means of  
14 procuring relevant evidence. In this digital age, data stored on mobile devices has  
15 proven time and again to be critical in assisting law enforcement officers to do  
16 their jobs. *Amici* and their members thus have a strong interest in ensuring that  
17 the Court's February 16, 2016, Order is upheld and enforced.

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**FACTS AND SUMMARY OF THE ARGUMENT**

This is a case in which this Court issued a February 16, 2016, Order (the “Order”) directing Apple Inc. (“Apple”) to assist in enabling the government’s search of the government-owned iPhone 5c used by Syed Rizwan Farook (“the Terrorist”) by providing “reasonable technical assistance to assist law enforcement agents in obtaining access to the data” on that device.<sup>1</sup> Apple has refused to comply with the Order.

On February 19, 2016, the government filed a motion to compel Apple to comply (“Government’s Motion to Compel”)<sup>2</sup>, and, on February 25, 2016, Apple filed an opposition to that motion and a motion to vacate the Order (“Apple’s Opposition”).<sup>3</sup> *Amici* respectfully submit this brief in support of the Government’s Motion to Compel.

*Amici* believe that the position Apple has taken is a dangerous one. *First*, Apple’s refusal to provide assistance has far-reaching public safety ramifications by making it difficult, and in some cases impossible, for law enforcement to fulfill

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<sup>1</sup> Order Compelling Apple, Inc. To Assist Agents in Search, *In the Matter of Search of an Apple iPhone Seized During Execution of a Search Warrant on a Black Lexus IS300, Cal. License Plate 35KGD203*, No. ED 15-0451M, 2016 WL 618401, at \*1-2 (C.D. Cal. Feb. 16, 2016).

<sup>2</sup> Motion to Compel Apple Inc. To Comply With Court’s February 16, 2016 Order Compelling Apple to Assist Agents In Its Search, *In the Matter of Search of an Apple iPhone Seized During Execution of a Search Warrant on a Black Lexus IS300, Cal. License Plate 35KGD203*, ED No. CM 16-10 (SP), Dkt. 1 (C.D. Cal. Feb. 19, 2016).

<sup>3</sup> Apple Inc’s Motion To Vacate Order Compelling Apple Inc. To Assist Agents in Search, And Opposition To Government’s Motion To Compel Assistance, *In the Matter of Search of an Apple iPhone Seized During Execution of a Search Warrant on a Black Lexus IS300, Cal. License Plate 35KGD203*, ED No. CM 16-10 (SP), Dkt. 16 (C.D. Cal. Feb. 25, 2016).

1 its obligation to investigate crimes, protect the public by bringing criminals to  
2 justice, and enforce the law. *Second*, if Apple were to prevail, the public at large  
3 may itself think twice about cooperating with law enforcement when called upon  
4 to do so.

## 5 6 **ARGUMENT**

### 7 **I. APPLE'S REFUSAL TO PROVIDE REASONABLE** 8 **ASSISTANCE TO THE GOVERNMENT HINDERS** 9 **EVERYDAY LAW ENFORCEMENT AND ENDANGERS** **PUBLIC SAFETY**

10 The Parties have extensively briefed the utility and necessity of searching  
11 the cell phone used by the Terrorist on the day of the attacks in San Bernardino.  
12 Yet beyond the facts of that heinous crime, a ruling which validates Apple's  
13 position in this litigation can only serve to hamper the ability of *Amici* to bring  
14 criminals to justice and justice to victims. To be clear: if Apple can refuse lawful  
15 court orders to reasonably assist law enforcement, public safety *will* suffer.  
16 Crimes *will* go unsolved and criminals *will* go free. Apple's iPhones and iPads  
17 are ubiquitous. They are powerful. They are used by criminals, as well as crime  
18 victims. And, until recently, Apple was willing to assist law enforcement in  
19 executing court orders to search these devices. But Apple has changed course. As  
20 this case illustrates, it has redesigned its iOS operating system to make its  
21 products far harder to search pursuant to a warrant, and in this case decided not to  
22 do what it can to help investigate the Terrorist and his murderous crimes. These  
23 decisions -- decisions made in Apple's boardroom -- are already impeding and  
24 damaging investigations in law enforcement offices around the country. As law  
25 enforcement officials who are sworn to ensure public safety, and to solve crimes,  
26 *Amici* are the first responders, the investigators, the law enforcers and the  
27 prosecutors who, day-in and day-out, must live with Apple's decisions. To *Amici*,

1 this is *not* a theoretical debate. It is as real as a killer gone free, as real as a  
2 pedophile planning for his next prey.

3 The importance of access to evidence found on iPhones, iPads, and similar  
4 devices is emphasized by actual, real world examples undisputed by Apple. For  
5 example, in one big-city district attorney's office *approximately 50%* of the  
6 mobile devices currently recovered during investigations are inaccessible to law  
7 enforcement due to the fact that they are running iOS 8.<sup>4</sup> That percentage will, of  
8 course, only grow as time goes on and newer devices replace older ones. As the  
9 DA in that county put it:

10 In some cases, we can't move at all. We can't establish liability or  
11 responsibility because we can't access the phone. In others, it's  
12 affecting our ability to gather all the evidence that's needed to make  
13 sure that we are making the right judgments. And I think it's very  
14 important for people to understand that a prosecutor's job is to  
15 investigate, get all the information and then make the right judgment  
16 as to whether or not we can go forward. It's also our responsibility to  
17 make sure that we are prosecuting the right people. And when we  
18 don't have access to digital devices, we don't have all the information  
19 that we need to make the best judgment as to how the case should be  
20 handled.<sup>5</sup>

21 Other district attorneys throughout the country have had alarmingly similar  
22 experiences with iPhones running the current operating system. For example, last  
23 year the Harris County (Texas) District Attorney's Office was unable to search  
24

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25 <sup>4</sup> See *The Encryption Tightrope: Balancing Americans' Security and Privacy: Hearing Before the H. Judiciary Comm.*, 114th Cong. 6 (2016) (written testimony of Cyrus R. Vance, Jr., N.Y. County Dist. Attorney) ("Vance Hearing Testimony"), at 6.

26 <sup>5</sup> NPR, *It's Not Just The iPhone Law Enforcement Wants To Unlock*, Feb. 21,  
27 2016, <http://www.npr.org/2016/02/21/467547180/it-s-not-just-the-iphone-law-enforcement-wants-to-unlock> (last visited Feb. 25, 2016).



1 more than 100 encrypted (and therefore inaccessible) Apple devices from cases to  
2 date, including human trafficking, violent street crimes, and sexual assaults. In  
3 2016, the number of inaccessible Apple devices for that office already numbers  
4 eight to ten per month. Similarly, in January and February of this year, the Cook  
5 County (Chicago) State Attorney’s office has received 30 encrypted devices it  
6 could not access, and the Connecticut Division of Scientific Services has  
7 encountered 46 encrypted Apple devices in criminal cases, including those  
8 involving child pornography.<sup>6</sup>

9 Actual, real-world cases provide a window into the types of cases at stake  
10 for *Amici*:

- 11 • **Homicide (conviction of guilty)**: *People v. Hayes*<sup>7</sup>: The victim was  
12 filming a video using his iPhone when he was shot and killed by the  
13 defendant. Because the iPhone was not passcode-locked, the video,  
14 which captured the shooting, was recovered and admitted into  
15 evidence at trial. The defendant was convicted of murder and  
16 sentenced to 35 years to life.<sup>8</sup>
- 17 • **Homicide (exoneration of innocent)**: *People v. Rosario*<sup>9</sup>: A  
18 detective obtained a search warrant and an unlock order for certain  
19 iPhones found at the scene of a homicide. He sent the phones to  
20

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21 <sup>6</sup> See Vance Hearing Testimony at 6-7.

22 <sup>7</sup> Indictment Number 4451/12.

23 <sup>8</sup> NEW YORK COUNTY DISTRICT ATTORNEY’S OFFICE, REPORT OF THE MANHATTAN  
24 DISTRICT ATTORNEY’S OFFICE ON SMARTPHONE ENCRYPTION AND PUBLIC SAFETY  
25 9 (Nov. 18, 2015),  
26 <http://manhattanda.org/sites/default/files/11.18.15%20Report%20on%20Smartphone%20Encryption%20and%20Public%20Safety.pdf> (the “NY DA’s Report”).

27 <sup>9</sup> Indictment Number 1859/10.  
28

1 Apple, which assisted in extracting data from them. The phone data  
2 demonstrated inaccuracies in what investigators initially thought to  
3 be the timeline of events, and demonstrated that a particular suspect  
4 was not, in fact, involved in the murder. A phone number stored in  
5 one of the iPhones was eventually linked to another individual, who  
6 later confessed and pled guilty to the killing. He is currently serving  
7 a sentence of 17 1/2 years' imprisonment.<sup>10</sup>

- 8 • **Child Pornography:** *People v. Hirji*<sup>11</sup>: The defendant was arrested  
9 after telling a taxi driver about his interest in having sex with children  
10 and showing the driver a child pornography image. Upon searching  
11 the defendant's iPhone pursuant to a search warrant, investigators  
12 discovered a large number of child pornography images. The  
13 defendant was convicted of Promoting a Sexual Performance by a  
14 Child.<sup>12</sup>
- 15 • **Sex Trafficking:** *People v. Brown*<sup>13</sup>: The defendant directed a sex  
16 trafficking operation involving at least four women, using physical  
17 violence, threats of force, and psychological manipulation to coerce  
18 the women to engage in prostitution. Evidence recovered from  
19 defendant's electronic devices contained (a) photographs showing  
20 him posing his victims for online prostitution advertisements and  
21 showing that he had "branded" multiple women with his nickname;

22  
23 <sup>10</sup> NY DA's Report at 11.

24 <sup>11</sup> Supreme Court Information Number 3650/15.

25 <sup>12</sup> NY DA's Report at 9-10.

26 <sup>13</sup> Indictment Numbers 865/12, 3908/12, and 3338/13.

1 and (b) text messages between him and several victims confirming  
2 that he had engaged in acts of violence against the testifying witness  
3 and others. The defendant was convicted of multiple counts of sex  
4 trafficking and promoting prostitution and was sentenced to 10-20  
5 years in prison.<sup>14</sup>

- 6 • **Cybercrime and Identity Theft:** *People v. Jacas et al.*<sup>15</sup> and *People*  
7 *v. Brahms et al.*<sup>16</sup>: An iPhone was recovered from a waiter who was  
8 arrested for stealing more than 20 customers' credit card numbers by  
9 surreptitiously swiping the credit cards through a card reader that  
10 stored the credit card number and other data. When the phone was  
11 searched pursuant to a warrant, law enforcement officials discovered  
12 text messages between the waiter and other members of the group  
13 regarding the ring's crimes. Based in large part on information  
14 obtained from the phone, investigators were able to obtain an  
15 eavesdropping warrant, and ultimately arrested a 29-member identity  
16 theft ring, including employees of high-end restaurants who stole  
17 credit card numbers, shoppers who made purchases using counterfeit  
18 credit cards containing the stolen credit card numbers, and managers  
19 who oversaw the operation. The group stole 100 American Express  
20 credit card numbers and property worth over \$1,000,000. All of the  
21 defendants pled guilty, and more than \$1,000,000 in cash and  
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24 <sup>14</sup> NY DA's Report at 9.

25 <sup>15</sup> Indictment Number 42/12.

26 <sup>16</sup> Indictment Number 5151/11.

1 merchandise was seized and forfeited.<sup>17</sup>

- 2 • **Unlawful Surveillance:** *People v. Lema*<sup>18</sup>: The defendant was  
3 arrested for unlawful surveillance after a police officer observed the  
4 defendant using his phone to film up women’s skirts (*i.e.*,  
5 “upskirting”). The defendant consented to a search of his phone, but  
6 the passcode he provided did not work. Investigators obtained a  
7 search warrant and unlock order for the phone. The phone was sent  
8 to Apple, Apple extracted data from the phone, and the phone and  
9 data were returned to the prosecutor. Two “upskirting” videos were  
10 found on the phone, both filmed on the date of the defendant’s arrest.  
11 Following the trial, at which both videos were entered into evidence,  
12 the defendant was convicted as charged, of two counts of unlawful  
13 surveillance.<sup>19</sup>

14 And in one current investigation in Louisiana, a locked iPhone’s text messages  
15 and other information on the device may hold the only clues to the murder of a  
16 pregnant woman gunned down at the front door of her home.<sup>20</sup> These examples,  
17 and many more, prove just how essential evidence recovered from iPhones can  
18 be.<sup>21</sup>

19  
20 <sup>17</sup> NY DA’s Report at 10-11.

21 <sup>18</sup> Indictment Number 4117/13.

22 <sup>19</sup> NY DA’s Report at 11.

23 <sup>20</sup> See Peter Holley, *A Locked iPhone May Be the Only Thing Standing Between*  
24 *Police and This Woman’s Killer*, Wash. Post, Feb. 26, 2016, available at  
25 [https://www.washingtonpost.com/news/post-nation/wp/2016/02/26/a-locked-](https://www.washingtonpost.com/news/post-nation/wp/2016/02/26/a-locked-iphone-may-be-the-only-thing-standing-between-police-and-this-womans-killer/)  
26 [iphone-may-be-the-only-thing-standing-between-police-and-this-womans-killer/](https://www.washingtonpost.com/news/post-nation/wp/2016/02/26/a-locked-iphone-may-be-the-only-thing-standing-between-police-and-this-womans-killer/).

27 <sup>21</sup> *Amici* have additional specific, law-enforcement sensitive examples which it  
28

1           Of course, Apple’s decisions also hamper crime *prevention*. Data  
2 successfully retrieved from a cell phone after the November 2015 Paris terrorist  
3 attacks on the Bataclan concert hall, where 89 people were killed, reportedly  
4 allowed French law enforcement officials to track down the alleged ringleader,  
5 who later died in a police raid.<sup>22</sup> This individual was in the process of planning  
6 yet another attack in Europe. And lest there be any doubt about the “value-add”  
7 for criminals by Apple’s recent engineering decisions and present litigation  
8 posture, *Amici* are even aware of jailhouse statements by criminals about how the  
9 new iOS encryption is a helpful “feature” for planning and committing crimes.  
10 For example, in 2015, the New York Department of Corrections intercepted a  
11 phone call between an inmate and a friend about Apple’s new, impregnable  
12 operating system, during which the inmate stated: “*If our phone is running on the*  
13 *iOS 8 software, they can’t open my phone. That might be another gift from*  
14 *God.*”<sup>23</sup> In fact, *Amici* are aware of numerous instances in which criminals who  
15 previously used one time, so-called “throwaway” or “burner” phones, have now  
16 switched to the new iPhones as the “device-of-choice” for their criminal  
17 wrongdoing. Troublingly, Apple *even advertises and promotes* its alleged  
18 inability to help law enforcement search these devices.<sup>24</sup>

19  
20 does not wish to place in the public domain. Should the Court, however, desire  
21 this information, *Amici* will make it available.

22 <sup>22</sup> Lori Hinnant & Karl Ritter, *Discarded Cell Phone Led to Paris Attacks*  
23 *Ringleader*, Associated Press, Nov. 19, 2015, *available at*  
24 [http://bigstory.ap.org/article/47e613d2ad184fe4802fd76de903d4bb/french-leader-](http://bigstory.ap.org/article/47e613d2ad184fe4802fd76de903d4bb/french-leader-extremists-may-strike-chemical-bio-arms)  
25 [extremists-may-strike-chemical-bio-arms](http://bigstory.ap.org/article/47e613d2ad184fe4802fd76de903d4bb/french-leader-extremists-may-strike-chemical-bio-arms).

26 <sup>23</sup> NY DA’s Report at 12 (emphasis added).

27 <sup>24</sup> Apple’s website states, “On devices running iOS 8 and later versions, your  
28 personal data is placed under the protection of your passcode. For all devices

1 To be sure, Apple has greatly assisted law enforcement in the past, helping  
2 officers to unlock the very phones it is now stating it would offend privacy to help  
3 search. This assistance has been critical in a number of law enforcement cases,  
4 both to prosecute criminals and to exonerate the innocent. In this case, law  
5 enforcement has no alternate means of obtaining the information they are  
6 seeking<sup>25</sup> and the iPhone used by the Terrorist may well be as critical to the  
7 resolution of this case as the devices were in the cases described above.

8 In sum, it is crystal clear that Apple's refusal to provide reasonable  
9 assistance to law enforcement has real world, on-the-ground implications for  
10 federal and state law enforcement officers as they do their daily jobs as well as for  
11 the public they are sworn to protect. In many instances, this assistance is critical  
12 to whether or not law enforcement can bring justice and closure to victims'  
13 families and, in cases such as this one, thwart everyday crime and violence as well  
14 as the ever-growing threat of terrorism across the globe.

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18 running iOS 8 and later versions, Apple will not perform iOS data extractions in  
19 response to government search warrants because the files to be extracted are  
20 protected by an encryption key that is tied to the user's passcode, which Apple  
21 does not possess." Apple Inc., Privacy – Government Information Requests –  
Apple, <http://www.apple.com/privacy/government-information-requests/> (last  
visited Feb. 29, 2016).

22 <sup>25</sup> Government's Motion to Compel at 6. It bears noting that although critics of  
23 the Government's position here state that law enforcement should simply rely on  
24 data that can be obtained on iCloud, as one DA has stated, even when criminals  
25 choose to back-up their data on the cloud (and in most cases they do not), data on  
26 an iPhone will not be backed up unless the iPhone is connected to Wifi. *See*  
27 Vance Hearing Testimony at 4. In this particular case, there are indications that  
28 the iCloud account had not been backed up since October 19, 2015. Moreover,  
Apple itself has stated that it cannot provide data that has been deleted from an  
iCloud account. *Id.*

1           **II.     A RULING IN FAVOR OF APPLE HERE WILL HAVE A CHILLING**  
2           **EFFECT ON PUBLIC ASSISTANCE TO LAW ENFORCEMENT**

3           Justice Cardozo, in a 1928 decision while he was still a state court judge,  
4           stated: “[A]s in the days of Edward I, the citizenry may be called upon to enforce  
5           the justice of the state, not faintly and with lagging steps, but honestly and bravely  
6           and with whatever implements and facilities are convenient and at hand.”

7           *Babington v. Yellow Taxi Corp.*, 164 N.E. 726, 727 (N.Y. 1928). Almost 50 years  
8           later, Justice White echoed Cardozo’s words in the Supreme Court’s landmark  
9           decision, *United States v. New York Telephone Co.*, recognizing that “citizens  
10          have a *duty* to assist in enforcement of the laws.” 434 U.S. 159, 175 n.24 (1977)  
11          (emphasis added); *see also Roviario v. United States*, 353 U.S. 53, 59 (1957)  
12          (recognizing the historic obligation of citizens to assist law enforcement and to  
13          communicate their knowledge of criminal activity to law enforcement officials);  
14          *In re Quarles and Butler*, 158 U.S. 532, 535 (1895) (recognizing the duty of  
15          citizens “to assist in prosecuting, and securing the punishment of, any breach of  
16          the peace of the United States”). Indeed, as one state supreme court recognized:

17                 The basic concept that every citizen can be compelled to assist in the  
18                 pursuit or apprehension of suspected criminals has ancient Saxon  
19                 origins, predating the Norman Conquest . . . . As the responsibility  
20                 for keeping the peace shifted, over the centuries, to sheriffs,  
21                 constables, and eventually to trained professional police departments,  
22                 the power of those law enforcement officials to command the  
23                 assistance of citizens was recognized both in statutes and in the  
24                 common law.

23          *State v. Floyd*, 584 A.2d 1157, 1166 (Conn. 1991) (upholding state statute  
24          requiring citizens to provide reasonable assistance to law enforcement) (internal  
25          citations omitted) (footnotes omitted).<sup>26</sup>

26 \_\_\_\_\_  
27 <sup>26</sup> *See also* Cal. Penal Code § 150 (making it an offense to “neglect[] or refuse[] to  
28 join the posse comitatus or power of the county, by neglecting or refusing to aid

1 The reasons supporting this venerable principle continue to be true today.  
2 Especially in this digital age, it is now critical for public safety that technology  
3 companies -- and the citizens that manage them -- cooperate with law  
4 enforcement. As the cases above recognize, this is not the first, nor will it be the  
5 last, time that law enforcement enlists the assistance of citizen-managers of  
6 corporations to help them ensure that the law, the bedrock of our society, is  
7 followed and that our officers have the tools and information necessary to enforce  
8 that law, prevent crime and protect the citizenry.

9 In *New York Telephone Co.*, the Supreme Court used the authority of the  
10 All Writs Act, 28 U.S.C. § 1651(a), to order the phone company to do what it was  
11 plainly able to do to assist the FBI in using its facilities and equipment to  
12 apprehend a group suspected of illegal gambling. *See* 434 U.S. at 172, 174.<sup>27</sup>

13  
14 and assist in taking or arresting any person against whom there may be issued any  
15 process, or by neglecting to aid and assist in retaking any person who, after being  
16 arrested or confined, may have escaped from arrest or imprisonment, or by  
17 neglecting or refusing to aid and assist in preventing any breach of the peace, or  
18 the commission of any criminal offense, being thereto lawfully required” to do so  
by a law enforcement officer or a judge).

19 <sup>27</sup> It bears noting that the request here is even less intrusive than was the case in  
20 *New York Telephone Co.* Here, the data at issue is “at rest” -- static data that  
21 exists on a phone whose owner is aware and supportive of law enforcement’s  
22 efforts to retrieve this data. In *New York Telephone Co.*, the data that was to be  
23 accessed was wiretap data belonging to a group of illegal gamblers who were  
unaware that the most private details of their phone conversations were being

24 Moreover, even if it were true (which it is not, *see* Government’s Motion to  
25 Compel, *supra* note 2) that this particular request implicates the Fourth  
26 Amendment, it is an integral part of our justice system that law enforcement, with  
27 appropriate authority in the form of a search warrant or court order and under  
28 court supervision, may intrude upon people’s privacy. For example, with court-  
authorized search warrants, law enforcement officers are able to enter people’s



1 Today, this Court has used this same statute to order Apple to do what it is plainly  
2 able to do to assist law enforcement in unlocking a cell phone used by the  
3 Terrorist where permission to unlock the phone has already been granted by the  
4 phone's owner (the San Bernardino County Department of Health, the Terrorist's  
5 employer).<sup>28</sup>

6 In short, law enforcement's request, and this Court's order, is neither new  
7 nor novel. What *is* new is Apple's refusal to comply with this reasonable, court-  
8 ordered request for assistance from law enforcement officials. *Amici* are  
9 concerned that were Apple to prevail in this case, the public at large may question  
10 why they should be called upon to cooperate with law enforcement. In countless  
11 ways, knowable and unknowable, this will hamper *Amici's* ability to detect, deter,  
12 and punish crime.

### 13 CONCLUSION

14 *Amici* agree with the Parties that this is an important case. It implicates  
15 privacy. It implicates security. For many years, Apple has provided crucial and  
16 commendable assistance to law enforcement. It has been a valuable partner to  
17 *Amici* in case after case. Apple has changed course in a single -- but a crucial --  
18 way. It has created technical impediments and has refused to provide assistance  
19 which it plainly can to *Amici's* execution of a court-ordered search. That it has  
20 done so in a case involving ISIS-inspired domestic terrorism is disheartening. If

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21  
22 bedrooms to search for contraband; collect health records from medical offices;  
23 and even, under some circumstances, search a criminal suspect's attorney's office.  
24 All implicate privacy and it is hardly self-evident as to why a search of an iPhone  
is somehow "special," as Apple seems to contend.


25  
26 <sup>28</sup> Apple has categorically stated that this Court is "a forum ill-suited to address"  
27 the issues in this case, and that the government should instead be seeking to  
28 amend existing legislation. *See* Apple's Opposition at 2. This is not the law. *See*  
Government's Motion to Compel at 21-25.

1 upheld by the Court, however, the effects of its refusal will, for countless  
2 Americans, be truly devastating.

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