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U.S. DISTRICT COURT E.D.N.Y.

★ **MAR 14 2013** ★

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF NEW YORK LONG ISLAND OFFICE

Case No. **13-0214MC**

IN RE ORDER REQUIRING APPLE, INC.
TO ASSIST IN THE EXECUTION OF A
SEARCH WARRANT ISSUED BY THIS
COURT

APPLICATION

WALL, M.J.

INTRODUCTION

The United States of America, by and through LORETTA E. LYNCH, United States Attorney, and CHARLES N. ROSE, Assistant United States Attorney, hereby moves this Court under the All Writs Act, 28 U.S.C. § 1651, for an order requiring Apple, Inc. to assist in the execution of a federal search warrant by bypassing the lock screen of an iOS device, specifically, an Apple iPhone.

FACTS

The Drug Enforcement Administration currently has in its possession an iOS device that is the subject of a search warrant issued by this Court. Initial inspection of the iOS device reveals that it is locked. Because the iOS device is locked, law enforcement agents are not able to examine the iOS device as commanded by the search warrant.

The iOS device is an iPhone. It has Model #A 1387 EMC 2430, on the AT&T network with access number (phone number) 631-682-2296, serial number C8PHNW3PDTD1, and FCC ID#BCG-E2430A.

Apple, Inc., the creator of the iOS operating system and producer of the iOS device, may have the capability of bypassing the iOS device's lock. This Application seeks an order

requiring Apple to use any such capability, so as to assist agents in complying with the search warrant.

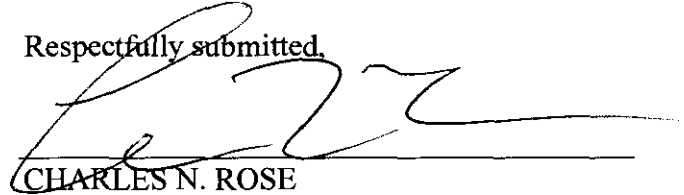
DISCUSSION

The All Writs Act provides that “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). As the Supreme Court explained, “[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute.” *Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 43 (1985). “The power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice... and encompasses even those who have not taken any affirmative action to hinder justice.” *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977). Specifically, in *United States v. New York Tel. Co.*, the Supreme Court held that the All Writs Act permitted district courts to order a telephone company to effectuate a search warrant by installing a pen register. Consequently, this Court has the authority to order Apple, Inc., to use any capabilities it may have to unlock the iOS Device.

The government is aware, and can represent, that in other cases, courts have ordered the unlocking of an iPhone under this authority. Additionally, Apple has routinely complied with such orders, and has suggested specific language for such orders.

This Court should issue the order because doing so would enable agents to comply with this Court's warrant commanding that the iOS device be examined for evidence identified by the warrant. Examining the iOS device without Apple's assistance, if it is possible at all, would require significant resources and may harm the iOS device. Moreover, the order is not likely to place any unreasonable burden on Apple.

Respectfully submitted,



CHARLES N. ROSE

Date: March 14, 2013

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ORDER WALL, M.J.

Before the Court is the Government's motion for an order requiring Apple, Inc. to assist law enforcement agents in the search of an Apple iOS Device. Upon consideration of the motion, and for the reasons stated therein, it is hereby

ORDERED that Apple Inc. assist law enforcement agents in the examination of the iPhone with Model # A 1387 EMC 2430, on the AT&T network with access number (phone number) 631-682-2296, serial number C8PHNW3PDTD1, and FCC ID# BCG-E2430A (the "IOS Device"), acting in support of a search warrant issued separately by this Court;

FURTHER ORDERED that Apple shall provide reasonable technical assistance to enable law enforcement agents to obtain access to unencrypted data ("Data") on the iOS Device.

FURTHER ORDERED that, to the extent that data on the iOS Device is encrypted, Apple may provide a copy of the encrypted data to law enforcement, but Apple is not required to attempt to decrypt, or otherwise enable law enforcement's attempts to access any encrypted data;

FURTHER ORDERED that Apple's reasonable technical assistance may include, but is not limited to, bypassing the iOS Device user's passcode so that the agents may search the iOS Device, extracting data from the iOS Device and copying the data onto an external hard drive or other storage medium that law enforcement agents may search, or otherwise circumventing the

iOS Device's security systems to allow law enforcement access to Data and to provide law enforcement with a copy of encrypted data stored on the IOS Device;

FURTHER ORDERED that although Apple shall make reasonable efforts to maintain the integrity of data on the iOS Device, Apple shall not be required to maintain copies of any user data as a result of the assistance ordered herein; all evidence preservation shall remain the responsibility of law enforcement agents.

Signed,

s/ William D. Wall

HON. WILLIAM D. WALL
UNITED STATES MAGISTRATE JUDGE

Date: March 14, 2013