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Law Professors

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 EASTERN DIVISION

15 IN THE MATTER OF THE SEARCH OF
AN APPLE IPHONE SEIZED DURING
16 THE EXECUTION OF A SEARCH
WARRANT ON A BLACK LEXUS IS300,
17 CALIFORNIA LICENSE PLATE
35KGD203.

Case No. CM 10-16-SP

**MOTION OF NONPARTY LAW
PROFESSORS FOR LEAVE TO FILE
PROPOSED AMICUS CURIAE BRIEF**

Date: March 22, 2016
Time: 1:00 p.m.
Ctrm: 3 or 4 - 3rd Floor
Judge: Honorable Sheri Pym

FILED
2016 MAR -3 PM 4:06
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
RIVERSIDE
BY _____
Amicus Curiae Landers

1 **TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 Pursuant to this Court’s Scheduling Order (ECF No. 10), a group of nonparty Law
3 Professors respectfully moves for leave to file the accompanying *amicus curiae* brief in the
4 above-captioned case in support of Apple. The Law Professors are not associated with
5 Apple and neither party is sponsoring The Law Professors’ proposed amicus brief. The list
6 of signatory Law Professors is attached to the Declaration of Michael A. Feldman
7 (“Feldman Decl.”) as Exhibit A and also appears on the signature page of the proposed
8 brief itself. Apple consents to the Law Professors filing the proposed *amicus curiae* brief.
9 Feldman Decl. ¶ 3. The government does not oppose the Law Professors filing the
10 proposed *amicus curiae* brief. *Id.* ¶ 4.

11 It is within the Court’s discretion whether to permit non-parties to file briefs as *amici*
12 *curiae*, and the Supreme Court has long counseled that courts should grant permission
13 liberally. *See N. Sec. Co. v. United States*, 191 U.S. 555, 555–56 (1903). A ruling in this
14 case can, and is likely to affect rulings in many other cases the DOJ has filed under the All
15 Writs Act seeking similar relief. *See In re Order Requiring Apple, Inc. to Assist in the*
16 *Execution of a Search Warrant Issued by This Court*, No. 1:15-mc-01902-JO (E.D.N.Y.
17 Feb. 29, 2016), ECF No. 29 at 28 (Orenstein, J.) (noting that there are about a dozen
18 additional cases pending in which the government seeks to compel Apple to province
19 assistance bypassing the security on Apple devices).

20 In this case, the Court should grant the Law Professors’ motion to file an *amicus*
21 *curiae* brief because this case presents novel issues that involve particularly complex
22 analysis of information security, technology law, criminal law, constitutional law, and
23 statutory laws governing the bounds of the government’s power to conscript third parties’
24 assistance in criminal investigations—areas in which the Law Professors are experts. The
25 Law Professors’ brief is not duplicative of either party’s brief. Many of the signatory Law
26 Professors have published extensively regarding the All Writs Act (“AWA”), CALEA
27 (“Communications Assistance for Law Enforcement Act”), and ECPA (“Electronic
28

1 Communications Privacy Act”), each of which is critical to analysis of this case. Feldman
2 Decl. ¶ 5. The Law Professors are therefore able to provide the Court a greater depth of
3 history and perspective on the AWA, CALEA, and ECPA than may be available in the
4 parties’ briefs.

5 Many of the signatory Law Professors have also published and taught Fourth
6 Amendment issues, criminal law, and other legal frameworks relevant to this case. *Id.* ¶ 6.
7 Therefore, the Law Professors may provide a broader context for the legal backdrop on
8 which the government proceeds, and may raise and explain issues that the parties have not
9 raised for practical or strategic purposes.

10 The Law Professors have a professional interest in matters of constitutional
11 importance, concern for privacy interests globally, and the security of technical
12 infrastructure that many in this country depend on as well as encouraging creativity and
13 innovation, and to support the public interest in the exercise of sound policy.

14 For these reasons, The Law Professors respectfully asks the Court to grant leave to
15 file the accompanying brief of *amicus curiae* in support of Apple.

16 Dated: March 2, 2016

DURIE TANGRI LLP

17
18 Bv:



MICHAEL A. FELDMAN

Attorneys for *Amicus Curiae*

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On March 3, 2016, I served the following documents in the manner described below:

MOTION OF NONPARTY LAW PROFESSORS FOR LEAVE TO FILE PROPOSED AMICUS CURIAE BRIEF

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at San Francisco, California.
- (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Durie Tangri LLP for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.
- BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from mfeldman@durietangri.com to the email addresses set forth below.
- (BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the offices of each addressee below.

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Attorneys for USA

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 3, 2016, at San Francisco, California.


MICHAEL A. FELDMAN

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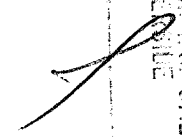
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20 35KGD203.

Case No. CM 10-16-SP

**DECLARATION OF MICHAEL A.
FELDMAN IN SUPPORT OF MOTION
OF NONPARTY LAW PROFESSORS
FOR LEAVE TO FILE PROPOSED
AMICUS CURIAE BRIEF**

Date: March 22, 2016
Time: 1:00 p.m.
Ctrm: 3 or 4 - 3rd Floor
Judge: Honorable Sheri Pym

2016 MAR -3 PM 4:06
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT CALIF.
MAYBRIE
BY: 

FILED

1 I, Michael A. Feldman, declare as follows:

2 1. I am an attorney with the law firm of Durie Tangri LLP, and I am one of the
3 attorneys representing nonparty Law Professors. I have personal knowledge of the facts
4 set forth herein, and if called upon to testify, I could and would testify competently and
5 completely to the statements made herein.

6 2. I submit this declaration in support of Nonparty Law Professors for Leave To
7 File Proposed *amicus curiae* Brief. A list of signatory Law Professors is attached as
8 **Exhibit A** and also appears on the signature page of the proposed *amicus curiae* brief
9 itself.

10 3. Apple consents to the Law Professors filing the proposed *amicus curiae* brief.

11 4. The government does not oppose the Law Professors filing the proposed
12 *amicus curiae* brief.

13 5. Many of the signatory Law Professors have published extensively regarding
14 the All Writs Act (“AWA”), CALEA (“Communications Assistance for Law Enforcement
15 Act”), and ECPA (“Electronic Communications Privacy Act”).

16 6. Many of the signatory Law Professors have also published and taught Fourth
17 Amendment issues, criminal law, and other legal frameworks relevant to this case.

18 I declare under penalty of perjury under the laws of the United States of America
19 that the foregoing is true and correct. Executed this 2nd day of March, 2016, at San
20 Francisco, California.

21 
22 MICHAEL A. FELDMAN

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On March 3, 2016, I served the following documents in the manner described below:

DECLARATION OF MICHAEL A. FELDMAN IN SUPPORT OF MOTION OF NONPARTY LAW PROFESSORS FOR LEAVE TO FILE PROPOSED AMICUS CURIAE BRIEF

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Attorneys for USA

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 3, 2016, at San Francisco, California.


MICHAEL A. FELDMAN

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Distinguished Professor
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Faculty Director, Entrepreneurship Law Clinic
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University of North Carolina School of Law

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