


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Marcia Hofmann (Cal. Bar No. 250087)  
Zeitgeist Law PC  
25 Taylor Street  
San Francisco, CA 94102  
Telephone: (415) 830-6664  
marcia@zeitgeist.law

Attorney for Amici Curiae  
Access Now and Wickr Foundation

**FILED**  
2016 MAR -2 PM 1:37  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE  
BY: 

*lodged  
3/0*

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

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

Case No. 5:16-cm-00010-SP-1

**APPLICATION FOR LEAVE TO  
FILE BRIEF OF AMICI CURIAE  
ACCESS NOW AND WICKR  
FOUNDATION IN SUPPORT OF  
APPLE INC.'S MOTION TO  
VACATE**

Date: March 22, 2016  
Time: 1:00 p.m.  
Place: Courtroom 3 or 4, 3<sup>rd</sup> Floor  
Judge: Honorable Sheri Pym

**ORIGINAL**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Access Now and Wickr Foundation hereby seek leave to file an amici curiae brief in support of Apple Inc.’s motion to vacate an order compelling Apple to assist government agents in the search of an iPhone. This application is supported by the proposed amici curiae brief and proposed order.

Amici are non-profit civil society organizations dedicated to supporting digital rights and championing private communications throughout the world. Amici’s proposed brief seeks to inform the Court about the impact that the intentional weakening of digital security would have on global human rights.

The government claims that this case is about a single iPhone, and that the software solution it wants Apple to create will do nothing to weaken encryption. In reality, this case could set precedent for law enforcement to demand that any technology company deliberately impair the security of its products or services, and has potential to do far-reaching harm.

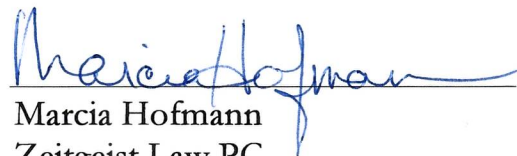
Technology and connectivity have empowered millions around the world to demand social and political change—but criminals and authoritarian regimes exploit the same technology to identify and persecute protesters, democracy activists, bloggers, and journalists. In some countries, reliable security tools such as encryption can be the difference between life and death. The relief sought by the government endangers people globally who depend on robust digital security for their physical safety and wellbeing.

1 Pursuant to international law, the United States government has a duty to foster  
2 basic human rights such as freedom of expression and privacy. The assistance sought by  
3 the government not only undermines the commitment of the United States to uphold  
4 those fundamental rights in the digital age, but also keeps Apple from fulfilling its own  
5 responsibilities to respect the human rights of users.  
6

7 Counsel for amici has contacted Apple Inc. and the United States to ask their  
8 positions on this proposed amici curiae brief. The parties have both indicated that they  
9 do not object to the filing of this brief.  
10

11  
12 DATED: March 1, 2016

Respectfully submitted,

13  
14 

15 Marcia Hofmann  
16 Zeitgeist Law PC  
17 25 Taylor Street  
18 San Francisco, CA 94102  
19 marcia@zeitgeist.law  
20 Telephone: (415) 830-6664

21  
22 Attorney for Amici Curiae  
23 Access Now and Wickr Foundation  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I, the undersigned, declare that I am a citizen of the United States; my business address is 25 Taylor Street, San Francisco, California 94102; I am employed in the City and County of San Francisco; I am over the age of eighteen (18) years and not a party to the within action.

On March 1, 2016, I served the foregoing document described as:

- **Application for Leave to File Brief of Amici Curiae Access Now and Wickr Foundation in Support of Apple Inc.’s Motion to Vacate**

on the interested party(ies) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Theodore J Boutrous, Jr.  
Eric David Vandevelde  
Gibson Dunn and Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
213-229-7000

Allen W Chiu  
AUSA - Office of US Attorney  
National Security Section  
312 North Spring Street, Suite 1300  
Los Angeles, CA 90012  
213-894-2435

Marc J Zwillinger  
Jeffrey G Landis  
Zwillgen PLLC  
1900 M Street NW Suite 250  
Washington, DC 20036  
202-296-3585

Tracy L Wilkison  
AUSA Office of US Attorney  
Chief, Cyber and Intellectual Property Crimes  
Section  
312 North Spring Street, 11th Floor  
Los Angeles, CA 90012-4700  
213-894-0622

Nicola T Hanna  
Gibson Dunn and Crutcher LLP  
3161 Michelson Drive 12th Floor  
Irvine, CA 92612-4412  
949-451-3800

Counsel for Plaintiff USA

Theodore B Olson  
Gibson Dunn and Crutcher LLP  
1050 Connecticut Avenue NW  
Washington, DC 20036-5306  
202-955-8668


Counsel for Respondent Apple Inc.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BY MAIL: I caused such envelope(s), fully prepaid, to be placed in the United States mail at San Francisco, California. I am “readily familiar” with this firm’s practice for collection and processing of correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service the same day, with postage thereon fully prepaid, at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date on postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: March 1, 2016

  
Stephanie Shattuck

1 Peter Bibring (SBN 223981)  
2 pbibring@aclusocal.org  
3 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
4 OF SOUTHERN CALIFORNIA  
5 1313 West Eighth Street  
6 Los Angeles, CA 90017  
7 Telephone: (213) 977-9500

8 Alex Abdo  
9 Esha Bhandari  
10 Eliza Sweren-Becker\*  
11 Brett Max Kaufman  
12 aabdo@aclu.org  
13 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
14 125 Broad Street, 18th Floor  
15 New York, NY 10004  
16 Telephone: (212) 549-2500

17 \*Admission to the bar pending  
18 Additional counsel listed on signature page

19 Attorneys for Proposed *Amici Curiae*

20 **UNITED STATES DISTRICT COURT**  
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 IN THE MATTER OF THE SEARCH ) ED No. CM 16-10 (SP)  
23 OF AN APPLE IPHONE SEIZED )  
24 DURING THE EXECUTION OF A ) **APPLICATION OF AMERICAN**  
25 SEARCH WARRANT ON A BLACK ) **CIVIL LIBERTIES UNION OF**  
26 LEXUS IS300, CALIFORNIA ) **SOUTHERN CALIFORNIA ET**  
27 LICENSE PLATE 35KGD203. ) **AL. TO FILE BRIEF OF AMICI**  
 ) **CURIAE; PROPOSED BRIEF**

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

BY \_\_\_\_\_  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE

2016 MAR -2 PM 3:00

FILED  
L. J. G. (proposed)

1           **APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE**

2           Proposed *amici curiae* the American Civil Liberties Union (“ACLU”),  
3 ACLU of Southern California, ACLU of Northern California, and ACLU of San  
4 Diego and Imperial Counties, by and through undersigned counsel, hereby move  
5 the Court for leave to file the attached Brief of *Amici Curiae* in the above-  
6 captioned case.

7           In support of this motion, proposed *amici* state the following:

8           The disposition of this case is of critical importance to Americans’ privacy  
9 and cybersecurity because the government seeks to compel a technology  
10 company to create software designed to weaken the security of its own devices—  
11 an effort that, if successful, would set precedent implicating the security and  
12 privacy of hundreds of millions of Americans. This case raises both statutory and  
13 constitutional questions regarding the limits of law enforcement authority to  
14 compel private parties to assist in investigations.

15           Proposed *amici* argue that the request is not authorized by the All Writs  
16 Act because the Act does not permit the government to force innocent third  
17 parties to turn over information not already in their possession or control, because  
18 the assistance the government seeks is unreasonably burdensome and  
19 unnecessary, and because Congress has deliberately withheld from the  
20 government the authority to require technology companies to circumvent the  
21 security protections in their devices. Proposed *amici* also argue that the order the  
22 government seeks violates the Fifth Amendment, and that principles of  
23 constitutional avoidance counsel against granting the government’s request.

24           Proposed *amici* frequently appear as direct counsel or *amicus curiae* in  
25 cases raising similar legal issues to those here.

26           Proposed *amicus* the American Civil Liberties Union is a nationwide,  
27 nonprofit, nonpartisan organization with approximately 500,000 members

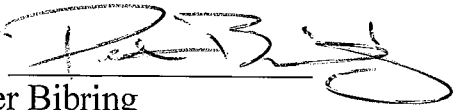
1 dedicated to the principles of liberty and equality embodied in the Constitution  
 2 and this nation's civil rights laws. Since its founding in 1920, the ACLU has  
 3 frequently appeared before the Supreme Court and other federal courts, both as  
 4 direct counsel and as *amicus curiae*, in numerous cases implicating Americans'  
 5 right to privacy. The ACLU and its members have long been concerned about the  
 6 impact of new technologies on constitutional rights. The ACLU is particularly  
 7 concerned with protecting the lawful use of strong encryption technologies, which  
 8 are essential to preserving the constitutional guarantees of privacy, free  
 9 expression, and anonymity in the digital age. The ACLU of Southern California,  
 10 the ACLU of Northern California, and the ACLU of San Diego and Imperial  
 11 Counties are the geographic affiliates in California of the ACLU.

12  
 13 Counsel for *amici curiae* states that no counsel for a party authored this  
 14 brief in whole or in part, and no person other than *amici curiae*, their members, or  
 15 their counsel made a monetary contribution to its preparation or submission.

16 Wherefore, proposed *amici* respectfully request leave to file the attached  
 17 Brief of *Amici Curiae*, to aid this Court in its consideration and resolution of the  
 18 issues in this case.

19 March 2, 2016

Respectfully Submitted,

20 By:   
 21 Peter Bibring

22 ACLU OF SOUTHERN  
 23 CALIFORNIA  
 24 pbibring@aclusocal.org  
 25 1313 West Eighth Street  
 26 Los Angeles, CA 90017  
 27 Telephone: (213) 977-9500



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Alex Abdo  
Esha Bhandari  
Eliza Sweren-Becker\*  
Brett Max Kaufman  
aabdo@aclu.org  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
125 Broad Street, 18th Floor  
New York, NY 10004  
Telephone: (212) 549-2500

Linda Lye (SBN 215584)  
llye@aclunc.org  
ACLU OF NORTHERN  
CALIFORNIA  
39 Drumm Street, 2nd Floor  
San Francisco, CA 94111  
Telephone: (415) 621-2493

David Loy (SBN 229235)  
davidloy@aclusandiego.org  
ACLU OF SAN DIEGO AND  
IMPERIAL COUNTIES  
San Diego, CA 92138  
Telephone: (619) 232-2121

\*Application for admission to the bar  
pending

Attorneys for *amici curiae*

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is ACLU of Southern California, 1313 West 8th Street, Los Angeles, CA 90017.

On March 2, 2016, I caused to be served through mail (USPS) and e-mail the foregoing document described as:

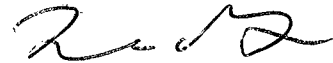
**APPLICATION OF AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA ET AL. TO FILE BRIEF OF AMICI CURIAE; PROPOSED BRIEF**

on each person on the attached Service List.

Executed on March 2, 2016, in Los Angeles, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Diana Gonzalez



Print Name

Signature

**Service List**

Service Type	Counsel Served	Party
Mail & E-mail	<b>Theodore J. Boutrous, Jr.</b> <b>Nicola T. Hanna</b> <b>Eric D. Vandeveld</b> Gibson, Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071-3197 Telephone: (213) 229-7000 Facsimile: (213) 229-7520	Apple, Inc.

	Email: <a href="mailto:tboutrous@gibsondunn.com">tboutrous@gibsondunn.com</a> <a href="mailto:nhanna@gibsondunn.com">nhanna@gibsondunn.com</a> <a href="mailto:evandevelde@gibsondunn.com">evandevelde@gibsondunn.com</a>	
Mail & E-mail	<b>Theodore B. Olson</b> Gibson, Dunn & Crutcher LLP 1050 Connecticut Avenue, N.W. Washington, DC, 20036-5306 Telephone: (202) 955-8500 Facsimile: (202) 467-0539 Email: <a href="mailto:tolson@gibsondunn.com">tolson@gibsondunn.com</a>	Apple, Inc.
Mail & E-mail	<b>Marc J. Zwillinger</b> <b>Jeffrey G. Landis</b> Zwillgen PLLC 1900 M Street N.W., Suite 250 Washington, D.C. 20036 Telephone: (202) 706-5202 Facsimile: (202) 706-5298 Email: <a href="mailto:marc@zwillgen.com">marc@zwillgen.com</a> <a href="mailto:jeff@zwillgen.com">jeff@zwillgen.com</a>	Apple, Inc.
Mail & E-mail	<b>Eileen M. Decker</b> <b>Patricia A. Donahue</b> <b>Tracy L. Wilkison</b> <b>Allen W. Chiu</b> 1500 United States Courthouse 7312 North Spring Street Los Angeles, California 90012 Telephone: (213) 894-0622/2435 Facsimile: (213) 894-8601 Email: <a href="mailto:Tracy.Wilkison@usdoj.gov">Tracy.Wilkison@usdoj.gov</a> <a href="mailto:Allen.Chiu@usdoj.gov">Allen.Chiu@usdoj.gov</a>	United States of America

ORIGINAL

LOGGED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Mark E. Haddad, SBN 205945  
mhaddad@sidley.com  
SIDLEY AUSTIN LLP  
555 West Fifth Street, Suite 4000  
Los Angeles, California 90013  
Telephone: +1 213 896-6000  
Facsimile: +1 213 896-6600

Eamon P. Joyce (*pro hac vice* motion forthcoming)  
ejoyce@sidley.com  
Nicholas M. McLean (*pro hac vice* motion forthcoming)  
SIDLEY AUSTIN LLP  
787 Seventh Avenue  
New York, New York 10019  
Telephone: +1 212 839-5300  
Facsimile: +1 212 839-5599

Attorneys for *Amicus Curiae* ACT | The App Association

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

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

) Case No. 5:16-CM-00010 SP  
)  
) **NOTICE OF MOTION AND**  
) **MOTION OF ACT | THE APP**  
) **ASSOCIATION FOR LEAVE TO**  
) **FILE AN *AMICUS CURIAE* BRIEF**  
) **IN SUPPORT OF APPLE INC.'S**  
) **MOTION TO VACATE ORDER**  
) **COMPELLING ASSISTANCE**

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

FILED  
Lodged Proposed  
2016 MAR -2 PM 3:38  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE  
BY \_\_\_\_\_

2016 MAR -2 PM 3:35  
U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT ACT | The App Association (“ACT”) re-  
3 spectfully requests leave to participate in this action as *amicus curiae* supporting Ap-  
4 ple Inc.’s (“Apple”) Motion to Vacate the Order Compelling Apple to Assist Agents  
5 in Search, and Opposition to the Government’s Motion to Compel Assistance (filed  
6 Feb. 25, 2016) [ECF Docket Entry 16]. *Amicus* requests leave to help explain the ex-  
7 traordinary burdens that the Government’s position would impose, and to discuss the  
8 disruption it threatens for a significant sector of the economy.

9 **I. STANDARD FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

10 “[A] district court has broad discretion to appoint *amici curiae*.” *Hoptowit v.*  
11 *Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). “There are no strict prerequisites that must  
12 be established prior to qualifying for *amicus* status although an individual or organi-  
13 zation seeking to participate as *amicus curiae* must make a showing that his partici-  
14 pation is useful to or otherwise desirable to the court.” *Congregation Etz Chaim v.*  
15 *City of Los Angeles*, No. CV 97-5042 CAS(EX), 2009 WL 1293257, at \*5 n.4 (C.D.  
16 Cal. May 5, 2009) (quoting *Infineon Techs. N. Am. Corp. v. Mosaid Techs., Inc.*, No.  
17 C 02-5772 JF(RS), 2006 WL 3050849, at \*3 (N.D. Cal. Oct. 23, 2006)). “An *amicus*  
18 brief should normally be allowed” when, among other considerations, “the *amicus*  
19 has unique information or perspective that can help the court beyond the help that the  
20 lawyers for the parties are able to provide.” *Cnty. Ass’n for Restoration of the Env’t*  
21 *(CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999) (cita-  
22 tion omitted). “District courts frequently welcome *amicus* briefs from non-parties  
23 concerning legal issues that have potential ramifications beyond the parties directly  
24 involved[.]” *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F.  
25 Supp. 2d 919, 925 (N.D. Cal. 2003).

26 As explained below and in ACT’s brief, the ramifications of the order to com-  
27 pel assistance obtained by the Government extend far beyond the parties directly in-  
28 volved and the issue of encryption. The Government’s position and the order’s

1 sweep should concern any company that uses proprietary methods to protect data pri-  
2 vacy and security, and ACT counts numerous such companies among its members.

## 3 **II. STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE***

4 ACT (formerly known as the Association for Competitive Technology) is an  
5 international grassroots advocacy and education organization representing more than  
6 5,000 small and mid-size app developers and information technology firms. It is the  
7 only organization focused on the needs of small business innovators from around the  
8 world. ACT advocates for an environment that inspires and rewards innovation  
9 while providing resources to help its members leverage their intellectual assets to  
10 raise capital, create jobs, and continue innovating. To this end, ACT has been closely  
11 monitoring recent developments in this case and others like it because of the signifi-  
12 cant implications for the interests of its members. In light of the critical role that  
13 technological innovation plays in enhancing competition and improving the welfare  
14 of consumers, ACT has a special interest in ensuring that federal law is properly ap-  
15 plied to dynamic industries and innovative technologies.

16 ACT has participated as *amicus curiae* in a number of cases involving techno-  
17 logical innovation. *See, e.g., United States v. Apple, Inc.*, No. 15-565 (U.S.) (pending,  
18 ACT's brief filed Dec. 2, 2015); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct.  
19 1962 (2014); *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003);  
20 *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (en banc) (per curiam).

## 21 **III. *AMICUS CURIAE*'S EXPERTISE WILL BENEFIT THE COURT**

22 Based on its strong interest in fostering innovation and protecting the interests  
23 of app developers and information technology firms, ACT believes that its perspec-  
24 tive will aid this Court in evaluating the motions filed by the Government and Apple.  
25 The Government has premised its All Writs Act arguments on the proposition that  
26 "compan[ies] that write[ ] software code as part of [their] regular business" can be  
27 compelled to "modify[ ] an operating system" or "writ[e] software code." *Ex Parte*  
28 *Application for Order Compelling Apple Inc. to Assist Agents at 15* (C.D. Cal. Feb.

1 16, 2016). ACT has substantial knowledge and a unique perspective regarding those  
2 issues, and submits that its participation as an *amicus* would assist the Court in as-  
3 ssuming the “potential ramifications beyond the parties directly involved,” *Sonoma*  
4 *Falls Developers*, 272 F. Supp. 2d at 925, and in particular would highlight the poten-  
5 tially devastating impact that the Government’s order may have for software devel-  
6 opers and across a number of critical industries.

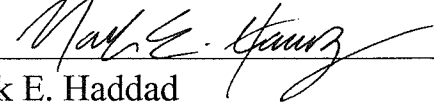
7 **IV. CONCLUSION**

8 Accordingly, ACT respectfully requests that the Court grant this Motion for  
9 Leave to Participate as *amicus curiae*, and to file the accompanying Brief in Support  
10 of Apple’s Motion to Vacate the Order Compelling Apple Inc. to Assist Agents in  
11 Search, and Opposition to the Government’s Motion to Compel Assistance.

12 ACT brings this motion after conferring with the parties’ counsel. Counsel for  
13 Apple and the United States indicated that they have no opposition to ACT | The App  
14 Association’s motion for leave to file its *amicus curiae* brief in support of Apple.

15 Dated: March 2, 2016

SIDLEY AUSTIN LLP  
Mark E. Haddad  
Eamon P. Joyce  
Nicholas M. McLean

17 By:   
18 \_\_\_\_\_  
19 Mark E. Haddad  
20 Attorneys for *Amicus Curiae*  
21 ACT | The App Association  
22  
23  
24  
25  
26  
27  
28