

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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

Docket Nos. 14 Cr. 387 (MKB)
15 Misc. 1902 (JO)

**DECLARATION OF ALEXANDER H. SOUTHWELL IN SUPPORT OF APPLE INC.'S
RESPONSE TO THE GOVERNMENT'S BRIEF IN SUPPORT OF ITS APPLICATION
FOR AN ORDER COMPELLING APPLE INC. TO ASSIST LAW ENFORCEMENT
AGENTS IN THE EXECUTION OF A SEARCH WARRANT**

I, Alexander H. Southwell, declare as follows:

1. I am an attorney licensed to practice law before this Court. I am a partner in the law firm of Gibson, Dunn & Crutcher LLP, and represent Apple Inc. in the above-captioned matter. I submit this declaration in support of Apple Inc.'s Response to the Government's Brief in Support of its Application for an Order Compelling Apple Inc. to Assist Law Enforcement Agents in the Execution of a Search Warrant. The following facts are true to the best of my knowledge and belief and, if called and sworn as a witness, I could and would testify competently to them.

2. Attached hereto as **Exhibit A** is a true and correct copy of a speech given by FBI Director James Comey at Kenyon College on April 6, 2016, titled *Expectations of Privacy: Balancing Liberty, Security, and Public Safety*, available at <https://www.fbi.gov/news/speeches/expectations-of-privacy-balancing-liberty-security-and-public-safety>. The speech was printed on April 15, 2016.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Wired article, *How the Feds Could Get into iPhones Without Apple's Help*, by Kim Zetter, originally published on March 2, 2016, available at <http://www.wired.com/2016/03/feds-might-get-iphones-without-apples-help/>. The article was printed on April 15, 2016.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Government's Status Report filed on March 28, 2016, in the case *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 #5KGD203*, Case No. 16-cm-00010-SP-1 (C.D. Cal.), filed at Docket Entry No. 209.

5. Attached hereto as **Exhibit D** is a true and correct copy of the Guardian article, *FBI Director Admits Apple Encryption Case Could Set Legal Precedent*, by Spencer Ackerman and Sam Thielman, originally published on February 25, 2016, available at <https://www.theguardian.com/technology/2016/feb/25/fbi-director-james-comey-apple-encryption-case-legal-precedent>. The article was printed on April 14, 2016.

6. Attached hereto as **Exhibit E** is a true and correct copy of the transcript of Testimony at the House Judiciary Committee Hearing on Encryption Security and Privacy, Panel 1, *Encryption Tightrope: Balancing Americans' Security and Privacy*, on March 1, 2016. The transcript was printed from Congressional Quarterly on March 2, 2016.

7. Attached hereto as **Exhibit F** is a true and correct copy of the transcript of Testimony at the House Select Committee on Intelligence Hearing on World Wide Threats on February 25, 2016. The transcript was printed from Congressional Quarterly on February 29, 2016.

8. Attached hereto as **Exhibit G** is a true and correct copy of the SF Gate article, *As Apple, FBI Spar, Feinstein Pushes Bill to Require Decryption*, by Sean Sposito and Carolyn Lochhead, originally published on April 8, 2016, available at <http://www.sfgate.com/business/article/As-Apple-FBI-spar-Feinstein-pushes-bill-to-7237590.php>. The article was printed on April 14, 2016.

9. Attached hereto as **Exhibit H** is a true and correct copy of the Apple Inc. document, *iOS Security: iOS 9.0 or later*, originally published in September 2015, available at https://www.apple.com/business/docs/iOS_Security_Guide.pdf.

10. Attached hereto as **Exhibit I** is a true and correct copy of the PCMag article, *iOS 7 Makes the iPhone More Secure than Ever*, by Max Eddy, originally published on September 13, 2013, available at <http://www.pcmag.com/article2/0,2817,2424408,00.asp>.

11. Attached hereto as **Exhibit J** is a true and correct copy of the letter from Assistant United States Attorney Karen Koniuszy to the Honorable Sterling Johnson, Jr., dated July 9, 2015, regarding the case *United States v. Djibo*, Case No. 15-CR-00088-SJ-1 (E.D.N.Y.), filed at Docket Entry No. 27.

12. Attached hereto as **Exhibit K** is a true and correct copy of the transcript of a hearing held on September 3, 2015, before the Honorable Sterling Johnson, Jr., on the defendant's motion to suppress in the case *United States v. Djibo*, Case No. 15-CR-00088-SJ-1 (E.D.N.Y.), filed at Docket Entry No. 65 on October 16, 2015.

13. Attached hereto as **Exhibit L** is a true and correct copy of the Government's Motion to Compel Apple Inc. to Comply with the Court's February 16, 2016 Order Compelling Assistance in Search filed on February 19, 2016 in the case *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 #5KGD203, Case No. 16-cm-00010-SP (C.D. Cal.), filed at Docket Entry No. 1.

14. Attached hereto as **Exhibit M** is a true and correct copy of the Washington Post article, *Proposal Seeks to Fine Tech Companies for Noncompliance with Wiretap Orders*, by Ellen Nakashima, originally published on April 28, 2013, available at https://www.washingtonpost.com/world/national-security/proposal-seeks-to-fine-tech-companies-for-noncompliance-with-wiretap-orders/2013/04/28/29e7d9d8-a83c-11e2-b029-8fb7e977ef71_story.html. The article was printed on February 23, 2016.

15. Attached hereto as **Exhibit N** is a true and correct copy of the Washington Post article, *Obama Faces Growing Momentum to Support Widespread Encryption*, by Ellen Nakashima and Andrea Peterson, originally published on September 16, 2015, available at https://www.washingtonpost.com/world/national-security/tech-trade-agencies-push-to-disavow-law-requiring-decryption-of-phones/2015/09/16/1fca5f72-5adf-11e5-b38e-06883aacba64_story.html.

16. Attached hereto as **Exhibit O** is a true and correct copy of the Declaration of Stacey Perino, Electronics Engineer, FBI. The Declaration was filed by the Government on March 10, 2016, in the case *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 #5KGD203*, Case No. 16-cm-00010-SP (C.D. Cal.), filed at Docket Entry No. 149-3.

17. Attached hereto as **Exhibit P** is a true and correct copy of the Washington Post opinion article, *Why The Fear Over Ubiquitous Data Encryption Is Overblown*, by Mike McConnell, Michael Chertoff, and William Lynn, originally published on July 28, 2015,

available at https://www.washingtonpost.com/opinions/the-need-for-ubiquitous-data-encryption/2015/07/28/3d145952-324e-11e5-8353-1215475949f4_story.html.

18. Attached hereto as **Exhibit Q** is a true and correct copy of a transcript of Emily Chang's interview with Attorney General Loretta Lynch at the RSA Conference on March 1, 2016. The transcript was printed from LexisNexis.

19. Attached hereto as **Exhibit R** is a true and correct copy of the transcript of Testimony at the House Judiciary Committee Hearing on Encryption Security and Privacy, Panel 2, *Encryption Tightrope: Balancing Americans' Security and Privacy*, on March 1, 2016. The transcript was printed from Congressional Quarterly.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on this 15th day of April, 2016 at New York, New York.



Alexander H. Southwell