

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

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

Docket Nos. 15-MC-1902(JO)  
14-CR-387(MKB)

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**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* FEDERAL LAW  
ENFORCEMENT OFFICERS ASSOCIATION, THE ASSOCIATION OF  
PROSECUTING ATTORNEYS, INC., AND THE DISTRICT ATTORNEYS  
ASSOCIATION OF THE STATE OF NEW YORK IN SUPPORT OF THE  
GOVERNMENT'S APPLICATION FOR AN ORDER COMPELLING APPLE INC.  
TO ASSIST LAW ENFORCEMENT AGENTS IN THE EXECUTION OF A  
SEARCH WARRANT**

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*Attorneys for Amici Curiae*

The Federal Law Enforcement Officers Association (“FLEOA”), the Association of Prosecuting Attorneys, Inc. (“APA”), and the District Attorneys Association of the State of New York, by and through undersigned counsel, hereby move the Court for leave to participate as *amici curiae* in this matter and to file the attached Brief in Support of the Government’s Application for an Order Compelling Apple Inc. To Assist Law Enforcement Agents In the Execution of a Search Warrant (the “Government’s Application”). Counsel for proposed *Amici* have contacted counsel for both parties to this matter, and neither the United States nor Apple, Inc. have objected to the filing of this brief.

In support of this motion, proposed *Amici* respectfully submit the following:

1. Members of the proposed *Amici* are law enforcement officers on the ground – police, investigators, prosecutors, and others – for whom the ability to extract data and evidence, from whatever sources are available, is a critical to solving crimes and upholding their obligations to protect the public. As such, *Amici* have a very strong interest in the outcome of this case.

2. Federal district courts have the authority to permit non-parties to participate in a case as *amici curiae*, and have broad discretion to determine whether or not to permit such participation. *See, e.g., McBeth v. Gabrielli Truck Sales, Ltd.*, 768 F.Supp.2d 392, 394 (E.D.N.Y. 2011).

3. As a general matter, courts typically permit amicus participation in the information offered is considered “timely and useful.” *Anderson v. Leavitt*, No. 03–cv–6115 (DRH)(ARL), 2007 WL 2343672, at \*2 (E.D.N.Y. Aug. 13, 2007) (*quoting Waste Mgmt. of Pennsylvania v. City of York*, 162 F.R.D. 34 (M.D.Pa.1995)). *Amici*’s Application meets both of these requirements.

4. First, proposed *Amici*’s Application is timely. Apple submitted its response to the Government’s Application on April 15, 2016. The Government’s reply is due on April 22, 2016. Proposed *Amici* are filing this Motion on April 21, 2016, in advance of the

Government's reply date and, thus, prior to the expiration of the briefing schedule set by the Court.

5. Second, courts have deemed *amicus* participation useful when a party has a special interest in or is particularly familiar with the issues in a case. *See Andersen*, 2007 WL 2343672, at \*2 (“An *amicus* brief should normally be allowed . . . when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.”) (*quoting Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir.1997) (Posner, J.); *see also McBeth*, 768 F.Supp.2d at 394 (“Participation will be granted where the proposed submission assists the court by, inter alia, providing a point of view that may not be available from the parties”) (citations omitted). Proposed *Amici*'s brief provides information regarding the importance of the data in question to law enforcement officers, who utilize exactly this type of cell phone extracted data on a daily basis to apprehend and prosecute criminals. Moreover, as officers on the ground, members of proposed *Amici* are particularly familiar with how this data has been used in the past and provide a unique perspective on the difficulties encountered by officers when faced with the inability to retrieve this vital information.

6. Moreover, the outcome of this case will have a tremendous impact on how law enforcement officers are able to carry out their mandates to promote law and order and preserve the peace. As this Court has stated, “the court is more likely to grant leave to appear as an *amicus curiae* in cases involving matters of public interest.” There is no question that this is such a matter.

Wherefore, proposed *Amici* request that the Court grant its Motion for Leave to File and allow them to participate as *amici curiae* by submitting a Brief in Support of the Government's Application.

DATED: April 21, 2016  
New York, NY

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of April, 2016, the foregoing Motion for Leave to File Brief of *Amici Curiae* Federal Law Enforcement Officers Association, Association of Prosecuting Attorneys, Inc., and the District Attorneys Association of the State of New York in Support of the Government's Application for an Order Compelling Apple Inc. to Assist Law Enforcement Agents in the Execution of a Search Warrant, along with its accompanying Brief of *Amici Curiae*, was filed electronically through the Court's CM/ECF system. Notice of this filing will be sent by e-mail to all counsel of record by operation of the Court's electronic filing system.

By: /s/ Joseph V. DeMarco  
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