

Another court weighs in on the iPhone battle

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In an order filed February 29, 2016, Judge James Orenstein, a federal magistrate judge in the Eastern District of New York, denied the U.S. government's request to force Apple to bypass security measures on an iPhone involved in a criminal investigation. The order comes in the wake of another high-profile dispute between Apple and the U.S. government related to the December 2015 shooting in San Bernardino, California. (For more information on this case, read our [recent post](#).)

The underlying question from San Bernardino to New York

Though not binding and factually distinguishable from the San Bernardino case, the recent decision by the magistrate judge in New York has been viewed as a [significant blow](#) to the government's arguments and is anticipated to impact several other cases across the country. This is largely due to the fact that both cases pose the same question: Can the 1789 [All Writs Act](#) (AWA) be used to give the government access to encrypted data stored on suspects' devices? [\[1\]](#)

Judge Orenstein's opinion

In both cases, the government has argued that the AWA empowers the court to require Apple to bypass the security measures on its devices. In rejecting this argument, Judge Orenstein concluded that the government failed to establish that the AWA permitted such relief. He further noted that even if the government satisfied the requirements of the AWA, such an order is within the discretion of the court, and discretion weighed in favor of denying the relief sought.

In his 50-page [memorandum and order](#), Judge Orenstein took specific care to detail why the government's interpretation of the AWA was not "agreeable to the usages and principles of law." Namely, he found that "[t]he government's interpretation of the breadth of authority the AWA confers on courts of limited jurisdiction . . . raises serious doubts about how such a statute could withstand constitutional scrutiny under the separation-of-powers doctrine."

He went on to say that while courts have the authority under the AWA to compel third parties to take action regardless of their involvement in underlying criminal conduct, such authority should only be exercised "under appropriate circumstances." In this case, he found that Apple's connection to the underlying case and investigation was not sufficient as to make such an order appropriate. [\[2\]](#)

Potential impact

While not binding, the detail of Judge Orenstein's decision may prove persuasive in other courts. The government has already stated its intention to appeal Judge Orenstein's order here, while Apple has vowed to appeal the decision in the San Bernardino case. Unless Congress passes legislation, the stage is set for a potential circuit split that could ultimately lead to Supreme Court review of the issue. Ultimately, this decision is another milestone related to the question of how involved the government can become in requiring private companies to produce private consumer information for government use. The answer to this question will continue to play out in court, and businesses across many industries would be wise to stay up to date on which side the courts take.

[1] There is one distinction between this case from New York and the one from California that could hold significance in future cases. Unlike the San Bernardino case, the phone here runs an earlier version of Apple's iOS operating system that allows Apple to pull information from the phone without having to unlock the phone. Apple has argued in San Bernardino that it does not currently possess the technology to access the data on its newest operating systems. In this case, however, Apple has previously complied with similar court orders to access data from phones running its older operating systems.

[2] An interesting side issue in this case pertained to mootness. The iPhone in this case was recovered pursuant to a warrant to search the home of a New York resident suspected of having involvement in drug trafficking. Interestingly, the suspect involved in the underlying case has already pleaded guilty. Nevertheless, Judge Orenstein agreed with the government that its request was not moot as a result of the guilty plea. Instead, he found that the government is free "to conduct lawful investigations into suspected criminal activity as it sees fit," and a ruling on the government's request would "therefore resolve a live dispute about whether Apple must unwillingly be compelled to provide the assistance the government seeks."

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