

Can The Government Unlock My Cell Phone? Part II: Federal Judge Says "Yes."

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Following up on our [recent post exploring the federal government's efforts to search cell phones](#), a U.S. magistrate judge recently issued an order requiring Apple Inc. to assist the Federal Bureau of Investigation (FBI) in unlocking an iPhone used by Syed Farook, one of the two individuals responsible for the mass shootings in San Bernardino, California. During the execution of a search warrant of Farook's vehicle, the FBI recovered a password-locked Apple iPhone 5C. See *In re Search of an Apple iPhone Seized During the Execution of a Search Warrant on a Black Lexus IS300, California License Plate 35KGD203*, No. 5:15-mj-00451, Dkt. No. 18 (C.D. Cal. Feb. 16, 2016). While the iPhone is actually owned by Farook's former employer, San Bernardino County, which consented to a search of the phone, no one other than Farook knew the passcode. The FBI apparently initially sought Apple's cooperation in unlocking the phone, but Apple declined. Farook's iPhone 5C contains a security measure that permanently locks the phone's data after ten incorrect passcode attempts. Unable to overcome this security measure, the government sought to compel Apple's assistance under the All Writs Act, 28 U.S.C. § 1651. *Id.* In its application, the government argued that the All Writs Act permitted the court to compel Apple's assistance because, first, Apple's unique product and security design meant that Apple was the only entity positioned to assist the FBI; second, that the order would not place an unreasonable burden on Apple; and third, that Apple's assistance was necessary to aid the FBI in overcoming the iPhone's security measures. *Id.* at 13-17. U.S. Magistrate Judge Sheri Pym agreed, and issued an order requiring that "Apple shall assist in enabling the search of a cellular telephone" by, principally, disabling the phone's security feature that locks the phone after ten incorrect passcode attempts. *Order Compelling Apple, Inc. to Assist Agents in Search*, No. 5:15-mj-00451, Dkt. No. 19 (C.D. Cal. Feb. 18, 2016). This would have the practical effect of permitting the FBI to repeatedly try different passcodes in an attempt to find the correct code, what is sometimes known as a "brute force attack." Apple has stated it will challenge the ruling, and may well raise many of the same arguments we covered in our [previous post](#), such as arguing the All Writs Act does not give the court the authority to issue the order or that compliance with the order would be unreasonably burdensome. Apple's first step will be to apply for relief to Judge Pym, and additional appeals will almost certainly follow one way or the other. We will closely monitor further developments in this case and in the area of data privacy and law enforcement at large.

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