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LAW BLOG

Judge Questions Legal Authority To Force Apple To Unlock iPhones

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YUYA SHINO/REUTERS

A federal judge raised concerns at a hearing Monday about how much legal authority the government has to compel Apple to unlock a criminal suspect's iPhone and access the user's data.

The judge's skepticism comes amid a national debate involving tech companies and the degree to which they can protect their customers' privacy from government.

In this case, Apple is contesting a search warrant from federal prosecutors to unlock an iPhone 5s that belonged to Jun Feng, a defendant in a meth conspiracy case who is scheduled to go on trial in three weeks. Mr. Feng has pleaded not guilty.

The iPhone's passcode made it impossible for Drug Enforcement Administration and Federal Bureau of Investigation agents to access the phone's contents, and only Apple has the capability to bypass the passcode without destroying the data within, prosecutors said.

Prosecutors from the Brooklyn U.S. Attorney's office say they have the authority to force Apple's compliance under the All Writs Act, which dates back to 1789 and gives courts broad authority to carry out their duties. Since Congress has not explicitly banned the government from seeking this type of help from tech companies, it's fair game under the law, prosecutors said.

However, U.S. Magistrate Judge James Orenstein took issue with that reasoning on Monday, questioning how far the government can stretch the All Writs Act. He expressed concerns about how this could impact the separation of powers between the legislative and judicial branches if judges can make determinations on emerging areas of law that haven't been fully debated in Congress.

"This proposed use...puts legislative authority away from Congress and puts it with the courts," said Judge Orenstein, at the hearing in Brooklyn federal court.

The judge raised hypotheticals for prosecutors to consider, including one where he suggested whether the government could force a company that manufactures lethal-injection drugs to help with an execution, even if that company was morally opposed to the death penalty.

“At some point, a private actor can say [they] don’t want to do this as a matter of conscience,” he added. “How far does the All Writs Act go?”

The legal dispute here is likely to inform a broader conversation over what role tech companies should play in helping law enforcement access customers’ data and devices. Apple’s lawyers have argued that complying with the order would hurt its trust with customers and tarnish the company’s brand.

Saritha Komatireddy, a Brooklyn federal prosecutor, pointed out that Apple’s decision to fight this search warrant is a “stunning reversal” from the company’s cooperation with law enforcement in the past. Since 2008, Apple has received at least 70 court orders of a similar nature and complied with all of them, a sign that these are routine requests that Apple processes, she said.

Marc Zwillinger, a lawyer for Apple, said this situation is unusual because the iPhone in question is in the possession of the government, not Apple — which means Apple is being “forced to become an agent of law enforcement.” He also said this is first time a court has invited Apple to submit its views on this matter.

There is “no indication Congress intended for the government to have this power,” Mr. Zwillinger said. “This is pushing the law to a new frontier.”

Judge Orenstein did question why Apple has never tried to challenge these court orders in the past if sharing customer data with the government is so damaging to the company’s reputation. “It just seems to me there’s a dog that didn’t bark here,” he said.

Both sides are expected to file additional briefs by Wednesday, and the judge is expected to make his decision soon after.

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