

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): _____ Caption [use short title] _____

Motion for: _____

Set forth below precise, complete statement of relief sought:

MOVING PARTY: _____
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: _____

MOVING ATTORNEY: _____
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: _____

Court-Judge/Agency appealed from: _____

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
 Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney: _____ Date: _____

Has service been effected? Yes No [Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:

CATHERINE O'HAGAN WOLFE, Clerk of Court

Date: _____

By: _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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IN RE: IN THE MATTER OF AN APPLICATION
OF THE UNITED STATES OF AMERICA FOR
AN ORDER AUTHORIZING THE RELEASE OF
HISTORICAL CELL-SITE INFORMATION

DECLARATION IN SUPPORT
OF MOTION TO WITHDRAW
APPEAL
Docket No. 11-3858

- - - - -X

DAVID C. JAMES declares, pursuant to 28 U.S.C. § 1746:

1. I am an Assistant United States Attorney in the Eastern District of New York. The United States is the appellant in this matter. I submit this declaration in support of the government's motion to withdraw the appeal.

2. This appeal arises from an order of the United States District Court for the Eastern District of New York denying the ex parte application of the United States pursuant to the Stored Communications Act for orders directing a cell-phone service provider to disclose cell-site-location records for a targeted cell phone.

3. The United States filed a notice of appeal from the district court's order on September 20, 2011. Pursuant to the government's scheduling notification letter, which the Court has so ordered, the government's brief would be due on January 5, 2012.

4. After further review of the case, in consultation with the Solicitor General's Office, the government has decided not to pursue this appeal. Accordingly, we now move to withdraw

the appeal.

5. Because this appeal arises from an ex parte application by the government in district court, there is no appellee on this appeal. However, the Electronic Frontier Foundation, the American Civil Liberties Union and the New York Civil Liberties Union have all been granted permission to file amicus curiae briefs. I have attempted to contact counsel for amici curiae by electronic mail to ascertain their position on this motion but, as of this writing, have not received any responses from them.

6. For the reasons stated, the government's motion should be granted.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Brooklyn, New York
December 15, 2011

/s/
DAVID C. JAMES

CERTIFICATE OF VIRUS SCANNING

It is hereby certified that the PDF version of this document has been scanned by Trend Micro Office Scan Version 7.3 for viruses and no virus has been detected.

Dated: Brooklyn, New York
December 15, 2011

/s/
Wendell Bennett
Legal Assistant
Appeals Division

CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served copies of the Motion Information Statement and Declaration for the United States by electronic mail on December 15, 2011.

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_____/s/
Wendell Bennett
Legal Assistant