Case: 11-3858 Document: 54 Page: 1 12/15/2011 474027 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:	OPPOSING PARTY:
□ Plaintiff □ Defendant □ Appellant/Petitioner □ Appellee/Respondent	
MOVING ATTORNEY:	OPPOSING ATTORNEY:
	vith firm, address, phone number and e-mail]
Court-Judge/Agency appealed from:	
Please check appropriate boxes:	FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:
Has movant notified opposing counsel (required by Local Rule 27.1 ☐ Yes ☐ No (explain):	): Has request for relief been made below? □ 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]
	Thus service been effected. = Tes = Two [Thunden proof of service]
	ORDER
IT IS HEREBY ORDERED THAT the motion is GR	ANTED DENIED.
	FOR THE COURT: CATHERINE O'HAGAN WOLFE, Clerk of Court
Date:	By:

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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:

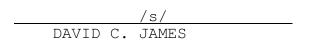
- 1. I am an Assistant United States Attorney in the Eastern District of New York. The United States is the appellant in this matter. I submit this declaration in support of the government's motion to withdraw the appeal.
- 2. This appeal arises from an order of the United States District Court for the Eastern District of New York denying the <a href="ex-parte">ex-parte</a> 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.

- 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



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## 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 Case: 11-3858 Document: 54 Page: 5 12/15/2011 474027 5

## 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.

Kevin Stuart Bankston, Esq. Hanni Meeni Fakhoury, Esq. Electronic Frontier Foundation 454 Shotwell Street San Franscisco, CA 94110 bankston@eff.org hanni@eff.org Amicus Curiae

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Amicus Curiae

/s/

Wendell Bennett Legal Assistant