



**ELECTRONIC FRONTIER FOUNDATION**  
Protecting Rights and Promoting Freedom on the Electronic Frontier

February 24, 2016

VIA CM/ECF

Ms. Catherine O'Hagan Wolfe, Clerk of Court  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, N.Y. 10007

**Re:** *United States of America v. Ross William Ulbricht,*  
No. 15-1815 (not yet scheduled for oral argument)

Dear Ms. Wolfe:

With the consent of both parties, the Electronic Frontier Foundation (“EFF”) respectfully requests to join the brief submitted by the National Association of Criminal Defense Lawyers (“NACDL”) as *amicus curiae* on January 19, 2016. (ECF 45).

EFF is a member-supported, non-profit civil liberties organization that has worked to protect free speech and privacy rights in the online and digital world for over 25 years. With roughly 26,000 active donors and dues-paying members nationwide, EFF represents the interests of technology users in both court cases and broader policy debates surrounding the application of law in the digital age.

As part of its mission, EFF places special emphasis on matters involving technology and the Fourth Amendment. EFF regularly participates as *amicus curiae* in cases involving the application of Fourth Amendment jurisprudence in light of the technological realities of the 21st century. By way of example, we participated as amicus in *Riley v. California*, 134 S. Ct. 999 (2014) (requiring a warrant to search a suspect’s cell phone incident to arrest); *United States v. Jones*, 132 S. Ct. 945 (2012) (holding that installation of GPS device is a search within the meaning of the Fourth Amendment). Additionally, EFF has submitted *amicus* briefs in Fourth Amendment cases currently pending before this court, namely *United States v. Ganius*, 755 F.3d 125 (2d. Cir. 2014) (*reh’g granted*, 791 F.3d 290 (2d. Cir. 2015)) (addressing whether government’s wholesale copying and later

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search of computer hard drives violates Fourth Amendment) and *Microsoft Corp. v. United States*, No. 14–2985 (2d. Cir.) (addressing Fourth Amendment implications of court order to produce records stored overseas).

In this case, the NACDL correctly called attention to the fact that the warrants used to search and seize Mr. Ulbricht's computer and his online accounts lacked the requisite specificity and particularity. By issuing a warrant for all files and accounts belonging to Ulbricht, the district court ignored the limiting principles enshrined in the Fourth Amendment's protection against unreasonable searches and seizures. As NACDL's brief argues, while "the application of the Fourth Amendment has changed, . . . its concern with privacy, expressed in the requirement of a limiting statement of particularity, has not and in the digital realm, should not." (ECF 45 at 5) (emphasis in original).

EFF agrees with these concerns and urges the Court to give them careful consideration as it considers Mr. Ulbricht's appeal in this case.

Respectfully submitted,

/s/Corynne McSherry

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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on February 24, 2016.

I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

*/s/ Corynne McSherry* \_\_\_\_\_

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