

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of January, two thousand seventeen.

PRESENT: ROBERT A. KATZMANN,
Chief Judge,
DENNIS JACOBS,
JOSÉ A. CABRANES,
ROSEMARY S. POOLER,
REENA RAGGI,
PETER W. HALL,
DEBRA ANN LIVINGSTON,
DENNY CHIN,
RAYMOND J. LOHIER, JR.,
SUSAN L. CARNEY,
CHRISTOPHER F. DRONEY,
Circuit Judges.

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In the Matter of a Warrant to Search a Certain E-Mail Account Controlled and
Maintained by Microsoft Corporation

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MICROSOFT CORPORATION,
Appellant,

UNITED STATES OF AMERICA,

Appellee.

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E. Joshua Rosenkranz, Orrick, Herrington & Sutcliffe LLP (Robert M. Loeb and Brian P. Goldman, Orrick, Herrington & Sutcliffe LLP, New York, NY; Guy Petrillo, Petrillo Klein & Boxer LLP, New York, NY; James M. Garland and Alexander A. Berengaut, Covington & Burling LLP, Washington, DC; Bradford L. Smith, David M. Howard, John Frank, Jonathan Palmer, and Nathaniel Jones, Microsoft Corp., Redmond, WA; *on the brief*), *for Microsoft Corporation.*

Justin Anderson, Assistant United States Attorney (Serrin Turner, Assistant United States Attorney, *on the brief*), *for* Preet Bharara, United States Attorney for the Southern District of New York, New York, NY.

Brett J. Williamson, David K. Lukmire, Nate Asher, O'Melveny & Myers LLP, New York, NY; Faiza Patel, Michael Price, Brennan Center for Justice, New York, NY; Hanni Fakhoury, Electronic Frontier Foundation, San Francisco, CA; Alex Abdo, American Civil Liberties Union Foundation, New York, NY; *for Amici Curiae* Brennan Center for Justice at NYU School of Law, American Civil Liberties Union, The Constitution Project, and Electronic Frontier Foundation, *in support of Appellant.*

Kenneth M. Dreifach, Marc J. Zwillinger, Zwillgen
PLLC, New York, NY and Washington, DC, *for*
Amicus Curiae Apple, Inc., in support of Appellant.

Andrew J. Pincus, Paul W. Hughes, Mayer Brown LLP,
Washington, DC, *for Amici Curiae BSA | The*
Software Alliance, Center for Democracy and
Technology, Chamber of Commerce of the United
States, The National Association of
Manufacturers, and ACT | The App Association,
in support of Appellant.

Steven A. Engel, Dechert LLP, New York, NY, *for*
Amicus Curiae Anthony J. Colangelo, in support of
Appellant.

Alan C. Raul, Kwaku A. Akowuah, Sidley Austin LLP,
Washington, DC, *for Amici Curiae AT&T Corp.,*
Rackspace US, Inc., Computer &
Communications Industry Association, i2
Coalition, and Application Developers Alliance,
in support of Appellant.

Peter D. Stergios, Charles D. Ray, McCarter & English,
LLP, New York, NY and Hartford, CT, *for Amicus*
Curiae Ireland.

Peter Karanjia, Eric J. Feder, Davis Wright Tremaine
LLP, New York, NY, *for Amici Curiae*
Amazon.com, Inc., and Accenture PLC, in support
of Appellant.

Michael Vatis, Jeffrey A. Novack, Steptoe & Johnson
LLP, New York, NY; Randal S. Milch, Verizon
Communications Inc., New York, NY; Kristofor T.

Henning, Hewlett-Packard Co., Wayne, PA; Amy Weaver, Daniel Reed, Salesforce.com, Inc., San Francisco, CA; Orin Snyder, Thomas G. Hungar, Alexander H. Southwell, Gibson, Dunn & Crutcher LLP, New York, NY; Mark Chandler, Cisco Systems, Inc., San Jose, CA; Aaron Johnson, eBay Inc., San Jose, CA, *for Amici Curiae* Verizon Communications, Inc., Cisco Systems, Inc., Hewlett-Packard Co., eBay Inc., Salesforce.com, Inc., and Infor, *in support of Appellant*.

Laura R. Handman, Alison Schary, Davis Wright Tremaine LLP, Washington, DC, *for Amici Curiae* Media Organizations, *in support of Appellant*.

Philip Warrick, Klarquist Sparkman, LLP, Portland, OR, *for Amici Curiae* Computer and Data Science Experts, *in support of Appellant*.

Owen C. Pell, Ian S. Forrester, Q.C., Paige C. Spencer, White & Case, New York, NY, *for Amicus Curiae* Jan Philipp Albrecht, Member of the European Parliament, *in support of Appellant*.

Owen C. Pell, Ian S. Forrester, Q.C., Paige C. Spencer, White & Case, New York, NY; Edward McGarr, Simon McGarr, Dervila McGirr, McGarr Solicitors, Dublin, Ireland, *for Amicus Curiae* Digital Rights Ireland Limited, National Council for Civil Liberties, and The Open Rights Group, *in support of Appellant*.

ORDER

Following disposition of this appeal, an active judge of the Court requested a poll on whether to rehear the case *en banc*.^{*} A poll having been conducted and there being no majority favoring *en banc* review, rehearing *en banc* is hereby **DENIED**.

Susan L. Carney, *Circuit Judge*, concurs by opinion in the denial of rehearing *en banc*.

Dennis Jacobs, *Circuit Judge*, joined by José A. Cabranes, Reena Raggi, and Christopher F. Droney, *Circuit Judges*, dissents by opinion from the denial of rehearing *en banc*.

José A. Cabranes, *Circuit Judge*, joined by Dennis Jacobs, Reena Raggi, and Christopher F. Droney, *Circuit Judges*, dissents by opinion from the denial of rehearing *en banc*.

Reena Raggi, *Circuit Judge*, joined by Dennis Jacobs, José A. Cabranes, and Christopher F. Droney, *Circuit Judges*, dissents by opinion from the denial of rehearing *en banc*.

Christopher F. Droney, *Circuit Judge*, joined by Dennis Jacobs, José A. Cabranes, and Reena Raggi, *Circuit Judges*, dissents by opinion from the denial of rehearing *en banc*.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, CLERK


Catherine O'Hagan Wolfe

^{*} The following active judges were recused from participating in the poll: Rosemary S. Pooler, Debra Ann Livingston, and Raymond J. Lohier, Jr.