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United States District Court,
S.D. New York.

In re Order Requiring [XXX], INC. to Assist in the Execution of a
Search Warrant Issued by This Court by Unlocking a Cellphone.

No. 14 Mag. 2258. | Signed Oct. 31, 2014.

Attorneys and Law Firms

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OPINION AND ORDER

[GABRIEL W. GORENSTEIN](#), United States Magistrate Judge.

*1 On October 10, 2014, the Government obtained a search warrant that authorized the Government to search the contents of a cellular telephone for evidence relating to credit card fraud. The cellphone had previously been seized incident to an arrest. The Government now reports that the phone is “locked”—apparently requiring a password to retrieve any of the information permitted under the search warrant. It has made an *ex parte* application pursuant to the All Writs Act, [28 U.S.C. § 1651](#), seeking an order that would compel the manufacturer of the cellphone to assist in the execution of the search warrant by “bypassing the lock screen.” Both the search warrant and the current application have been filed under seal.

The All Writs Act, originally enacted as part of § 14 of the Judiciary Act of 1789, *see* 1 Stat. 81–82, provides that federal courts “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” [28 U.S.C. § 1651\(a\)](#). The Supreme Court has recognized that “[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute.” *Pa. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985). The All Writs Act does not confer an independent basis of jurisdiction. *Syngenta Crop Prot., Inc. v. Hens on*, 537 U.S. 28, 33 (2002); *Sprint Spectrum L.P. v. Mills*, 283 F.3d 404, 413 (2d Cir.2002). Instead, it allows writs to issue that will aid courts in exercising their “existing statutory jurisdiction,” *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 333–34 (2d Cir.2006) (citation and internal quotation marks omitted), by supplying “courts with the instruments needed to perform their duty, as prescribed by the Congress and the Constitution,” *Harris v. Nelson*, 394 U.S. 286, 300 (1969) (citing *Price v. Johnston*, 334 U.S. 266, 282 (1948)); *accord Sprint Spectrum L.P.*, 283 F.3d at 413 (the All Writs Act “provides a tool courts need in cases over which jurisdiction is conferred by some other source”) (citation omitted). Thus, the All Writs Act permits a court, in its “sound judgment,” to issue orders necessary “to achieve the rational ends of law” and “the ends of justice entrusted to it.” *United States v. New York Telephone Co.*, 434 U.S. 159, 172–3 (1977) (citations and internal quotation marks omitted). Courts must apply the All Writs Act “flexibly in conformity with these principles.” *Id.* at 173; *accord United States v. Catoggio*, 698 F.3d 64, 67 (2d Cir.2012) (“[C]ourts have significant flexibility in exercising their authority under the Act.”) (citation omitted).

The Supreme Court case that most directly supports the application here is *United States v. New York Telephone Co.* In that case, the Supreme Court held that a district court had authority under the All Writs Act to issue an order requiring a telephone company to provide technical assistance to the Government in its effort to install a “pen register”—a device for recording the numbers dialed on a telephone. [434 U.S. at 172–75](#). It held that such an order was in aid of the district court's jurisdiction under [Fed.R.Crim.P. 41](#) to issue a search warrant. *Id.* at 168–70. *New York Telephone Co.* made clear that

*2 [t]he power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice.

Id. at 174. (internal citations omitted); accord *Ass'n for Retarded Citizens of Conn., Inc. v. Thorne*, 30 F.3d 367, 370 (2d Cir.1994) (court “may require the compliance of nonparties in order to ensure that its legally-mandated directives are not frustrated”); *In re Baldwin—United Corp.*, 770 F.2d 328, 338 (2d Cir.1985) (same). Thus, we conclude that it is appropriate to order the manufacturer here to attempt to unlock the cellphone so that the warrant may be executed as originally contemplated. See *United States v. Fricosu*, 841 F.Supp.2d 1232, 1238 (D.Colo.2012) (order issued under All Writs Act requiring defendant to provide password to encrypted computer seized pursuant to a search warrant).

We are mindful that the “the power of federal courts to impose duties upon third parties is not without limits.” *N.Y. Tel. Co.*, 434 U.S. at 172. Thus, a court may not impose “[u]nreasonable burdens” upon them. *Id.*; accord *United States v. Doe*, 537 F.Supp. 838, 839 (E.D.N.Y.1982) (All Writs Act extends to third parties its it0 -1 3. (its) alres it0 -1 3. 9 . (it0 -1 10 Tf 1-1 453.39001465es1 0 0 3900