



Via ECF

January 28, 2025

Honorable Katherine Polk Failla
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *USA v. Storm*, 23-cr-00430-KPF

Dear Judge Failla,

The Electronic Frontier Foundation (“EFF”) respectfully moves for leave to file the accompanying amicus curiae brief in support of Roman Storm’s motion for reconsideration of his motion to dismiss.¹ Defendant consents to this filing. The Government takes no position on EFF’s motion.

Founded in 1990 and supported by over 30,000 members, the Electronic Frontier Foundation is the largest and oldest digital civil liberties organization in the world.² One of EFF’s longstanding concerns has been the careful application of criminal law to new technologies, especially as it impacts internet users, innovators, and security researchers. Additionally, as part of its Coders’ Rights Project, EFF offers pro bono legal services to researchers engaged in cutting-edge exploration of technology whose work in the public interest may be unjustly chilled by the overbroad application of criminal laws. EFF has also served as counsel or amicus curiae in key cases addressing computer crime statutes.³

¹ No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person other than the amicus curiae or its counsel contributed money that was intended to fund preparing or submitting this brief.

² EFF, by its attorneys, hereby states that it is a corporation organized under Section 501(c)(3) of the Internal Revenue Code. EFF does not have a parent corporation, and no publicly held company has a 10 percent or greater ownership interest in it.

³ These include *Van Buren v. United States*, 593 U.S. 374 (2021) (amicus); *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F. 4th 1180 (9th Cir. 2022); *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012) (“Nosal I”) (en banc) (amicus); *United States v. Nosal*, 844 F.3d 1024 (9th Cir. 2016) (“Nosal II”) (amicus); *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058

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EFF has a particular concern about protecting the development of tools that advance people's privacy and security from overbroad application of criminal laws. Although this case concerns a privacy tool for those using cryptocurrencies, the government's prosecution raises larger civil liberties concerns that could chill the future development of privacy enhancing technologies more broadly.

EFF's proposed amicus brief will help the court evaluate the implications of the government's arguments in the context of the broader need to protect the development of dual-use technologies aimed at protecting privacy and security. Although such tools can also be misused to hide criminal activities, the government must be careful in its criminal prosecutions to avoid overreaching and chilling the creation of tools that are used to enhance people's privacy. EFF believes that the government has stretched the criminal laws at issue here too far. If the government believes it is appropriate to criminalize these technologies, it must seek relief from Congress and not rely on IEEPA and the other laws deployed in this prosecution, or, worse, attempt to bootstrap ancillary activities even further removed from any criminal acts into the ambit of these laws.

Respectfully submitted,

/s/ Mitchell L. Stoltz

Mitchell L. Stoltz

Electronic Frontier Foundation
815 Eddy Street
San Francisco, CA. 94109
Tel.: (415) 436-9333
mitch@eff.org

Counsel for Electronic Frontier Foundation

cc: All counsel via ECF

(9th Cir. 2016) (amicus); *United States v. Valle*, 807 F.3d 508 (2d Cir. 2015) (amicus); and *United States v. Auernheimer*, 748 F.3d 525 (3d Cir. 2014) (appellate co-counsel); *United States v. Cioni*, 649 F.3d 276 (4th Cir. 2011) (amicus); *Craigslis, Inc. v. 3Taps, Inc.*, 964 F. Supp. 2d 1178 (N.D. Cal. 2013) (amicus); *United States v. Drew*, 259 F.R.D. 449 (C.D. Cal. 2009) (amicus).