



U.S. Department of Justice

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District of Columbia

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Via Email and FedEx

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Re: *United States v. Ethan Nordean et al.*, Cr. No.: 21-cr-175 (TJK)

Dear Counsel:

We write to memorialize productions related to the above captioned case as part of the government's ongoing efforts to produce discovery.

Productions via Relativity

As of May 3, 2022, materials from the FBI case files of defendants Nordean Ethan Nordean (CAPD_000437282 - CAPD_000442093) and Rehl (CAPD_000435164 - CAPD_000435197, CAPD_000442094 - CAPD_000443218) were made available via the FPD Relativity Database. On the same date, materials from the FBI case file of Ronald Loehrke (CAPD_000435207 - CAPD_000437228) were made available. We are noting the production of the Loehrke materials as part of our ongoing effort to make cross discovery available for your review. *See* ECF 353 (Gov. Opp. at 2-4). As additional materials are made available via the FPD Relativity Database, we will alert you and direct you to those materials.

Under separate cover, we are providing a letter from the Chief of our Office's Discovery Unit memorializing Global Discovery Production No. 15, which includes materials made available via the FPD Relativity Database. Please note this letter reflects the recent addition of Nordean, Rehl, and Loehrke materials to the database.

Productions Via USAfx

Through the Cross Discovery folder in USAfx, we have produced a collection of documents related to the prosecution of defendant Tarrío in D.C. Superior Court for destruction of a Black Lives Matter flag on December 12, 2020, and possession of large capacity magazines. These documents include:

- Misdemeanor Warrant
- Misdemeanor Information
- Felony Complaint
- Felony Affidavit
- Suppelmental Felony Affidavit
- Stay Away Order
- Initial Appearance Transcript
- Guilty Plea Transcript
- Judgment and Commitment Orders
- Booking / Detention Information
- An open source video of the charged destruction of property

Insofar as these documents contain personal identifying information of Tarrío, they are designated Highly Sensitive under the protective orders.

Through the Cross Discovery folder in USAfx, and in response to an inquiry from counsel for defendant Rehl, we have also produced FD-302s of interviews of Louis Colon, who pled guilty in Case No. 21-cr-160. These documents are designated Highly Sensitive under the protective orders. A recorded interview of Colon is also being produced as part of the materials described below that are being produced via hard drive.

Please note that, as we have explained on several occasions, USAfx is a file transfer system and is not meant for storing data indefinitely. Accordingly, you should download materials provided via USAfx to your own drive or drives for your use in this case and not rely on material remaining on USAfx indefinitely. Over the course of this case, we have re-uploaded to USAfx materials that were previously made available to earlier counsel so that newer counsel are able to download the same materials. Thus, all or nearly all of the earlier USAfx productions are currently available on the system. If there are specific items of discovery that you have not downloaded or cannot locate for some reason, please let us know and we can attempt to assist you in obtaining copies.

Productions via Hard Drives

As we have explained in prior letters and filings (*see e.g.*, ECF 353 at 3), the government is making case-specific and cross discovery productions through the searchable FPD Relativity Database. As we have also noted, however, even as certain materials (for example, scoped search warrant returns) are obtained from the FBI and processed for inclusion in the FPD Relativity Database, the government has offered to produce preliminary copies of that material via hard drives.¹ Today, we are sending by FedEx to each counsel a 4TB hardware-encrypted hard drive containing such materials obtained from the FBI case files of the defendants in this case and additional individuals whose case file materials may be relevant. To expedite production of this material to you, we are designating the materials provided on the hard drive as Highly Sensitive.

To ensure consistency, our production of these materials largely maintains the FBI's labeling and organization. Accordingly, folders on the hard drive are labeled with the unique identifier of the FBI case file or subfile from which the materials were obtained. For your convenience, the name of the individual associated with a file or subfile has been added to the folder name in parentheses after the case file. In some instances an individual may have more than one case file or subfile associated with him or her (usually from different FBI field offices).²

In previous productions you have received numerous serials (for example, FD-302s or ECs) from various FBI case files, including but not limited to the case files of each of your clients. As you likely know, in the FBI's recordkeeping system, additional items—attachments to serials and evidentiary items—are assigned an identifier beginning with the characters "1A," "1B," or "1D," followed by a number. These identifiers are unique *within* a given case file, but are not unique *between* case files. For example, a Nordean case file might contain a piece of evidence designated 1B5, and a Biggs case file might contain a different piece of evidence designated 1B5. Therefore, to accurately identify an item of evidence it is necessary to provide both the case file number and the item number — for example, "item 1B5 from case file 266O-SE-3380382 (Nordean)."

As you may know, although certain 1A items are "digital" and accompany FBI serials within the FBI's electronic systems, other 1A attachments are "physical" and exist outside of those systems—typically as hard copies of documents or digital evidence stored on external media—as do 1B and 1D items. (For "physical 1A" items, a physical attachment "cover sheet" is stored in the FBI's electronic systems.) The 1A items we are providing on the hard drive are, in the main, copies of 1A physical items, as well as 1B and 1D items, that the FBI created or gathered during its investigation and made available to us for production in discovery. To assist your review of

¹ As you are aware, the government has repeatedly requested that defense counsel return hard drives previously provided by the government, after counsel have copied the materials produced on those drives. We again make that request here.

² Certain materials are being provided from an FBI case file titled "100T-WF-3414040" and subfiles with the same prefix. This file and subfiles are separate from those that are associated with individual subjects; the contents, as identified on the index and in the files themselves, may be relevant to your client's case and are therefore being made available for your review.

the 1A, 1B, and 1D items provided on the hard drive, we have included with those items the FBI case file serial or serials associated with that item, as well as, in some instances, additional 1A items (including digital items) that we believe may assist your review.

For your convenience, we have also included on the hard drive certain materials that were produced either through USAfx or on prior drives. Based on the detailed index provided with the materials and the naming conventions of the materials, we expect that identifying the nature of the materials (including those previously made available) will be straightforward, even as these same materials are also processed for production through the searchable FPD Relativity Database.

The index accompanying the hard drives contains the following fields:

- Case Number (This is name of the unique FBI case file or subfile from which the listed item was obtained.)
- Subject (This is the name of the subject associated with the case file or subfile, as provided by the FBI.)
- 1A/1B/1D (This field identifies the 1A/1B/1D categorization of the item)
- Item Number (This provides specific 1A/1B/1D number of an item. Thus, an item labeled 1A4 in the production would be listed on the index as having a 1A/1B/1D designation of “1A” with Item Number 4.)
- FBI Data Description (This information is provided by FBI and typically describes the item.)
- Description for Counsel (We have added this field to provide an additional description of items to assist your review. Note that, in the files themselves, we have included this description as part of the folder name of the item.)

To further assist your review, we are providing the following additional information regarding certain materials:

- Note that item 1A5 in 100T-WF-3414040-SUB_A_VIDEO contains open source videos obtained by the FBI. Among these videos, which were previously produced in the CAPVID series is the YouTube video titled “MoSD brief youtube.mp4,” which was recently reproduced (on March 15, 2022) in response to an inquiry for counsel for defendant Biggs.
- Item 1B4 in 100T-WF-3414040-SUB_A_VIDEO is a copy of Nicholas Qusted media files provided to the FBI by Qusted. On September 21, 2021, the government produced in discovery to defendants Nordean, Biggs, Rehl, and Donohoe files obtained from Qusted, and re-produced those files to defendants Tarrío and Pezzola on April 20, 2022. Item 1B4 comprises a larger set of files provided on a separate occasion by Qusted. With reference to the allegations in the Second Superseding Indictment, we would draw your attention to the range of files spanning ML_DC_20210105_Sony_FS5_Clip0029.mov through ML_DC_20210105_Sony_FS5_Clip0036.mov. Included with these items are FD-302s memorializing interviews of Qusted.

