

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION – FELONY BRANCH**

THE UNITED STATES OF AMERICA	:	Criminal Nos.	2017 CF2 001147
	:		2017 CF2 001247
v.	:		2017 CF2 001251
	:		2017 CF2 001257
NATHANIEL H. JAFFE, et al.	:		2017 CF2 001258
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: Judge Lynn Leibovitz

**GOVERNMENT’S MOTION FOR A PROTECTIVE ORDER  
REGARDING DISCOVERY OF CELL PHONE DATA**

The United States of America by and through its attorney, the United States Attorney for the District of Columbia, submits this motion for a protective order regarding the discovery of certain materials that the government is prepared to produce in discovery. A proposed order is attached.

1. On January 20, 2017, more than 200 people organized and participated in a violent riot in the heart of downtown Washington, D.C., in which more than \$100,000 worth of damage was caused to buildings, property, and vehicles. The rioters walked in mass through the streets of the city for approximately half an hour. The rioters were only able to be subdued after multiple standoffs with police officers that concluded with law enforcement cordoning the rioters in or around the 1200 block of L Street, NW. The police were able to arrest approximately 230 of the rioters that day; all of them were charged with violating D.C. Code § 22-1322 (Rioting or inciting to riot). However, many other rioters evaded arrest by forcibly charging police officers and fleeing. The grand jury has returned an indictment against 214 defendants for felony rioting.

2. On the day of the arrests, the government recovered cell phones from more than 100 indicted defendants and other un-indicted arrestees in connection with this matter (“Rioter Cell Phones”). The government is in the process of extracting data from the Rioter Cell Phones pursuant to lawfully issued search warrants, and expects to be in a position to produce all of the data from the searched Rioter Cell Phones in the next several weeks. (All of the Rioter Cell Phones were locked, which requires more time-sensitive efforts to try to obtain the data.) The government will produce this enormous amount of data to the defendants via the USAfx discovery portal that the government has used for other discovery in this case.<sup>1</sup> The government will identify each of the Rioter Cell Phones on USAfx in a separate folder with the name of the owner of that phone. Through this portal, all of the attorneys for each of the defendants will have access to all of the data from the Rioter Cell Phones.

3. In addition to containing evidence that is relevant to the charges in this case, the Rioter Cell Phones contain a large amount of irrelevant personal information such as private photographs, videos, medical data, and identifying information that should not be further disseminated.

4. The government understands—and, indeed, expects—that each of the defense attorneys in this case will review the data from their individual client’s phone and will likely share a copy of that data with their client. The government further understands – and, indeed, expects, -- that each of the defense attorneys in this case will review the data from other co-defendant’s phones as there is relevant planning and association evidence that may impact their defense strategy. However, there is no legitimate purpose for the defense attorneys in this case to share copies of irrelevant data from other arrestees’ phones with their client.

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<sup>1</sup> The government submits that this level of transparency far exceeds its discovery obligations required by law.

5. Accordingly, the government requests a protective order from the Court directing the attorneys for each of the defendants in these matters not to copy or reproduce information recovered from the Rioter Cell Phones for defendants other than their client unless that information is relevant to the preparation of the defense for trial. A proposed order is attached.

Respectfully submitted,  
CHANNING D. PHILLIPS  
UNITED STATES ATTORNEY

By: /s/ Jennifer A. Kerkhoff  
Jennifer Kerkhoff  
John W. Borchert (DC Bar No. 472824)  
Assistant United States Attorneys  
United States Attorney's Office for the  
District of Columbia  
555 Fourth Street, N.W.  
Washington, D.C. 20530  
(202) 252-7679

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served on all registered counsel for each of the defendants via e-service this \_\_\_ day of March 2017.

/s/ Jennifer A. Kerkhoff  
Jennifer A. Kerkhoff  
Assistant United States Attorney

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:	Judge Lynn Leibovitz

**[PROPOSED] ORDER**

The United States has moved to issue a protective order pursuant to Superior Court Rule of Criminal Procedure 16(d)(1) regarding the discovery of cell phone data which the government has gathered during its investigation. The government intends to make available as part of the discovery in this case all of the data from the cell phones seized and searched as evidence in this case, which the government represents may include sensitive personal information that should not be further disseminated. The United States has submitted an identical request for a protective order in each of the 214 co-defendant matters captioned *United States v. Nathaniel Jaffe, et al*, Nos. 2017 CF2 1147 *et seq* (the “*Jaffe* defendants”). The Court finds that a sufficient basis exists for the issuance of a protective order.

Therefore, this \_\_\_\_\_ day of \_\_\_\_\_ 2017, it is **ORDERED** that the motion is hereby **GRANTED**, and that it is further

**ORDERED** that counsel for each *Jaffe* defendant may review and copy their client’s cell phone data, and share that data with their client; and it is further

**ORDERED** that counsel for each *Jaffe* defendant may review data with their client from cell phones attributed to other *Jaffe* defendants and any other persons; and it is further

**ORDERED** that counsel for each *Jaffe* defendant shall not copy or disseminate the data from cell phones not attributed to their client unless that counsel believes that the data is relevant and material to the preparation of their defense, or until further order of the Court.

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JUDGE LYNN LEIBOVITZ