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2024 MAY 22  
CLERK  
U.S. DISTRICT COURT

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THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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IN THE MATTER OF  
ELECTRONICALLY STORED  
INFORMATION (ESI) DISCOVERY IN  
CRIMINAL CASES

**GENERAL ORDER  
(AMENDED MAY 22, 2024)**  
**No. 22-003**

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On January 25, 2022, the Court entered General Order No. 22-003, which is hereby amended as follows:

1. **Purpose.** This Order establishes guidelines for the efficient and cost-effective post-indictment production of discoverable electronically stored information (ESI) between the government and all individuals and business entities facing charges in criminal federal court proceedings. This Order aims to reduce unnecessary conflict and litigation over ESI discovery production, encourage communication about ESI discovery issues, establish guidelines for ESI discovery production and disputes, and avoid court intervention. The Court encourages all criminal practitioners to educate themselves and follow best practices in managing and using ESI.
2. **Scope.** This Order applies to disclosure of ESI under Fed. R. Crim. P. 16, 16.1, 26.2, and DUCrimR 16-1. It does not limit the Court's authority to determine the timetable and procedures for discovery disclosure.
3. **Limitations.** This Order does not alter the parties' discovery obligations or

protections under the U.S. Constitution, the Federal Rules of Criminal Procedure, the Jencks Act, or other federal statutes, case law, or local rules. This Order does not create any rights or privileges and does not limit any party's claims for relief. It does not give the Court any authority beyond what is provided under the Federal Rules of Criminal Procedure or applicable law. It does not alter any safeguards provided by the Jencks Act, the Classified Information Procedures Act, or other laws.

4. **Strategies for Implementing ESI Discovery.** The Court adopts by reference the ["Recommendations for Electronically Stored Information Discovery Production in Federal Criminal Cases"](#) (2012) (National ESI Recommendations), which are a product of the Department of Justice and Administrative Office of the U.S. Courts Joint Working Group on Electronic Technology in the Criminal Justice System. The Court also encourages the parties to make use of the ESI Discovery Production Checklist therein.
5. **Procedures in Complex Cases.** The Court may deem cases involving complex criminal charges, or those with voluminous ESI, or those where criminal charges are filed against multiple individuals, as complex for purposes of the appointment of a Local Discovery Liaison.
6. **Local Discovery Liaison Guidelines.** The following guidelines apply to the appointment of a Local Discovery Liaison (the Liaison) and the distribution of ESI discovery in a complex case:
  - A. The Court shall consult with the Federal Public Defender's Office (FPD) and/or the CJA Resource Attorney (CRA) to determine who they have designated as the Liaison in a complex case.
  - B. The CRA will endeavor to ascertain, before the initial appearance, whether multidefendant cases are complex, and will notify the Court of the Liaison selection in advance of the hearing where possible—to facilitate the appointment of a Liaison should the court find the case is complex.

- C. In selecting a Liaison for a complex case, the FPD and CRA shall:
- i. Designate the FPD attorney on the case as the Liaison in every complex case where the FPD represents an individual on a case; or
  - ii. In a complex case where the FPD has a conflict prohibiting representation of an individual on the case, the CRA shall designate the Liaison from among the CJA Attorneys representing defendants in the case; and
  - iii. In selecting a Liaison, the CRA shall designate an attorney who has experience working with NLST, using ESI, and with discovery platforms that make ESI easier to organize, search, and utilize. The Liaison must know the technical aspects of ESI in the matter, which may include: electronic document storage, organization, formats, and relevant information retrieval technology, including search methodology and software platforms.
- D. The attorney who is designated as the Liaison shall inform the Court of their willingness to act in this role and file a motion and order for appointment as the Liaison, as soon as practicable; and
- E. The Court should ordinarily enter an appointment order designating that attorney as the Liaison in the complex case; and
- F. The Liaison shall contact the Defender Services Office National Litigation Support Team (NLST) as soon as practicable after the U.S. Attorney's Office informs the Liaison about the size, type, and scope of discovery.
- i. The purpose of the contact with NLST is to find out the most effective, economic, and efficient way to receive, distribute, and utilize the particular ESI on a complex case, and how NLST may be able to assist on the case.
  - ii. If NLST authorizes the help of a National Coordinating Discovery Attorney (CDA), or software on a case, the Court may grant a motion for the appointment of a CDA and/or the use of information technology in the

case. The Liaison shall work with the CDA and the CJA attorneys to set up trainings and/or to provide periodic reports to the Court (more information on CDA's is available on the Defender Services Website); and

- iii. No Liaison or their staff shall undertake any work to organize, arrange, cull, or otherwise change the ESI before helping to facilitate its distribution to other CJA attorney teams on the case. However, the Liaison may confer with the Assistant U.S. Attorney about their obligations under this Order; and
- iv. All attorneys appointed to represent individuals in a complex case must work with the Liaison on ESI matters, including any ESI disputes, to limit the need for court intervention.

7. **Discovery Production and Receipt.** In all criminal cases, but particularly in complex cases, the United States Attorney's Office (USAO) must, subject to subsection (C) below, produce ESI discovery consistent with the following provisions:

- A. In cases with less than 25 GB of discovery, discovery will ordinarily be produced in pdf/native format in an organized folder structure and include a detailed discovery index;<sup>1</sup>
- B. In cases with 25 GB or more of discovery, discovery will ordinarily be produced via load file with a detailed discovery index. The load file will contain a .dat file, .opt file, native folders, an images folder, and a text folder that can

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<sup>1</sup> A "detailed discovery index" is one that organizes and identifies the categories of information available as ESI discovery and provides a high-level guide to the ESI discovery in a case. The index is intended to reduce the time the receiving party must spend finding the relevant information. The index does not diminish the responsibility of the parties to review the actual ESI.

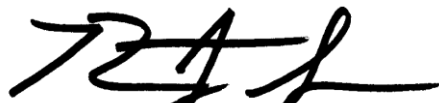
- be loaded into a discovery review platform;
- C. If a case has a specialized need, it may be necessary to vary from the general rules outlined herein. This will be addressed on a case-by-case basis and discussed with counsel as necessary;
  - D. Although the USAO will provide limited technical assistance, defense counsel is responsible for accessing and utilizing ESI software and maintaining ESI proficiency to work with discovery once it is produced; and
  - E. Regardless of discovery size, discovery produced in native format will include, but not be limited to Google Earth files, Title III wire results, social media records, and any additional audio/video requiring players or executables to run. Phone downloads and pole camera footage will be produced with the appropriate executable file or player, while native files will be produced in a separate folder.
8. **Technological Knowledge and Experience.** All attorneys are responsible for having an adequate understanding of ESI discovery and its utility in a case. For complex ESI discovery production, all attorneys should maintain sufficient technical competence and experience to understand, communicate about, utilize, and plan for the orderly exchange of ESI discovery. Defense attorneys must maintain proficiency and capabilities to work with ESI in a format that is effective and efficient once it is produced by the USAO.
9. **Discovery Conference.** Before the Rule 16.1 conference, the producing party must be prepared to discuss the scope and timing of ESI discovery production. At the conference, the government and defense attorneys must confer in good faith to agree on a timetable and procedures for pretrial disclosure under Fed. R. Crim. P. 16, 26.2, and DUCrimR 16-1(a). When a case involves ESI, the parties should confer about the nature, volume, and mechanics of ESI discovery production. Additionally, the parties should consider the following issues: whether to propose a scheduling order that reflects their discovery agreements, whether

ongoing dialogue would be helpful, and whether the parties should notify the Court of ESI discovery issues or problems they anticipate may affect the timing and nature of the case. The Court emphasizes the particular importance of cooperative exchanges of information at the earliest possible stage of discovery, including during the parties' discovery conference.

10. **Memorializing Agreements.** To help avoid later disputes, the parties should memorialize any agreements around the transfer of discovery.
11. **Informal Resolution of ESI Discovery Matters.** Before filing any motion addressing an ESI discovery issue, the moving party must meet and confer with opposing counsel in a good-faith effort to resolve the dispute. If technical knowledge is required to resolve the dispute, the parties should involve individuals with sufficient knowledge to understand the technical issues, clearly communicate the problem(s) leading to the dispute, and either implement a proposed resolution or explain why a proposed resolution will not solve the dispute.
12. **Request for Court Action.** After the discovery conference, one or both parties may ask the Court to determine or modify the time, place, manner, or other aspects of disclosure to facilitate preparation for trial.
13. **Motions Regarding Discovery Disputes.** Motions addressing a discovery dispute concerning ESI production should include a statement by the moving party that after meaningful, good faith consultation with opposing counsel, the parties are unable to resolve the dispute without court action.

**IT IS SO ORDERED AMENDED**, this 22nd day of May, 2024.

BY THE COURT:



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ROBERT J. SHELBY  
CHIEF UNITED STATES DISTRICT JUDGE