

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW WILLIAM SCHWIER,

Defendant.

Case No. 3:17-cr-00095-SLG

**ORDER FOR GOVERNMENT TO REPLY TO DEFENSE’S RESPONSE IN
OPPOSITION AT DOCKET 248 AND COMPELLING PRODUCTION OF
VALIDATION TESTING RECORDS**

Before the Court at Docket 244 is the government’s motion proposing additional terms for the protective order governing production of the Torrential Downpour software.¹ Pursuant to the Court’s order at Docket 247, the defense has responded in opposition and filed a redlined copy of the government’s proposed order.² The defense disputes several elements of the government’s proposed protective order, including a term that would prohibit internet access during testing.³ Having reviewed the defense’s opposition, the Court directs the

¹ See Docket 231 at 13–14 (entering protective order); see *also* Docket 243 at 8 (allowing government to “propose additional terms to the protective order entered at 231 as warranted”).

² Docket 248; see *also* Docket 249 (Decl. of Jeffrey Fischbach in support of Response in Opposition).

³ Docket 248 at 2–3; see *also* Docket 249 at 5, ¶ 19 (“[I]n order to complete *any* of my proposed tests, and as a requirement of the software itself, I *must* have internet access.” (emphasis in original)); Docket 244 at 4 (proposing that software be tested on computer without access to the internet).

government to file a brief reply, giving special attention to the question of internet access.⁴

The defense's response in opposition also claims that the government has not yet produced the results of the November 4, 2019 validation testing of the Torrential Downpour software.⁵ At the November 5, 2019 status conference, the government stated that it believed it could "overnight [the validation data] on Thursday, have it down to the Orange RCFL on Friday, the 8th [of November]."⁶ According to the defense, Detective Erdely also indicated that he planned to prepare a report on the validation testing.⁷ The Court hereby orders the government to produce to the defense the validation data and Detective Erdely's report immediately or, failing that, to explain why doing so is impossible in its reply.

Accordingly, IT IS ORDERED that the government shall file a reply to the defense's opposition no later than **November 20, 2019 at 5:00 p.m.** IT IS FURTHER ORDERED that the government shall produce the data from the November 5, 2019 Torrential Downpour validation and the accompanying report

⁴ See L. Crim. R. 47.1(c) ("Unless otherwise ordered by the Court, no reply memorandum will be filed.").

⁵ Docket 248 at 4.

⁶ Docket 250 at 2:17–22 (Partial Tr. of Nov. 5, 2019 Status Conf.).

⁷ Docket 250 at 5–8 (Defense counsel's stating that "Detective Erdely indicated that the earliest he thought he could have a package of data available for release, he wanted time to write a report, the earliest that could be ready would be Friday [November 8, 2019].").

to the Orange RCFL for review by the defense as soon as possible upon receipt of this order. If such production is impossible, the government shall provide an explanation in its reply.

DATED this 19th day of November, 2019, at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE