IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	*	
v.	*	**CRIM. NO. JKB-19-0036**
		UNDER SEAL
CORREY CAWTHORN, et al.,	*	
Defendants.	*	

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MEMORANDUM

The Court held a Motions Hearing on June 2, 2023 at which it heard argument relating to various motions, including Tyeshawn Rivers' Motion to Suppress Evidence Obtained from Search of Instagram Account ("Instagram Motion"). (ECF No. 1100.) At the Motions Hearing, the Court reserved on the Instagram Motion and allowed the parties to file additional briefing. (ECF No. 1169 at 1, 5.) Upon review of the original and supplemental briefing, the Court will grant in part the Instagram Motion and will take further evidence regarding the Government's review of Rivers' Instagram data.

I. Factual and Procedural Background

In the Instagram Motion, Rivers argues that the search of his Instagram account violated the Fourth Amendment because "(1) the warrant authorizing the search was not supported by probable cause, (2) the scope of the warrant was impermissibly broad, and (3) the government kept every communication it obtained from Instagram despite promising to seize only specific material described in the warrant." (ECF No. 1100 at 1.) Rivers moves to suppress all evidence obtained from his Instagram account and any evidence and information derived from that search (*Id.* at 9.)

A. Warrant Application

The affidavit in support of the application for a search warrant authorizing the search of Rivers' Instagram explains that there was probable cause to believe that 10 Instagram accounts contain evidence of criminal activity. (*See generally* ECF No. 1103-1.) The affiant explains that one of the subject Instagram accounts is believed to belong to Rivers. (*Id.* ¶ 1.) The affiant explains that "[b]ased on my training and experience, I know that individuals involved in drug trafficking and criminal gangs frequently use social media platforms like Instagram to further their illegal activities." (*Id.* ¶ 6.) She also explains that "[i]ndividuals who are involved in drug trafficking and criminal gangs often use these platforms to communicate privately with co-conspirators, or to communicate with wider audiences to advertise drugs for sale, spread news about murders and shootings, or intimidate rivals." (*Id.*) She further explains that she believes the subject accounts would "contain evidence of criminal activity, namely, conspiracy to participate in a racketeering enterprise in violation of 18 U.S.C. § 1962(d), possession with intent to distribute controlled dangerous substances in violation of 21 U.S.C. § 841, and possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)." (*Id.* ¶ 9.)

With respect to facts relating specifically to Rivers' involvement in the suspected criminal activity, the affidavit provides text messages related to a murder during a dice game. (*Id.* ¶ 13.) The affiant explains that "[i]nvestigators believe this text exchange is about arranging the robbery of a dice game by having some members participate in the game, and others rob the game. RIVERS notifies the group of the dice game ('dice game'), and then alerts the members that they are about to be robbed ('Dnt do no funny shit y'all rey get robed by us')." (*Id.*) The affidavit also explains that "[i]nvestigators believe RIVERS to be a member of 'CCC' through multiple cellular phone search warrants obtained during the investigation in which RIVERS has conversations with

CCC members arranging criminal events, such as the event detailed in paragraph 13" and that "BPD arrested RIVERS and . . . an associate of CCC, on October 30, 2020" and that they were in "possession of a loaded firearm and approximately 265 gelcaps of suspected heroin, 116 ziplocs of suspected crack cocaine, and a bag containing approximately four grams of crack cocaine." (*Id.* ¶ 19.)

With respect to facts suggesting that evidence of criminal activity would be found on Instagram specifically, the affidavit provides the following facts relating to Rivers. First, Desmond Butler (a co-defendant) posted a photo of himself on Instagram with the text "all the wrong i did i know nothing good going come from that" on October 30, 2022 (which coincides with the date he was arrested for a handgun violation). (*Id.* ¶ 18.) Rivers commented: "Ain't no question 100 respect." (*Id.* ¶ 19.) Second, "MCMANN is a CCC member and a suspect in a July 29, 2018 homicide along with other CCC members RIVERS and CAWTHORN" and "[Instagram] posts on SUBJECT ACCOUNT 10 show MCMANN with CCC members RIVERS, JETER and a saved Instagram 'story' of CAWTHORN." (*Id.* ¶¶ 25–26.)

The affidavit explains that "[u]pon receipt of the information described in Section I of Attachment B [to the affidavit], government-authorized persons will review that information to locate the items described in Section II of Attachment B." (*Id.* ¶ 45.) Section I of Attachment B lists the "[i]nformation to be disclosed by the service provider" and essentially requires Instagram to produce all data in its possession for each of the ten Instagram accounts from January 1, 2017 to the present.[1] (*Id.* at 26–27.) Section II of Attachment B provides the "[i]nformation to be seized

[1] Both in its briefing and at the June 2, 2023 Motions Hearing, the Government attempted to point the finger at Instagram for over-producing data in response to the warrant. (*See* ECF No. 1127 at 16 (response in which the Government stated that it "asked Instagram to seize relevant documents outlined in Attachment B" and that "[t]he fact that Instagram may have been over broad in its production cannot result in a sanction against the government"); ECF No. 1178 (transcript of the June 2, 2023 Hearing in which the Government stated that it did not request that Instagram "give [the Government] everything").) The Government appears to have (correctly) abandoned this argument in its

by the government" and includes "[a]ll information . . . that constitutes fruits, evidence and instrumentalities of [certain enumerated crimes][2] since January 1, 2017," including information relating to the crimes, evidence relating to how and when the account was accessed and used, evidence relating to the account owner's state of mind, and other information. (*Id.* at 27.)

Finally, Attachment B explains that:

> With respect to the search of the information provided pursuant to this warrant, law enforcement personnel will make reasonable efforts to use methods and procedures that will locate and expose those categories of files, documents, communications, or other electronically stored information that are identified with particularity in the warrant while minimizing the review of information not within the list of items to be seized as set forth herein to the extent reasonably practicable.

(*Id.* at 28.) A magistrate judge signed the warrant on November 19, 2020. (*Id.* at 2.)

B. Warrant Execution

The Government obtained the data from Instagram in December 2020. (ECF No. 1100 at 3.) In its latest filing, the Government for the first time provides the timeline of its review of the Instagram data it received. (*See* ECF No. 1170 at 3–4.) The Government explains that, from January 20–27, 2021, "investigators reviewed and identified several files" from Rivers' Instagram account. (*Id.* at 3.) On September 17, 2021, the Government conducted a reverse proffer with Rivers and his prior defense counsel during which it shared information recovered from Rivers' Instagram account. (*Id.*) On March 23, 2023,[3] investigators "identified and extracted particular Instagram conversations between Rivers and particular usernames." (*Id.* at 4.) And on June 5,

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latest filing, and the Court notes that Instagram apparently produced precisely what the warrant required.

[2] Those crimes are: "racketeering conspiracy in violation of 18 U.S.C. § 1962(d), conspiracy to distribute narcotics in violation of 21 U.S.C. § 846, distribution and possession with intent to distribute narcotics in violation of 21 U.S.C. § 841, possession of a firearm and/or ammunition by a felon in violation of 18 U.S.C. § 922(g), and discharging of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)[.]" (ECF No. 1103-1 at 27.)

[3] This was the day before the Government's responses to Defendants' pretrial motions were due. (ECF No. 1025.)

2023,[4] investigators again reviewed the Instagram data "and identified additional conversations from the account." (*Id.*) In addition, in late 2022, the Government produced the entire contents of Rivers' Instagram account to counsel for each of the co-Defendants. (ECF No. 1100 at 3.)

C. Motions Hearing

During the Motions Hearing, the Court heard argument with respect to the Instagram Motion and the parties referenced a prior October 19, 2022 Order entered by the Court. As relevant here, in that Order, the Court explained that, where the Government had access to iCloud data since "sometime after December 7, 2020 . . . and before February 2021[,]" "[c]ontinued access to search through the data beyond what the Government has already identified as responsive . . . would be unreasonable." (ECF No. 986 at 4.) In that Order, the Court directed the Government to no longer "meaningfully retain access to the iCloud data beyond what the Government has already identified as responsive." (*Id.* at 4.)

After the June 2 Motions Hearing, the Court issued an Order relating to, *inter alia*, the Instagram Motion. (ECF No. 1169.) The Court explained that:

> Like the iCloud data at issue previously, the Government has had an ample amount of time to conduct any review of the Instagram data, as it has had access to it since December 2020 . . . . Therefore, the Government will be directed to no longer meaningfully retain access to the Instagram data beyond what it has already identified as responsive.

(*Id.* at 4.) At the time of that Order, the Government had not yet filed its supplemental briefing in which it disclosed the timeline of its review of Rivers' Instagram data.

II. Analysis

The Instagram Motion will be granted in part. Although the probable cause to search Rivers' Instagram account was weak, the *Leon* good faith exception applies and the evidence will

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[4] This was three days after the June 2, 2023 Motions Hearing.

therefore not be suppressed on the basis of a lack of probable cause. However, as discussed in more detail below, the Government did not reasonably conduct its March and June 2023 reviews of the massive amount of data that was entrusted to it and the evidence obtained from those reviews will be suppressed. The Court will hear additional argument and evidence with respect to data reviewed prior to March 2023 to determine whether any evidence obtained through such earlier reviews should be admitted at trial.

A. Probable Cause

Rivers argues that probable cause to search his Instagram account was lacking. The Court agrees that the warrant affidavit may have lacked the requisite nexus to search his Instagram and that it was overbroad. However, the Court finds that suppression of evidence obtained from Rivers' Instagram is not warranted on this basis, as *Leon*'s good faith exception applies.

1. Legal Standard

A judicial officer's determination that there is probable cause to issue a search warrant is a "practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Montieth*, 662 F.3d 660, 664 (4th Cir. 2011) (quoting *Illinois v. Gates*, 462 U.S. 213, 235 (1983)). Further,

> Probable cause to believe that a person is engaged in criminal activity is not *carte blanche* to search all their personal effects. There must also be some nexus between the suspected crime and the place to be searched—"a substantial likelihood that evidence of a crime will be found *in a particular place*."

United States v. Orozco, 41 F.4th 403, 409 (4th Cir. 2022) (emphasis in original) (quoting *United States v. Allen*, 631 F.3d 164, 173 (4th Cir. 2011)). The requisite nexus between the evidence sought and place to be searched may be established by "the normal inferences of where one would likely keep" the evidence being sought. *Allen*, 631 F.3d at 172 (citation and quotations omitted).

In considering a motion to suppress, "the task of the reviewing court is not to conduct a de novo determination of probable cause, but only to determine whether there is substantial evidence in the record supporting the magistrate [judge]'s decision to issue the warrant." *Massachusetts v. Upton*, 466 U.S. 727, 728 (1984). Moreover, evidence "obtained in objectively reasonable reliance on a subsequently invalidated search warrant" is not subject to the exclusionary rule unless certain circumstances are present. *United States v. Leon*, 468 U.S. 897, 922 (1984). For instance, evidence is subject to the exclusionary rule where the warrant is "based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable" or where a warrant is "so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." *Id.* at 923 (citations and quotations omitted).

2. Analysis

Rivers argues that the warrant application did not establish probable cause to believe that his Instagram account would contain evidence of the specified federal crimes. (ECF No. 1100 at 5–6.) As Rivers puts it, "the government maintained that because Mr. Rivers was allegedly involved in criminal activity, and because he and some of his co-defendants had Instagram accounts, then the government was entitled to nearly four years' worth of Mr. Rivers' private Instagram communications." (*Id.* at 6.) Rivers also argues that the warrant was overbroad because it did not describe the material to be searched with sufficient particularity and it sought all communications over a four-year period of time. (*Id.* at 6–7.)

Here, the Court agrees with Rivers that the requisite nexus is weak and that the warrant may be overbroad. However, the Court finds that *Leon*'s good faith exception applies, as the warrant is not so lacking in probable cause that reliance on it would be unreasonable *See United*

States v. Chavez, 423 F. Supp. 3d 194, 208 (W.D.N.C. 2019) (explaining that "applying the Fourth Amendment to social media accounts is a relatively unexplored area of law with nuances that have yet to be discovered" and that "[c]ourts should not punish law enforcement officers who are on the frontiers of new technology simply because they are at the beginning of a learning curve and have not yet been apprised of the preferences of courts on novel questions" (citation and quotations omitted)); *United States v. Westley*, Crim. No. 17-171 (MPS), 2018 WL 3448161, at *17 (D. Conn. July 17, 2018) ("Because of these largely unexplored nuances in the application of the Fourth Amendment to Facebook accounts, and because the information in the affidavits that establishes probable cause is not demarcated by a clear date cut-off, I find that the good faith exception applies to the warrants at issue to the extent they are overbroad, and that suppression is unwarranted as a result."). Because the *Leon* good faith exception applies, the Court will not suppress the Instagram evidence on the basis that the warrant affidavit lacked probable cause or was overbroad.

B. Execution of the Warrant

Rivers further argues that "the government ignored the limitations it promised to follow when it sought the warrant, and instead engaged in an unconstitutionally overbroad seizure of Mr. Rivers' private communications." (ECF No. 1100 at 7.) The Court agrees that the Government did not reasonably review the Instagram data in March and June 2023. Therefore, Rivers' request that evidence obtained from his Instagram account be suppressed as a result of those reviews will be granted. With respect to any earlier reviews of Rivers' Instagram data, the Court will conduct further proceedings at the currently-scheduled September 8, 2023 Motions Hearing to determine whether any evidence obtained as a result of those reviews should be admitted at trial.

1. Legal Standard

Federal Rule of Criminal Procedure 41(e)(2)(B) provides that "[a] warrant under Rule

41(e)(2)(A) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant."

Although Rule 41 does not prescribe the method by which such later review must occur, "[i]n the [warrant] execution context, as elsewhere, Fourth Amendment reasonableness kicks in." *Cybernet, LLC v. David*, 954 F.3d 162, 168 (4th Cir. 2020). Thus, courts agree that such review must occur within a reasonable amount of time to comply with the Fourth Amendment. *See, e.g.*, *United States v. Metter*, 860 F. Supp. 2d 205, 215 (E.D.N.Y. 2012) (explaining that, while there is "no established upper limit as to when the government must review seized electronic data to determine whether the evidence seized falls within the scope of a warrant[,]" the Fourth Amendment requires the review to occur "within a reasonable period of time"); *United States v. Lustyik*, 57 F. Supp. 3d 213, 230 (S.D.N.Y. 2014) ("Like all activities governed by the Fourth Amendment, the execution of a search warrant must be reasonable. Law enforcement officers therefore must execute a search warrant within a reasonable time." (citing *United States v. Ramirez*, 523 U.S. 65, 71 (1998))). Further, courts agree that the government "may not seize and retain items outside the scope of a warrant." *Lustyik*, 57 F. Supp. 3d at 230; *see also United States v. Nasher-Alneam*, 399 F. Supp. 3d 579, 589 (S.D.W. Va. 2019) ("[I]t is imperative that searches of electronic information strictly comply with the parameters outlined in the warrant to avoid effectively converting a search warrant supported by probable cause into the sort of general warrant forbidden by the Fourth Amendment.").

2. Analysis of March and June 2023 Reviews

Law enforcement did not act reasonably in conducting the March and June 2023 reviews of Rivers' Instagram data and the Court will therefore suppress the evidence obtained through

those reviews. The Government argues that "it should be dispositive that the government has done everything that Attachment B required it to do and has done nothing that Attachment B expressly prohibited." (ECF No. 1170 at 14.) Not so. The "ultimate touchstone of the Fourth Amendment is reasonableness[,]" *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006), and thus the dispositive question here is whether the Government acted reasonably.[5]

The Government is correct that Rule 41(e)(2)(B) contemplates a two-step process where electronic data may be seized and then later reviewed. Further, "the weight of the authority supports the conclusion that a warrant that requires disclosure of the entire contents of an [electronic source] and then describes a subset of that information that will be subject to seizure is reasonable." *United States v. Lee*, Crim. No. 14-227-TCB-2, 2015 WL 5667102, at *3 (N.D. Ga. Sept. 25, 2015). However, given the vast trove of information that was entrusted to the Government, it was incumbent on the Government to have made every effort to conduct a reasonable review—both in timing and in scope—of that information.

Courts have found lengthy delays in reviewing data reasonable where there is some justification for the delay. *See, e.g.*, *United States v. Hansen*, Crim. No. 18-00346-DCN, 2019 WL 5846879, at *11 (D. Idaho Nov. 7, 2019) (concluding that a search was reasonable where data became reviewable on January 24, 2017 and reviews were conducted during February–September 2017, January 2018, June 2018, July 2018, October 2018, and January 2019 given the "vast quantity of ESI . . . coupled with the limited resources available to the Government"); *United States v. Estime*, Crim. No. 19-0711 (NSR), 2020 WL 6075554, at *15 (S.D.N.Y. Oct. 14, 2020) (finding a ten-month delay to be reasonable where "the Government explain[ed] that its delay in reviewing

[5] Further, Attachment B itself explicitly requires the Government to make "reasonable efforts" to review the data, (ECF No. 1103-1 at 28), and the affiant explained that "*[u]pon receipt* of the information" from Instagram, "government-authorized persons will review that information" to locate relevant information. (*Id.* ¶ 45 (emphasis added).)

the ESI contained in Defendant's cellphone is the result of difficulties created by the encryption"); *United States v. Nejad*, 436 F. Supp. 3d 707, 735 (S.D.N.Y. 2020) (finding a review reasonable where it concluded "roughly three years after issuance of the first search warrant in April 2014 and only one year after issuance of the last warrant in 2016"; where "the search warrant returns comprised over one million documents in at least three different languages"; and where the prosecutor "toggled between review platforms throughout the duration of the review in an attempt to more efficiently process this large volume of documents").[6]

Here, the Government does not justify its delay. The Government explains that courts recognize that a "reasonable period of time must account for the complexity of electronic evidence, the large amounts of evidence, the workloads of investigating agents, and other factors." (ECF No. 1170 at 15.) This is, of course, true, but the Government does not argue that any of these issues prevented it from timely reviewing the data here. For instance, while the Government makes passing reference in a footnote to the large amount of data and the fact that this is a "gang case" (*id.* at 12 n.6), the Government does not contend that these facts prevented it from conducting a reasonably-timed review.

By its own admission regarding the timing of its reviews, the Government's timeline indicates that it reviewed the data shortly after its receipt (in January 2021) and then apparently only conducted further reviews on March 23, 2023—the day before its responses were due to certain pretrial motions, including the Instagram Motion—and June 5, 2023—a few days after the

[6] The Court also recognizes that there is case law suggesting that the Government need not necessarily provide a reason for a lengthy delay. *See, e.g.*, *United States v. Estime*, Crim. No. 19-0711 (NSR), 2020 WL 6075554, at *14 (S.D.N.Y. Oct. 14, 2020) (collecting cases and explaining that "[c]ourts have previously determined that delays of 10 months, or more, in reviewing electronic data are not per se unreasonable, even when the government does not furnish a basis for the delay in searching electronic data"). While the Court does not necessarily endorse that view, the delay in this case is approximately three times longer than the delay in those cases and thus requires some justification by the Government.

most recent Motions Hearing, during which the Court heard argument on the Instagram Motion. While the Court will not impose a bright-line time limit within which the Government should have completed its review of the Instagram data, two conclusions emerge from the facts. First, the timing of the Government's review in January 2021 (approximately one month after it received the Instagram data) was reasonable. And second, the timing of the Government's review of the Instagram data in March and June 2023 (over two years after it received the Instagram data) was not reasonable.[7] These latter reviews were unreasonable, given that this vast amount of information was provided to the Government upon the Government's representation that "*upon receipt* of the information" from Instagram, "government-authorized persons will review that information to locate the items described" in the warrant. (ECF No. 1103-1 ¶ 45 (emphasis added).)

Further, the Court finds that suppression of any evidence obtained in the May and June 2023 reviews is warranted. A violation of the Fourth Amendment does not automatically trigger the application of the exclusionary rule. *Herring v. United States*, 555 U.S. 135, 141 (2009) (rejecting "the argument that exclusion is a necessary consequence of a Fourth Amendment violation"). In determining whether suppression is warranted, the Court must examine "the efficacy of the rule in deterring Fourth Amendment violations in the future" and must weigh the benefits of applying the rule against its costs. *Id.* Suppression is warranted here, where the Government essentially sat on a vast trove of personal data for over two years despite obtaining

[7] Indeed, the Court already signaled to the Government that it would conclude as much in its prior Order relating to Rivers' iCloud data. As noted above, in that Order, the Court explained that "[t]he Government has had access to the iCloud data since at least February 2021, an ample amount of time to conduct the necessary review. Continued access to search through the data beyond what the Government has already identified as responsive in its report would be unreasonable." (ECF No. 986 at 4.) By October 2022, when that Order was docketed, the Government had access to the iCloud data for at least 20 months. At the time of the March and June 2023 reviews, the Government had been in possession of the Instagram data for approximately 30 months.

the warrant upon the Government's representation that it would review the information upon receipt. The need for deterrence is great, where the Government was entrusted with years' worth of Rivers' social media data and where the Court had already indicated that it would not look favorably upon a lengthy delay in reviewing such data.[8]

Accordingly, any evidence obtained in connection with the March and June 2023 reviews of Rivers' Instagram data will be suppressed.

3. Analysis of January 2023 Review

The Court now turns to the review that occurred in January 2021. While the timing of that review is reasonable—within about a month of receiving the data—the scope of the Government's review is unclear. The Government explains that "[f]rom January 20 through 27, 2021, investigators reviewed and identified several files from the defendant's Instagram account." (ECF No. 1170 at 3.) The Government provides a list of file names it identified from this review, (ECF No. 1172-3), but does not explain whether these files were all responsive to the warrant or otherwise provide detail regarding the contents of these files. The report itself notes that "[a] search of the Instagram account . . . was reviewed" and that reviewers "recovered several items of evidentiary value." (ECF No. 1172-3 at 1.) Rivers argues that much of the information contained in those files is not relevant, noting that "those lists are a collection of media files that the government thought it might find useful down the road, including, for example, a baby shower announcement, and assorted family pictures." (ECF No. 1173 at 5.)

As explained above, "it is imperative that searches of electronic information strictly comply

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[8] As the Government recognizes, the *Leon* good faith exception does not apply here. (ECF No. 1170 at 16); *see also Nasher-Alneam*, 399 F. Supp. 3d at 596 (explaining that *Leon* is inapplicable where "the error was not with the warrant itself but, rather, the government's execution of that warrant" in the context of a search of electronic data).

with the parameters outlined in the warrant to avoid effectively converting a search warrant supported by probable cause into the sort of general warrant forbidden by the Fourth Amendment." *Nasher-Alneam*, 399 F. Supp. 3d at 589. Without more from the Government describing the seizure of the files it identified in January, the January search resembles one pursuant to such a general warrant.

Further, while Rivers points to evidence seized from his account during the January 2023 search that appear outside of the scope of the warrant, "[t]he exclusionary rule does not compel suppression of evidence properly covered by a warrant merely because other material not covered by the warrant was taken during the same search." *United States v. Shilling*, 826 F.2d 1365, 1369 (4th Cir. 1987) (finding that the improper seizure of entire file cabinet did not require suppression of individual files properly taken); *see also United States v. Borromeo*, 954 F.2d 245, 247 (4th Cir. 1992) (finding that improper seizure of additional fifty-seven files did not require suppression of thirty-five files which were properly seized); *United States v. Nejad*, 436 F. Supp. 3d 707, 736 (S.D.N.Y. 2020) (concluding that the Government's responsiveness review was not unreasonable where the government identified 3,000 relevant documents in a set of more than 100,000 despite the fact that a small number of the 3,000 documents may not have been relevant).

To the extent that the Government can show—through affidavits, testimony, or other evidence—that it obtained information from Rivers' Instagram account by way of a reasonable execution strategy, that evidence may be admitted at trial even if there may have been certain data that was improperly seized. Although the Court does not prejudge what may comprise a reasonable execution strategy in this case, a reasonable execution strategy will have been conducted within a reasonable time[9] and will have likely included the identification and segregation of data responsive

[9] It is not clear whether the PowerPoint presentation provided to counsel during a reverse proffer in September 2021 includes information retrieved during the January 2021 review of Rivers' Instagram account or during some later

to the search warrant within that time.[10] The Government will be provided the opportunity to present such evidence at the upcoming Motions Hearing that is currently scheduled for September 8, 2023.

III. Conclusion

This case presents challenging issues relating to privacy and law enforcement. The sheer amount of data available with respect to criminal defendants—due in part to the prevalence of social media—cannot be overstated. And the Court recognizes that conducting searches and seizures in this social media age presents novel questions for law enforcement. However, that this case presents novel and challenging questions does not work a suspension of the Fourth Amendment. In this case, the Government sought and obtained a warrant by explaining that it would review the data for items within the scope of the warrant, and the Government did not reasonably do so. As discussed in more detail above, the Instagram Motion will be granted in part, and any evidence from Rivers' Instagram account obtained through the March and June 2023 reviews will be suppressed. The evidence from any earlier reviews is subject to further consideration by the Court.

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review. To the extent it involved some later review of his Instagram data, the Government will be required to establish the reasonableness of that timing.

[10] Rivers raises issues relating to the Government's disclosure of the full contents of his Instagram account to other defense counsel and to the Government's continued retention of the data. While the Court agrees that these issues highlight the need to cabin the Government's ability to search through large amounts data, the Court finds that the remedy it has imposed here—suppressing the evidence from the later reviews, conducting a further review of the earlier reviews, and directing the Government to no longer meaningfully retain any of the data—strikes the appropriate balance in protecting Rivers' privacy interests.

DATED this 13 day of July, 2023.

BY THE COURT:

James K. Bredar
Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	*	
v.	*	**CRIM. NO. JKB-19-0036**
CORREY CAWTHORN, et al.,	*	
Defendants.	*	

* * * * * * * * * * * *

ORDER

For the reasons provided in the foregoing Memorandum, it is ORDERED that:

1. Tyeshawn Rivers' Motion to Suppress Evidence Obtained from Search of Instagram Account (ECF No. 1100) is GRANTED in part;
   A. Evidence obtained from the March and June 2023 reviews is SUPPRESSED; and
   B. The Court will hear further argument and evidence with respect to any earlier reviews of Rivers' Instagram account at the hearing currently scheduled for September 8, 2023.
2. The Government is REMINDED that it SHALL NOT meaningfully retain access to the Instagram data beyond what it has already identified as responsive.

DATED this 13 day of July, 2023.

BY THE COURT:

James K. Bredar

James K. Bredar
Chief Judge