

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

Criminal Action No. 07-cr-00462-JLK-1

UNITED STATES OF AMERICA,

Plaintiff,

vs.

1. CORY VOORHIS,

Defendant.

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**DEFENDANT'S MOTION FOR DISCOVERY AND  
PRESERVATION OF EVIDENCE**

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Defendant Cory Voorhis ("Voorhis"), through his attorneys, respectfully moves for an order directing the United States of America ("the Government") to produce discovery, to provide already-produced electronic discovery without a watermark, and to preserve evidence material to this case. In support of this Motion, Voorhis states:

1. On October 25, 2007, Voorhis was charged with three counts of violating 18 U.S.C. § 1030(a)(2)(B). *Information as to Cory Voorhis* (Docket Entry # 1).
2. Prior to November 20, 2007, Voorhis's attorney had a conversation with the Government's attorney regarding discovery in this case. Voorhis's attorney requested several discovery items, including: un-redacted copies of documents provided during pre-charging discussions with the Government; additional investigative reports; ICE files relating to the investigation of Voorhis; forensic reports regarding Voorhis's ICE computer; and a mirror image of that computer's hard drive.

3. On November 20, 2007, at Voorhis's initial appearance, Voorhis's attorney hand delivered a letter to the Government's attorney requesting the items listed above and additional discovery items. A copy of the November 20, 2007 letter is attached as Exhibit 1.

4. During the initial appearance, the Government's attorney provided Voorhis with a disk containing some, but not the majority of, the requested discovery materials. Part of the "new" discovery was duplicative of the materials provided during pre-charging discussions. Materials on these disks revealed that more than one computer had been seized and searched.

5. Also during the initial appearance, attorneys for the parties completed the Court's Discovery Conference Memorandum and Order ("Discovery Order") and submitted it to the Court. Later that same day, the Court entered the Discovery Order. (Docket Entry # 22).

6. Pursuant to the Discovery Order, the Government was to provide its discovery to Voorhis by December 10, 2007. *Id.* at 8, § V(B). Voorhis's discovery is due 10 days after the Government completes discovery. *Id.* at 8, § V(C). The Government stated on the record that it would attempt to provide discoverable materials requested by December 10, but could not guarantee that it could provide all of them.

7. On November 30, 2007, the Government's attorney explained via telephone that most of the items requested by Voorhis would be produced by December 10 and asked if Voorhis's attorneys would be willing to inspect various materials at the Colorado Bureau of Investigation ("CBI") during the week of December 3. Voorhis's attorney agreed to inspect the materials to determine if copying would be necessary and asked to be permitted to do so as early as possible during the week of December 3, 2007.

8. During this telephone call, the Government's attorney also explained that some materials seized from Voorhis's ICE office were not copied and maintained, but all items were indexed during the search. Voorhis's attorney requested a copy of the list, in addition to copies or a chance to inspect all materials seized. Also, Voorhis's attorney again requested that the Government specify the type of storage media Voorhis needed to provide the Government in order to obtain a forensic mirror image of Voorhis's ICE computers hard drive, and those of any other computers seized and searched. The Government's attorney stated that he was not sure, but would get back to Voorhis's attorney as soon as possible. Voorhis's attorney also requested copies of exhibits referenced in investigative reports drafted by Agent Manuel Olmos and that an online government computer training program ("Computer Security Awareness Training" - - produced only in the form of PDF copies of "screen shots") be produced in an electronic version that renders them decipherable, explaining that as produced, the materials were essentially useless. The Government's attorney agreed that if it was technologically feasible to produce the materials electronically, he would do so.

9. Voorhis did not receive any additional discovery from the Government on December 10, 2007.

10. On December 11, 2007, Voorhis's attorneys had additional telephone conferences with the Government's attorney regarding outstanding discovery. The Government's attorney explained that discovery was being sorted and bates-stamped and most of the materials requested by Voorhis would be produced later in the week. However, the A-Files requested by Voorhis still had not shown up and would be produced as they came in, as would additional investigative

reports. Additionally, ICE did have a list of materials seized from Voorhis's office and then turned back over to individuals at ICE.

11. During this teleconference, the Government's attorney further explained that he was "wrong" about the CBI having a "computer run" of a congressional report, so that material would not be made available for inspection. Also, the Government still was unable to provide information about the type of storage media Voorhis's attorneys would need to obtain a mirror image of the hard drive of computers seized in the investigation.

12. Voorhis did not receive any additional discovery during the week of December 10. On December 13, the Government's attorney informed Voorhis's attorney that materials Voorhis's attorney had previously agreed to inspect at Agent Olmos's office would be provided electronically.

13. On December 14, the Government's attorney and Voorhis's attorney had a telephone conference regarding the late discovery. The Government's attorney apologized for the delay and explained that additional materials would be sent via overnight delivery to Voorhis's attorneys so that they would arrive by Saturday, December 15. These materials arrived on Monday, December 17, 2007. Additional materials arrived on Wednesday, December 19, 2007.

14. Additionally, on December 19, Voorhis's counsel spoke with the Rocky Mountain Regional Computer Forensic Lab regarding a mirror image of the seized computers' hard drives. Upon entry of a Stipulated Protective Order to be filed in short order, Voorhis's attorneys should be provided access to the hard drives as early as next week.

15. Due to the delay in the production of the Government's discovery, Voorhis has not had an opportunity to conduct a meaningful review and analysis of these materials. However, as detailed below, Voorhis's attorney believes that several types of requested material still have not been produced.

16. Voorhis is filing today those motions that can be identified and filed based on discovery that the defense has received and had a meaningful opportunity to review. Voorhis respectfully reserves the right to file additional pretrial motions that may arise out of the late-produced discovery.

17. Voorhis is producing its reciprocal discovery to the Government today, 10 days after the Government's original deadline established by the Discovery Order and will comply with its continuing obligation in this regard.

**I. Request For Order Compelling Production Of Previously-Requested Discovery**

18. What follows is a list of items Voorhis has requested from the Government pursuant to Fed.R.Crim.P. 16, but which, to undersigned counsel's knowledge, the Government has not produced, or has not produced entirely. If any of the items have in fact already been produced, Voorhis requests that the Government specify wherein the discovery materials the items are located. If the Government takes the position that all of the materials falling under a particular request have already been provided, Voorhis requests that the Government so state. If the Government takes the position with respect to a particular request that no such materials exist, Voorhis requests that the Government so state. Finally, if the Government takes the position that a protective order should be entered prior to production of any materials, Voorhis requests that the Government immediately file a motion for a protective order.

19. Voorhis requests that the following previously-requested materials be produced forthwith:

- A. All ICE / DHS Internal Affairs file(s) regarding the investigation of Voorhis;
- B. All materials seized during the search conducted of Voorhis's desk and work space;
- C. Any index or other lists of materials seized from Voorhis's ICE office, including any index or lists of materials not maintained and copied and the disposition of such materials;
- D. All documents evidencing ICE policies and practices regarding NCIC and/or CCIC use;
- E. All documents evidencing the former Immigration and Naturalization Service's ("INS") policies and practices regarding NCIC and/or CCIC use;
- F. All documents evidencing the former Border Patrol and Customs Service's ("Customs") policies and practices regarding NCIC and / or CCIC use;
- G. Documents explaining which agencies' policies and practices regarding NCIC and / or CCIC use governed during and after the merger of INS and Customs within the Department of Homeland Security;
- H. Documents regarding the Colorado Bureau of Investigation's ("CBI") instructions, policies, and practices on the use of NCIC and / or CCIC;
- I. Alien Files for any person whose information Voorhis allegedly accessed or obtained by exceeding his authorized access to CCIC and/or NCIC;
- J. All exhibits referenced in Agent Olmos's reports;
- K. An native-file copy of the "Computer Security Awareness Training" contained on the DHS discovery disks;
- L. Mirror images of any computers seized during the investigation of Voorhis; and
- M. Forensic reports of any computers seized during the investigation of Voorhis other than the Forensic report of Voorhis's ICE computer by Corky Hilton.

## II. Request For Additional Discovery

20. Additionally, Voorhis requests that the Government provide the following materials, not previously specifically requested:

- A. ICE Central Index System data for any of the individuals whose information Voorhis's allegedly accessed in violation of 18 U.S.C. § 1030;
- B. A cassette tape containing the recording of a voice mail message from Kathy Edgell left for Agent Olmos regarding privileged documents;
- C. A list of all ICE and/or CBI personnel who were involved in the search and seizure of Voorhis's ICE office or who were granted access to his office while he was on administrative leave;
- D. All documents relating to the Colorado Bureau of Investigation's prosecution decisions regarding alleged misuse of the CCIC and/or the NCIC;
- E. All documents relating to the United States' prosecutions for alleged misuse of CCIC and/or NCIC pursuant to 18 U.S.C. § 1030 within the District of Colorado;
- F. All communications relating to the investigation and prosecution in this case between the United States Attorney's Office for the District of Colorado and the United States Attorney's Office for the District of Wyoming, the United States Department of Justice, any investigative agency, A. William "Bill" Ritter, Jr., the Bill Ritter for Governor Campaign, the Colorado Governor's Office, the Colorado Democratic Party, the Harris County, Texas District Attorney's Office, the Department of Homeland Security ("DHS"), the DHS, Immigration and Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;
- G. All communications relating to the investigation and prosecution in this case between the United States Attorney's Office for the District of Wyoming and the United States Attorney's Office for the District of Colorado, the United States Department of Justice, any investigative agency, A. William "Bill" Ritter, Jr., the Bill Ritter for Governor Campaign, the Colorado Governor's Office, the Colorado Democratic Party, the Harris County, Texas District Attorney's Office, the Department of Homeland Security ("DHS"), the DHS, Immigration and Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;

- H. All communications relating to the investigation and prosecution in this case between the CBI and the United States Attorney's Office for the District of Wyoming, the United States Attorney's Office for the District of Colorado, the United States Department of Justice, any investigative agency, Bill Ritter, the Bill Ritter for Governor Campaign, the Colorado Governor's Office, the Colorado Democratic Party, the Harris County, Texas District Attorney's Office, the Department of Homeland Security ("DHS"), the DHS, Immigration and Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;
- I. All communications relating to the investigation and prosecution in this case between the FBI and the United States Attorney's Office for the District of Wyoming, the United States Attorney's Office for the District of Colorado, the United States Department of Justice, any investigative agency, Bill Ritter, the Bill Ritter for Governor Campaign, the Colorado Governor's Office, the Colorado Democratic Party, the Harris County, Texas District Attorney's Office, the Department of Homeland Security ("DHS"), the DHS, Immigration and Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;
- J. All communications relating to the investigation and prosecution in this case between ICE and the United States Attorney's Office for the District of Wyoming, the United States Attorney's Office for the District of Colorado, the United States Department of Justice, any investigative agency, Bill Ritter, the Bill Ritter for Governor Campaign, the Colorado Governor's Office, the Colorado Democratic Party, the Harris County, Texas District Attorney's Office, the Department of Homeland Security ("DHS"), the DHS, Immigration and Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs; and
- K. All communications relating to the investigation and prosecution in this case between the United States Attorney's Office for the Districts of Wyoming or Colorado and any United States Attorney's Office in Texas or any law enforcement agency in Texas.
- L. Any records reflecting the federal or joint federal/state investigation of ICE Agent Jessica McKinnish and any request made to any federal prosecutor's office to prosecute Ms. McKinnish in United States District Court for the District of Colorado.

### **III. Request That Discovery Be Provided Without Watermark**

21. Voorhis also requests that the Government be ordered to provide previously-provided discovery *without* the watermark that has been electronically “stamped” on the bottom of each page or, in some cases, superimposed over the entire document. *See, e.g.*, Ex. 2 to Def.’s Mot. to Suppress Statements and Evidence, filed concurrently (Docket Entry # 30).. There are numerous problems with this watermark, including that it: 1) lists the incorrect case number; 2) implies that the documents must be “protected” from unauthorized access, a particularly prejudicial implication given that this case involves alleged unauthorized access to government information; 3) makes it impossible to print at least 1 set of the documents on 8.5” by 11” paper – thereby placing an undue burden on Voorhis’ attorneys to print the documents on oversized paper and then have them reduced before they can be scanned to be used as exhibits;<sup>1</sup> and 4) inserts new assertions of making chain of custody and identification of the documents more difficult than necessary. If the Government believes that a protective order restricting further dissemination of discovery in this matter is warranted, it may apply for one.

### **IV. Request For Preservation Of Evidence**

22. Voorhis respectfully requests that the Court issue an Order requiring the Government to preserve the above-described materials pending their production or adjudication of this Motion.:

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<sup>1</sup> The security settings on the disks do not allow Voorhis’ attorneys to electronically “extract” pages, thereby preventing the need for printing/scanning prior to electronically filing the documents.

WHEREFORE, Voorhis respectfully requests this Court enter an order directing the Government to produce the discovery materials listed in paragraphs 19(A) – (M) and 20 (A)-(L); and requiring the Government to preserve the same materials.

Dated December 20, 2007

Respectfully submitted,

s/ William L. Taylor

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**ATTORNEYS FOR DEFENDANT CORY VOORHIS**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 20, 2007, I have caused to be electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following via e-mail.

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s/ Brooke Nicholson  
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