

**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.

**DEFENDANT'S UNOPPOSED MOTION FOR PRESERVATION
DEPOSITION OF FRANCIS A. LEE**

Pursuant to Rule 15(a) of the Federal Rules of Criminal Procedure, Defendant Cory Voorhis ("Voorhis"), through his attorneys, respectfully requests that the Court permit Voorhis to conduct a preservation deposition of Francis A. Lee before January 20, 2008. In support of this Motion, Voorhis states as follows:

1. Rule 15(a) permits parties to depose a prospective witness in order to preserve testimony for trial "because of exceptional circumstances and in the interest of justice."

2. Mr. Lee is a recently retired acting supervisor for the Department of Homeland Security, Immigration and Customs Enforcement ("ICE"). Upon information and belief, Mr. Lee has information and will provide testimony relevant to the charges filed in this case and Voorhis's affirmative defenses. Specifically, Voorhis believes Mr. Lee will provide evidence regarding:

A. ICE's collection of data regarding aliens who received plea bargains from Colorado District Attorneys' Offices.

- B. ICE's provision of data to congressional staffers.
- C. ICE's policies, practices, and procedures regarding access to government databases and systems.
- D. ICE's policies, practices, and procedures regarding the provision of criminal history information to people outside of ICE.

3. Mr. Lee has been ordered to active duty in the United States Army, and has been ordered to report to Ft. Riley, Kansas on January 20, 2008 for training and deployment to Afghanistan in the Spring of 2008.

4. Because of the delayed production of the Government's discovery, the current trial date of February 11, 2008 is at risk for being continued. If the trial is continued, and Mr. Lee is, in fact, deployed to Afghanistan, it would be unduly costly and burdensome for Mr. Lee to be returned to testify at trial.

5. Therefore, a preservation deposition of Mr. Lee before January 20, 2008 is appropriate to prevent undue burden on Voorhis, Mr. Lee and the United States Army, and less costly to the United States.

6. Further, Voorhis will work with Mr. Lee and the Government to designate a time and place for the deposition to ensure that no party is prejudiced or unduly inconvenienced by the taking of the deposition.

7. Counsel for the Government does not oppose the preservation deposition of Mr. Lee. However, if Mr. Lee is in the United States at the time of trial, the parties will seek to secure his presence at trial.

WHEREFORE, due to Mr. Lee's scheduled military service and deployment, Voorhis respectfully requests that the Court exercise its discretion and allow Voorhis to conduct a Rule

15(a) videotaped preservation deposition of Mr. Lee before January 20, 2008. A proposed order is attached for the Court's convenience.

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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