

**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 MOTION TO SUPPRESS STATEMENTS AND EVIDENCE

Defendant Cory Voorhis ("Voorhis"), through his attorneys, William L. Taylor and Danielle R. Voorhees of Holland & Hart LLP, and Patrick L. Ridley of Ridley, McGreevy & Weisz, P.C., respectfully moves for the suppression of certain statements and evidence constituting fruits of such statements taken from Voorhis in violation of his rights under the Fifth Amendment to the United States Constitution, and requests an evidentiary hearing on this Motion. In support of this Motion, Voorhis states as follows:

I. Facts

1. On or about October 13, 2006, the Colorado Bureau of Investigation (CBI) commenced an investigation into alleged misuse of the Colorado Crime Information Center (CCIC) and/or the National Crime Information Center (NCIC).

2. On or about October 16, 2006, the Executive Director of the CBI, Robert Cantwell, personally telephoned Denver U.S. Immigration and Customs Enforcement (ICE) Special Agent in Charge (SAC), Jeffrey Copp, to request that he investigate the use of

NCIC/CCIC by Voorhis. Copp is the highest ranking ICE official in its office in Denver, known as the Denver SAC Office. Pursuant to Cantwell's request, Voorhis was called into the office of Assistant Special Agent in Charge (ASAC) Paul Maldonado. Maldonado was then, and is now, one of two ASACs in the Denver SAC Office, and reports directly to Copp. Voorhis's direct supervisors at the time were Group Supervisors Anthony Rouco and Kathy Edgell, who both reported to ASAC Maldonado.

3. Without providing any admonition or advisement of rights of any kind, Maldonado asked Voorhis whether he had accessed the file of an individual in NCIC/CCIC - - the question posed by Cantwell to Copp originally. Voorhis answered the question. After Voorhis answered Maldonado's question, Maldonado directed Voorhis to accompany him to Copp's office. Voorhis was instructed to answer the same question in Copp's presence. Voorhis answered the question, and some follow-up questions. No admonition or advisement of rights was provided Voorhis at this juncture either. Upon further questioning, Voorhis invoked his right to counsel and declined to answer further questions posed by Copp or Maldonado.

4. According to the United States' discovery, precisely what Voorhis may have said in response to Maldonado's and Copp's questioning is in substantial doubt as the discovery offers different versions of the statements. These different versions are contained in reports prepared not by Maldonado or Copp, or in their notes, but in summary reports and interview memoranda prepared second- or third-hand by investigating agents months after the statements actually were made.

5. Voorhis was not provided with any written or oral warnings prior to being questioned by ASAC Maldonado or SAC Copp or anyone else.

6. When Voorhis was summoned to ASAC Maldonado's and SAC Copp's offices and questioned regarding the database queries, he believed that he had to answer the questions or he would face sanctions from his employer up to and including termination from his employment at ICE. Voorhis was aware of the express policy of ICE which states that "[Failure] to provide honest and complete information or displaying lack of candor in any official inquiry or proceeding [including] (but not limited to) statements . . . related to . . . employment, . . . OPR, . . . transactions with the public, or any other official" [or] "[i]nvestigations, inquiries, or proceedings [internal to DHS or ICE] or external (any other state or federal agency, police investigator, court, etc.)" is punishable by removal "for a first offense." See *Interim ICE Table of Offenses and Penalties*, attached hereto as Exhibit 1. Voorhis also was aware of the content of *Garrity* warnings routinely provided as a matter of policy in connection with internal inquiries within ICE and its predecessor agency, the Immigration and Naturalization Service (INS). These warnings - - not given here, in violation of ICE standard procedure and policy - - expressly provide that an employee to whom such questions are posed "[has] a duty to reply to these questions and disciplinary action, including dismissal, may be undertaken if [the employee] refuse[s] to answer or fail[s] to reply fully and truthfully." See *INS Garrity Warning*, attached hereto as Exhibit 2.

7. Voorhis's workspace in the SAC Denver Office subsequently was searched and his work papers, computer, and personal papers and effects were seized. Two other computers assigned to Voorhis, or to which he had access, also were seized and searched by government agents.

8. On or about October 17, 2006, Voorhis was publicly identified in the media as a “suspect” in the investigation of unauthorized access of the government database. Also on or about October 17, 2006, Voorhis’s gun, badge and office access card were seized from him, and he was informed that he had been placed on administrative leave pending investigation.

II. Legal Standard

9. The Fifth Amendment to the United States Constitution provides that, “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” *U.S. Const. amend. V*. It is coercion by the government in compelling testimonial statements that is the concern of the Fifth Amendment. *Colo. v. Connelly*, 479 U.S. 157, 170 (1986).

10. The Fifth Amendment proscribes such compulsion in the employment context, when governmental employers coerce statement from public employees by threat of discharge from employment. *Garrity v. New Jersey*, 385 U.S. 493 (1967). Courts have recognized that “ a public employee may not be coerced into surrendering his Fifth Amendment privilege by threat of being fired or subjected to other sanctions . . . and cannot be forced to choose ‘between self-incrimination or job forfeiture.’” *United States v. Vangates*, 287 F.3d 1315, 1320 (11th Cir. 2002) (*citing Garrity*, 385 U.S. at 496) (*internal citations omitted*).

11. Under the Fifth Amendment and federal statutes, no person may be compelled to answer any question put to him “unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant.” *Lefkowitz v. Turley*, 414 U.S. 70, 78 (1973) (*citing Kastigar v. United States*, 406 U.S. 441 (1972)); *see also* 18 U.S.C. §§ 6001-6003. This protection is not limited to formal proceedings, but exists even in informal settings where answers to questions might incriminate

that person in future criminal proceedings. *Vangates*, 287 F.3d at 1320 (citing *Minn. v. Murphey*, 465 U.S. 420, 426 (1984)).

12. *Garrity* thus protects law enforcement officers, as public employees, from having to choose between answering questions posed during internal investigations and making potentially incriminating statements, affording use immunity for statements made under threat of termination or other sufficiently coercive sanction. *Id.* Although the Fifth Amendment protection against self-incrimination is not, as a general rule, self-executing, *id.*, use immunity attaches to such compelled statements as a matter of law, even absent a waiver under *Garrity*. *Id.* at 1321. Therefore, *Garrity* may be self-executing. *Id.*

13. Furthermore, impermissible coercion and pressure may take subtle forms, direct or indirect, and may include the implicit threat of economic sanctions, such as those available in the employment context. *See id.* (citing *United States v. Montanye*, 500 F.2d 411, 415 (2d Cir. 1974); *Womer v. Hampton*, 496 F.2d 99, 108 (5th Cir. 1974)). No explicit threat of termination need be made for statements made in this context to be rendered inadmissible. *U.S. v. Trevino*, 215 Fed.Appx. 319, 321, 2007 WL295505 (5th Cir. 2007) (unpublished disposition), attached hereto as Exhibit 3.

14. In the absence of a direct threat to terminate, a law enforcement officer's statements are impermissibly coerced when (1) the officer in fact believed, subjectively, that he was compelled to give a statement upon threat of loss of employment, and (2) that belief was objectively reasonable. *Id.* at 1321 (citing *United States v. Friedrich*, 842 F.2d 382, 395 (D.C. Cir. 1988); *United States v. Camacho*, 739 F.Supp. 1504, 1515 (S.D.Fla.1990)).

15. Whether Voorhis's statements were the product of impermissible coercion and are thus inadmissible is determined under the totality of the attendant circumstances. *Vangates*, 287 F.3d at 1322.

16. In the event that Voorhis's statements were unconstitutionally obtained, they must be suppressed and all evidence derivative of them must similarly be suppressed. *See Wong Sun v. United States*, 371 U.S. 471, 485 (1963).

III. Argument

17. The environment and circumstances present here were inherently coercive. First, the questioning was done not by some internal, lower-level investigator, but by or at the direction of the most senior ICE official in the region and Voorhis's ultimate supervisor in the Denver SAC Office. Second, the questioning was done in the respective supervisors' offices, after Voorhis was summoned first to Maldonado's office, and then directed to Copp's office, where he was questioned by both the SAC and the ASAC together. Third, the questioning was done without the presence of any representative for Voorhis, as had been the practice at INS. Fourth, Voorhis was specifically aware of official policy statements and practices threatening him with "removal" or "dismissal" from employment in the event that he refused to answer questions posed to him under the circumstances present here by ASAC Maldonado and SAC Copp. Finally, no admonitions or advisements were given, nor was any explanation given about the purpose or scope of the questions being posed by the SAC and the ASAC.

18. Voorhis subjectively believed, under all the attendant circumstances, that he could not assert his Fifth Amendment right to remain silent and refuse to answer these questions without facing termination from employment. This belief was objectively reasonable, given

agency policy and practice. The statements made by Voorhis in response to interrogation by ASAC Maldonado and SAC Copp were the product of coercion and should be suppressed, as should any evidence derived therefrom.

WHEREFORE, Voorhis respectfully requests that the Court suppress the statements at issue here. Further, Voorhis requests that all evidence derived from the statements also be suppressed as fruits of the poisonous tree. Voorhis request that an evidentiary hearing be held on this motion.

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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