

**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 A BILL OF PARTICULARS**

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Pursuant to Federal Rules of Criminal Procedure, Rule 7(f), Defendant Cory Voorhis (“Voorhis”), through his attorneys, respectfully requests that the Court order the United States of America (“the Government”) to provide a Bill of Particulars no later than January 18, 2008. In support of this Motion, Voorhis states as follows:

**INTRODUCTION**

Voorhis is charged by Information with three counts of violating Title 18, United States Code, Section 1030(a)(2)(B), intentionally exceeding authorized access to a computer and obtaining information from an agency of the United States, for allegedly having “access[ed] a database maintained in the National Crime Information Center (NCIC) of the Federal Bureau of Investigation . . . through which he retrieved the criminal histories of various individuals[.]”<sup>1</sup>

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<sup>1</sup> \_\_\_/ Information, Docket Item No. 1, attached hereto as Exhibit 1.

Through this Motion, Voorhis makes the following limited, but essential, requests for particularized information:

1. The specific database or databases maintained in NCIC that Voorhis allegedly accessed.
2. The names of the individuals whose information Voorhis allegedly retrieved.
3. The information Voorhis is alleged to have retrieved.

Without this information, Voorhis is not sufficiently advised of the conduct the Government alleges violated Section 1030(a)(2)(B) and cannot adequately prepare his defense and avoid prejudicial surprise during trial.

### **BACKGROUND**

Voorhis is a Special Agent with the Department of Homeland Security, Immigration and Customs Enforcement (“ICE”).<sup>2</sup> As such, his job duties include investigating civil and criminal violations of the Immigration and Nationality Act (“INA”) and effecting arrests for criminal violations of the INA and certain other federal statutes, and pursuant to the INA’s civil arrest authority. *See* 8 U.S.C. § 1357. In the ordinary course of his assigned duties, Voorhis is authorized to access a number of different government information systems and databases.

On October 27, 2007, Voorhis was charged by Information filed by the Government with three violations of Section 1030(a)(2)(B). Each Count in the Information begins by reciting excerpted language of the charged subsection. In the clause that follows (the “to-wit” clause), Counts One and Two recite, in pertinent part, that Voorhis “access[ed] a database maintained in [NCIC and] retrieved the criminal histories of various individuals.” Count Three recites that

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<sup>2</sup> \_\_\_/ Voorhis is presently suspended, with pay.

Voorhis “access[ed] a database maintained in [NCIC and] retrieved the criminal history of an individual.” *See* Ex. 1. None of the Counts identify (1) the database(s) maintained in NCIC that allegedly were accessed, (2) the individuals whose criminal history allegedly was retrieved, or (3) the particular criminal history data allegedly retrieved.

Based on the discovery that has been provided to date, it is clear that the Government knows the identities of at least some of the individuals alluded to in the Counts charged. Voorhis has requested that the Government provide the results of forensic examination of two separate computers reportedly analyzed by Government agents, but has not yet been provided that information. Finally, Voorhis has requested that the Government provide the alien file for any persons whose criminal history it alleges Voorhis unlawfully retrieved. Counsel for the Government has informed the defense that it may or may not provide the requested files.

### **LEGAL STANDARD**

“It is axiomatic that a criminal defendant should be given enough information about the offense charged so that he may prepare adequately for trial.” *See United States v. Rogers*, 617 F. Supp. 1024, 1027 (D. Colo. 1985). A bill of particulars may be ordered “[to] more specifically define the charge set forth in the indictment, so that the defendant is apprised of the charges against him with sufficient clarity in order to allow him the opportunity to prepare his defense and to obviate prejudicial surprise to the defendant at trial.” *Id.* (internal quotation omitted). Further, a bill of particulars allows the defendant to be sufficiently informed of the charges to later raise a double jeopardy claim, if it becomes appropriate. *See id.* A defendant’s request for a bill of particulars should be granted if it is necessary that the “defendant have the particulars

sought in order to prepare his defense and in order that prejudicial surprise will be avoided.” *Id.* The Court has broad discretion in ruling on a motion for a bill of particulars. *Id.* at 1026.

### **ARGUMENT**

This case involves a number of complicated legal and factual issues. The gravamen of the offenses charged is that Voorhis exceeded his authorized access to a computer when he obtained information to which he was not entitled. *See* 18 U.S.C. §§ 1030(a)(2)(B) & (e)(6). However, at the time the alleged offenses occurred, Voorhis unquestionably was allowed to access a variety of government systems and databases and to retrieve criminal history information about individuals he reasonably suspected to have violated the INA or other federal statutes. Therefore, Voorhis routinely used a government computer to access information from a number of different databases regarding foreign nationals. Without the Government specifically identifying which systems or databases he allegedly “exceeded authorized access” to through NCIC, whose criminal histories he allegedly accessed, and what elements of criminal history information he allegedly retrieved to which he was not entitled, Voorhis is left to guess which of his actions the Government alleges were criminal. Such guesswork would render his defense unnecessarily complicated and burdensome. *See United States v. Hsia*, 24 F. Supp. 2d 14, 31 (D.D.C. 1998) (granting in part motion for bill of particulars when defendant’s preparation for trial would be unnecessarily complicated without knowing which acts were preformed by which co-conspirators).

Specific government databases to which Voorhis was granted access, even if one is to address only the databases accessible through NCIC, are controlled by different agencies or departments of the United States or of the several States and governed by different sets of

statutory and regulatory provisions. Further, the various databases are subject to different agency policies and practices, with the scope of authorization as to each articulated in different documents, different sets of oral instructions, and/or different customs and practices amounting to policies, proof as to which may need to be marshaled through different witnesses, documents, or tangible evidence. Access to an individual's files within a given database inevitably will be justified by a fact-specific showing of cause as to that individual. Such a showing may well require adducing documentary or testimonial evidence, and may include production of additional discovery to the defense by the Government.

Finally, to defend against the Government's allegations, Voorhis anticipates that it will be necessary to call expert witnesses on such subjects as authorized access, agency policies and practices, and government information technology systems. In order to focus the efforts of potential expert witnesses on the acts that will actually be at issue at trial, Voorhis must be allowed to know which of his acts will be in dispute.

Voorhis cannot conceivably marshal evidence in preparation for his defense at trial in a meaningful way without knowing which particular databases the Government contends Voorhis accessed, and what particular information he allegedly obtained in excess of his authorized access. The surprise and uncertainty that the charging document filed in this case poses to Voorhis as he prepares to present his defense in Court unnecessarily and indefensibly burden his exercise of his right to a jury trial.

The information requested is narrow and necessary for Voorhis to prepare his defense. Voorhis is not improperly using this request for a Bill of Particulars as a discovery device - - he is not seeking evidentiary detail, identification of specific proof the Government seeks to admit

at trial, or requiring the Government to disclose trial strategy. Voorhis merely seeks to know with particularity which acts the Government seeks to hold him criminally liable, *i.e.*, what specific information the Government alleges Voorhis retrieved and from which database(s). This is information to which Voorhis is entitled and which is properly sought through a motion for a bill of particulars.

WHEREFORE, Voorhis respectfully requests that the Court order the Government to provide a Bill of Particulars on or before January 18, 2008. A proposed order is attached for the Court's convenience.

Dated November 30, 2007

Respectfully submitted,

s/ William L. Taylor

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**ATTORNEYS FOR DEFENDANT CORY VOORHIS**

**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 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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