

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

Criminal Case No. 07-CR-00462-JLK

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**CORY VOORHIS,**

Defendant.

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**GOVERNMENT'S RESPONSE TO THE DEFENDANT'S MOTION FOR DISCOVERY  
AND  
PRESERVATION OF EVIDENCE**

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**COMES NOW**, the United States, by and through its attorney, James C. Anderson, Special Prosecutor, and respectfully submits the following as the Government's response to the Defendant's Motion for Discovery and Preservation of Evidence filed with the court on December 20, 2007.

1. The Defendant has filed a motion moving the court to order the United States to provide the Defense with specific items and requesting that all items requested be preserved pending resolution of the motion.

2. As an introductory matter, the United States has attempted to comply with its discovery responsibilities in this matter. To date, the United States has provided the Defendant with over 5,446 pages of discovery consisting of reports, documents pertaining to policies and procedures, and other documentary material, 4 CD-Roms containing various items relating to the

investigation of this matter, and complete copies of three hard drives from work computers used by the Defendant. A significant amount of material was turned over to the defense even before the Defendant was charged in this matter. As further material becomes available to the United States Attorney's Office it will be turned over to the Defense subject to the objections raised below.

3. The Defense has moved the court for additional discovery. The Government will address the Defendant's demands *seriatim*:

**A. All ICE / DHS Internal Affairs file(s) regarding the investigation of Voorhis.**

To the best of the undersigned's knowledge and belief, all investigative reports generated by ICE-OPR regarding this matter have been turned over to the Defense. Bate # 500490-500900; Bate # 500901-501714; Bate # 502757-503518. Additionally, the Government has sent several CD-Roms with material from ICE-OPR.

**B. All materials seized during the search conducted of Voorhis's desk and work space.**

Any and all materials that were seized from the Defendant's desk and thereafter retained by ICE-OPR were turned over to the Defense. See Bate # 500901-501714; note cards, Bate # 503519-504459; a CD-Rom containing contents of 64 diskettes found in the Defendant work space. A significant portion of the items originally seized by ICE-OPR, such as active case files, were subsequently returned to ICE. A complete inventory of all the items originally seized by ICE-OPR has been provided to the defense. Bate # 502986-502988.

- 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.**

See the answer to "B" above.

- D. **All documents evidencing ICE policies and practices regarding NCIC and/or CCIC use.**

Based upon information provided to the undersigned by ICE personnel, ICE does not have a specific, formal written policy regarding NCIC use. ICE agents receive extensive training regarding computer security and handling law enforcement sensitive information. Documents evidencing such training, policy and procedure that have been turned over to the defense include: Management Directive, re: Safeguarding Sensitive but Unclassified Information; ICE Policy re: Safeguarding Law Enforcement Sensitive Info.; Privacy Act Compliance; Public Affairs Guidance and Designated Spokespeople; Immigration Information Section 3-46-8 (Constitutional and Civil Rights in Law Enforcement); Immigration Information 3-3-202 (FOIA); FOIA Definitions; DHS policy re: Personal Use of Government Office Equipment; DHS Policy re: FOIA Compliance; Immigration Information 1-1-901 (Standards of Ethical Conduct); Immigration Information 3-3-20 (FOIA/Privacy Act); Customs Directive - Treasury Enforcement Communications System Data. See Bate # 505311-505407.

Additionally, ICE agents who are authorized operators of the NCIC system are required to undergo training and abide by the rules, regulations, and policies of the agency providing the agent with access to the NCIC system. As the Defendant was stationed in Colorado he was subject to the rules, regulations, and policies of the Federal Bureau of Investigation and Colorado Bureau of

Investigation, the state agency charged with administering NCIC within the State of Colorado. The CBI adheres to all federal policies, regulations and laws regarding the access of the NCIC computer system by operators accessing NCIC through the CCIC computer system. Training materials, policies and procedures, and other pertinent information regarding use of CCIC/NCIC have been provided to the Defense. See Bate # 504460-505183.

**E. All documents evidencing the former Immigration and Naturalization Service's ("INS") policies and practices regarding NCIC and/or CCIC use.**

To the best of the information and belief of the undersigned, no specific, formal written policy existed within the former INS regarding NCIC use. Rather, INS agents were required to undergo training and abide by the rules, regulations, and policies of the agency providing the agent with access to the NCIC system as described above in "D."

**F. All documents evidencing the former Border Patrol and Customs Service's ("Customs") policies and practices regarding NCIC and / or CCIC use.**

To the best of the information and belief of the undersigned, no formal policy existed within the Border Patrol or the Customs Service regarding NCIC use. Rather, agents from these agencies were required to undergo training and abide by the rules, regulations, and policies of the agency providing the agent with access to the NCIC system as described above in "D."

**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.**

To the best of the information and belief of the undersigned, after the merger of INS and Customs all operators of the CCIC/NCIC system were required to abide by the rules and regulations

of CBI just as they were prior to the merger of the two agencies. Without putting too fine a point on the issue - before the merger authorized operators were authorized to access the system only for legitimate law enforcement purposes and after the merger authorized operators were only allowed to access the system for legitimate law enforcement purposes.

**H. Documents regarding the Colorado Bureau of Investigation's ("CBI") instructions, policies, and practices on the use of NCIC and / or CCIC.**

As set forth above, these documents have been provided to the Defense. See Bate # 504460-505183.

**I. Alien Files for any person whose information Voorhis allegedly accessed or obtained by exceeding his authorized access to CCIC and/or NCIC.**

These files have been requested and are forthcoming. Upon their receipt the files will be forwarded to the Defense.

**J. All exhibits referenced in Agent Olmos's reports.**

Senior Agent Olmos is the ICE-OPR agent assigned to this matter. The Government would submit that most, if not all, of the exhibits or attachments referenced by Agent Olmos have been provided to the Defense. The vast majority of exhibits Agent Olmos references as exhibits in his reports are investigative reports authored by other case agents. If the Defense would provide a list of any such exhibit it does not have in its possession from previously provided discovery the United States will take immediate steps to provide the same to the Defense.

**K. A native-file copy of the "Computer Security Awareness Training" contained on the DHS discovery disks.**

The United States has provided a hard copy, screen shot by screen shot of computer security training program the Defendant completed. According to ICE-OPR it is not possible to provide a copy of the "native file" to the defense.

**L. Mirror images of any computers seized during the investigation of Voorhis.**

Copies of three hard drives contained in work computers used by the Defendant have been acquired and delivered to the Defense as of the date of this filing.

**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.**

All three computers referenced immediately above in sub-paragraph "L" were forensically examined. Formal reports evidencing two of those examinations have been provided to the Defense. Both reports are on CD-Roms. Additionally, a final report, from ICE, on the third computer the Defendant utilized has not yet been received by the undersigned. Upon its receipt the same will be forwarded to the Defense.

4. In the Defendant's December 20, 2007, discovery motion he made additional discovery demands upon the United States. Each of these requests will be addressed *seriatim*:

**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.**

This information has been obtained and turned over to the Defense. See Bate # 505408-505445.

- B. **A cassette tape containing the recording of a voice mail message from Kathy Edgell left for Agent Olmos regarding privileged documents.**

A copy of this tape will be provided to the Defense forthwith.

- 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.**

To the best of the information and belief of the undersigned, the following individuals were involved in the search of the Defendant's work space and/or seizure of material from said office: ICE-OPR Senior Agent Manual Olomos; ICE-OPR Senior Agent David Cook; ICE-OPR Senior Agent Terry Brumfield. The individuals who were granted access to the Defendant's work space were FBI Special Agent John Elvig; FBI Special Agent Michael Castro (retired); CBI Agent-in-Charge Mark Wilson; and CBI Agent-in-Charge Jan Simkins. After the search of the Defendant work area it was marked as an off limits area. The area was subsequently assigned to another ICE agent.

- D. **All documents relating to the Colorado Bureau of Investigation's prosecution decisions regarding alleged misuse of the CCIC and/or the NCIC;**

This demand is so broad and vague that the United States simply cannot respond. The United States would note that "prosecution decisions," in so far as the plain meaning of the phrase may apply, are normally made by prosecutors, not investigators.

- 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;**

The United States objects to this demand as irrelevant and beyond the scope of Rule 16, F.R.Cr.P. and any statutory discovery requirement imposed upon the United States. However, the

United States is unaware of any federal prosecution within this district under 18 U.S.C. § 1030(a)(2)(B) wherein a federal law enforcement agent was alleged to have improperly exceeded his or her access to CCIC/NCIC.

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, and the Department of Homeland Security ("DHS"), the DHS, Immigration Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;**

The United States objects to this demand as irrelevant and beyond the scope of Rule 16, F.R.Cr.P. and any statutory discovery requirement imposed upon the prosecution. Further, because this demand is so broad and vague the Government simply cannot discern exactly what material the defense is seeking to be produced. In so far as this demand may cover "work product" the United States would also object.

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, and the Department of Homeland Security ("DHS"), the DHS, Immigration Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;**

While there seems to be slightly different wording in this demand as compared to the demand contained in subparagraph "F" above, it appears this demand is seeking exactly the same type of

information as above and the United States would lodge the same objection as noted immediately above.

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, and the Department of Homeland Security ("DHS"), the DHS, Immigration Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;**

While there seems to be slightly different wording in this demand as compared to the demands contained in subparagraphs "F" and "G" above, it appears this demand is seeking exactly the same type of information as above and the United States would lodge the same objection as noted above.

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, and the Department of Homeland Security ("DHS"), the DHS, Immigration Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;**

While there seems to be slightly different wording in this demand as compared to the demands contained in subparagraphs "F" and "G" and "H" above it appears this demand is seeking exactly the same type of information as above and the United States would lodge the same objection as noted above.

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, and the Department of Homeland Security ("DHS"), the DHS, Immigration Customs Enforcement ("ICE"), and/or ICE's Office of Internal Affairs;**

While there seems to be slightly different wording in this demand as compared to the demands contained in subparagraphs "F," "G," "H," and "I" above it appears this demand is seeking exactly the same type of information as above and the United States would lodge the same objection as noted above.

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.**

The United States objects to this demand as irrelevant and beyond the scope of Rule 16, F.R.Cr.P. and any statutory discovery requirement imposed upon the United States. Further, because this demand is so broad and vague the Government simply cannot discern exactly what material the defense is seeking to be produced. In so far as this demand may cover "work product" the United States would also object.

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.**

The United States would object to this demand as irrelevant and beyond the scope of Rule 16, F.R.Cr.P. and any statutory discovery requirement imposed upon the United States.

5. The Defendant also demanded that the Government be ordered to provide previously-provided discovery without a watermark that has been electronically "stamped" on the bottom of each page or, in some cases, superimposed over the entire document. The water mark was included on the material simply as a security measure as some material provided to the Defense is law enforcement sensitive.

6. The United States is highly cognizant of its discovery obligations and will not engage in the destruction of any material, if such exists, that the Defendant has demanded but has not been produced due to objections thereto.

**DATED** this 4th day of January, 2008.

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