

**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 BRIEFING SCHEDULE REGARDING  
MOTION TO DISMISS FOR SELECTIVE PROSECUTION**

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Defendant Cory Voorhis ("Voorhis"), through his attorneys, respectfully requests that the Court set a schedule governing the remaining briefing on Voorhis's Motion to Dismiss for Selective Prosecution, Motion for Discovery, and Motion for an Evidentiary Hearing (Docket Entry #6) ("Motion to Dismiss"). Voorhis requests that the United States of America ("the Government") be required to respond to the Motion to Dismiss by December 12, 2007 and that Voorhis be allowed to submit a reply no later than December 20, 2007 (the same date other defense pretrial motions are due). In support of this Motion, Voorhis states as follows:

1. On November 6, 2007, Voorhis filed his Motion to Dismiss. At that time, this case was assigned to the magistrate judge docket.

2. On November 7, 2007, Magistrate Judge Watanabe ordered the Government to respond to the Motion to Dismiss by November 20, 2007 and set a Hearing for December 10, 2007 at 10:00 a.m. Minute Order (Nov. 7, 2007) (Docket Entry # 14.)

3. On November 8, 2007, the Government requested a ten-day extension of time to respond to the Motion to Dismiss. Voorhis did not oppose that request. Mot. for Extension of Time at ¶ 3 (Docket Entry #17.) The Government's Motion for an Extension of Time was granted, rendering its response due on or before November 30, 2007. (Docket Entry #18.)

4. On November 20, 2007, Voorhis's initial appearance and arraignment occurred. At that time, Voorhis exercised his right to proceed before a district court judge. *See* Def.'s Notice of Intent (Nov. 20, 2007) (Docket Entry #19.) This case was then transferred to proceed before this Court.

5. One week later, on November 27, 2007, the magistrate's case was "terminated as to Cory Voorhis" and a new case number was assigned. (Docket Entry #23.) The transaction notifying the parties of the magistrate case termination did not provide any information regarding the previously-set briefing schedule or hearing on the Motion to Dismiss.

6. On November 30, 2007, the date the Government's response to the Motion to Dismiss was due, this Court issued a Minute Order Setting Trial Date and Other Deadlines (Docket Entry #23). The Court ordered: "All *additional* pretrial motions are due by December 20, 2007; responses to *these motions* are due January 4, 2008. A motions hearing is set for January 14, 2008." (Emphasis added.) The Minute Order does not purport to alter any previously set deadlines regarding the Motion to Dismiss.

7. Also on November 30, 2007, counsel for the Government and Voorhis had a conference call to discuss discovery. The Government's attorney explained that he believed the transaction terminating the magistrate case vacated the previously-set November 30, 2007 response deadline and the December 10, 2007 hearing deadline and that the Government would

require additional time to respond to the Motion to Dismiss, perhaps through Wednesday, December 5, 2007. Voorhis's attorney stated that he disagreed with that interpretation of the transaction, but stated that an additional extension of 2-3 days to respond would not be opposed. The attorneys agreed that the Government's attorney would contact Voorhis's attorney on December 3, 2007 to discuss the amount of additional time the Government would require to submit its response and to conference-call the Court to inquire as to the status of the December 10, 2007 hearing.

8. On December 3, 2007, the Government's attorney informed Voorhis's attorney that his office had contacted the Clerk and that the November 30, 2007 response deadline and December 10, 2007 hearing were vacated. The Government's attorney explained that the Government's response to the Motion to Dismiss could be expected in the coming weeks.

9. A briefing schedule specifically governing the Motion to Dismiss will allow this case to proceed in a more efficient manner. The defense anticipates filing a motion for additional discovery specific to the Motion to Dismiss. *See United States v. Folkers*, 2007 WL 67703, at \*4, Cr. Act. No. 04-20124-KHV (D. Kan. Feb. 28, 2007) (Ex. 9 to Mot. to Dismiss) (discovery on selective prosecution should be allowed if defendant "presents 'some evidence' tending to show the essential elements of his selective prosecution claim."). The scope of such additional discovery likely will vary depending on the Government's response. With the Government's response in hand before December 20, 2007 (the date other defense pretrial motions are due), the defense can tailor these supplemental discovery requests to the relevant issues and can tender that motion when all other defense motions are due.

10. Additionally, the Government has already had four weeks to prepare its response to the Motion to Dismiss. If the Court enters an order requiring the Government to submit its response by December 12, 2007, the Government will have had 36 days to prepare its response to the Motion to Dismiss. This is more than ample time to respond; therefore, the Government will not be prejudiced by being required to submit its response next week.

WHEREFORE, Voorhis respectfully requests that the Court order the Government to respond to the Motion to Dismiss on or before December 12, 2007, and that Voorhis be afforded an opportunity to reply not later than December 20, 2007 (the same day that other defense motions are now due). A proposed order is attached for the Court's convenience.

Dated December 6, 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 6, 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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