

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOHN GRAHAM, a.k.a.  
JOHN BOY PATTON, and  
VINE RICHARD MARSHALL, a.k.a.  
RICHARD VINE MARSHALL, a.k.a.  
DICK MARSHALL,  
Defendants.

Case No. CR 08-50079

DEFENDANT MARSHALL'S  
RESPONSE IN OPPOSITION TO  
GOVERNMENT'S MOTION  
TO EXPEDITE TRIAL

NOW COMES Defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and hereby opposes the government's motion to expedite his trial. Defendant Marshall opposes the government's motion on the grounds that if his trial were advanced from its presently scheduled trial date, he would be deprived of his constitutional rights to present a defense and to effective assistance of counsel.

In support of the Defendant's opposition to the government's motion, Dana L. Hanna, attorney for the Defendant, hereby affirms:

1. On August 20, 2008, Richard Marshall was charged with aiding and abetting a murder that occurred 33 years ago, in 1975. He was arrested on August 25, 2008 and arraigned the next day. On August 28, 2008, the Court entered an order fixing dates [Doc. 14] and scheduled trial for October 28, 2008.

2. On September 8, 2008, Richard Marshall, through undersigned counsel, filed a motion

to continue the trial and other deadlines for four months [Doc. 17].

3. On September 23, 2008, the Honorable Veronica L. Duffy, United States Magistrate Judge, granted the Defendant's motion for continuance and based her ruling, in part, on a finding that "failure to grant the continuance would deny counsel the reasonable time necessary for effective preparation" [Doc. 23]. The Court continued the trial of Richard Marshall to February 24<sup>th</sup>, 2009.

4. On October 7<sup>th</sup>, 2008, the government filed a superseding indictment that joined the case of Richard Marshall with that of Defendant John Graham. On the same day, the government filed a motion to expedite the Defendants' jury trial, and asked the Court to advance Richard Marshall's trial from February 24<sup>th</sup>, 2009 to November or December 2008.

5. The trial Court directed defense counsel to inform the Court by October 14<sup>th</sup>, 2008 if they would be able to try this case on December 9<sup>th</sup>, 2008.

6. Counsel for Defendant Marshall hereby states unequivocally and without reservation that it is his considered professional judgment that it would be impossible for him to prepare an adequate defense and be prepared to try this case on December 9<sup>th</sup>, 2008 or at any time before the presently scheduled trial date of February 24<sup>th</sup>, 2008.

7. The government has taken 33 years to investigate this case. Now, Defendant Richard Marshall requires more than three months to investigate the facts and history of this case and to prepare his defense. The government provided defense counsel with approximately five thousand pages on disc on or about October 6<sup>th</sup>, 2008. It is impossible, in the judgement of defense counsel, to read, review, and analyze the discovery documents, review them with Richard Marshall, investigate facts and interview witnesses, and prepare his defense by

December 9<sup>th</sup>, 2008, or at any time before the presently scheduled trial date.

8. Defense counsel has an ethical obligation to conduct his own independent investigation of this case. I cannot and will not rely solely on the government's investigation and the discovery documents provided to me last week. I intend to seek other discovery than that which has been provided to me. I intend to interview witnesses, some of which are out of state. I intend to obtain and review case files and court documents related to the history of various individuals in the American Indian Movement in the 1970s, which were brought out in testimony in the trial of the *United States v. Arlo Looking Cloud*. I also intend to file motions and legal briefs that will require extensive legal research and writing, including a motion to dismiss the indictment on the grounds that Richard Marshall's ability to present a defense has been irrevocably prejudiced by the passage of 33 years between the crime charged and the indictment and a motion to sever Richard Marshall's trial from that of Defendant Graham on the grounds that Richard Marshall's defense is irreconcilably in conflict with that of Defendant Graham. Given the facts, issues, and history of this case, it would be impossible for me to adequately investigate the facts in this case, research and prepare briefs on the legal issues, read and analyze all the discovery, and prepare this case for trial in two months, or at any time before February 24<sup>th</sup>, 2008.

9. Moreover, in addition to the professional duty I owe to Richard Marshall and to this Court in this case, I have professional obligations to other clients and other courts. I am scheduled to begin a criminal trial on October 28<sup>th</sup>, 2008, United States vs. Barrera, before the Honorable Charles B. Kornmann in United States District Court in Pierre, South Dakota. I also represent the lead defendant in a multi-defendant drug conspiracy case, United States vs. Vigil, et

al., that is scheduled to begin trial before the Honorable Karen E. Schreier, Chief Judge of the United States District Court, on December 9<sup>th</sup>, 2008.

10. The government has submitted no evidence, and can submit no evidence, to controvert the Magistrate Judge's finding that a denial of defendant's request for a continuance to February 24, 2009 would deny counsel for Richard Marshall the reasonable time necessary for effective preparation [Doc. 23].

11. In summary, if this Court were to grant the government's motion to expedite the trial in this case, it is my legal opinion that Richard Marshall would be deprived of his constitutional right to effective counsel and his constitutional right to present a defense.

WHEREFORE, Defendant Richard Marshall opposes the government's motion to advance his trial date from February 24<sup>th</sup>, 2009 to December 9<sup>th</sup>, 2008 or to any other date prior to the scheduled trial date and respectfully urges the Court to deny the government's motion.

Dated this 14<sup>th</sup> day of October, 2008.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna  
Dana L. Hanna  
Attorney for Defendant Marshall  
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**CERTIFICATE OF SERVICE**

I hereby certify that I a true and correct copy of the foregoing Response in Opposition to Government's Motion to Expedite Trial was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney  
kim.nelson@usdoj.gov

Robert Mandel, Assistant United States Attorney  
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham  
jmurphysd@hotmail.com

Dated this 14<sup>th</sup> day of October, 2008.

/s/ Dana L. Hanna

Dana L. Hanna