

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

CR08-50079-01

Plaintiff,

v.

UNITED STATES' SUPPLEMENT TO  
MEMORANDUM OPPOSING  
DEFENDANT'S MOTION TO DISMISS  
COUNT III OF INDICTMENT

JOHN GRAHAM aka JOHN BOY  
PATTON, and VINE RICHARD  
MARSHALL aka RICHARD VINE  
MARSHALL aka DICK MARSHALL,

Defendants.

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COMES NOW the United States of America, by and through United States Attorney Marty J. Jackley and Assistant US Attorney Robert A. Mandel and respectfully supplements the United States' Memorandum Opposing Defendant's Motion to Dismiss Count III of Indictment filed on October 29, 2008, with the following two documents issued by the Canadian Indian Registrar and attached as Exhibits A and B:

1. Certificate of authenticity of official records re: Johnnie Graham, issued on November 7, 2008, by the Indian Registrar Allan Tallman.
2. Certificate of authenticity of official records of Annie May Maloney issued on November 7, 2008 by Indian Registrar Allan Tallman.

These Certificates further support federal jurisdiction over an offense that involves and affects enrolled members of a federally-recognized Indian tribe (Looking Cloud/Marshall/Clarke) and involves and affects registered North American Indians

who are affiliated<sup>1</sup> with a federally-recognized tribe (Aquash and Graham's affiliation with the Oglala Sioux). Graham, through aiding and abetting Indians (Looking Cloud/Marshall/Clarke) in the murder of Annie Mae Aquash in Indian Country, committed acts involving and affecting Indians giving rise to federal jurisdiction under §§1153 and 2. See New York ex rel. Ray v. Martin, 326 U.S. 496, 500 (1946) (recognizing that United States v. McBratney, 104 U.S. 621 (1881), applies to "crimes between whites and whites which do not affect Indians") (emphasis added); United States v. Goings, 527 F.2d 183, 185 (8th Cir. 1975) (stating that McBratney held that "state courts have exclusive jurisdiction of offenses committed solely between non-Indians on Indian reservations") (emphasis added).

In conclusion, the present case is not a murder committed solely between non-Indians and jurisdiction for Defendant Graham's aiding and abetting in the murder of Annie Mae Aquash as alleged in Count III of the Indictment properly remains with this Court.

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<sup>1</sup> An Indian for purposes of §§ 1152 and 1153 requires evidence that: (1) he/she is an Indian in the racial sense; and (2) he/she is enrolled or affiliated with a tribe that is recognized by the United States and is individually subject to United States jurisdiction. LaPier v. McCormick, 986 F.2d 303, 305-06 (9th Cir. 1993) (emphasis added); United States v. Broncheau, 597 F.2d 1260, 1263 (9th Cir. 1976); Ex Parte Pero, 99 F.2d 28, 31 (7th Cir. 1938); St. Cloud v. United States, 702 F. Supp. 1456, 1461 (DSD 1988); see also State v. Daniels, 16 P.3d 650, 653-54 (Wash. App. 2001) (applying test and noting, "Mr. Daniels has clearly established that he is an Indian in the racial sense; his Canadian nationality does not divest him of his racial identity.").

Date: December 16, 2008

MARTY J. JACKLEY  
United States Attorney



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PO Box 2638  
Sioux Falls, SD 57101-2638  
605.357.2330

### CERTIFICATE OF SERVICE

The undersigned hereby certifies on December 16, 2008, a true and correct copy of the foregoing was served upon the following person(s), by placing the same in the service indicated, addressed as follows:

John R. Murphy  
Dana Hanna

- U.S. Mail, postage prepaid
- Hand Delivery
- Facsimile at
- Federal Express
- Electronic Case Filing



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Marty J. Jackley  
United States Attorney

This document has been filed electronically.

CERTIFICATE OF AUTHENTICITY OF OFFICIAL RECORDS

I, Allan Tallman, attest that my position with the  
(Name)  
Government of Canada is Indian Registrar and that in  
that position I am authorized by the laws of Canada to attest  
that the documents attached hereto and described below:

(1) are true copies of official records that are authorized  
by the laws of Canada to be recorded or filed in  
the Department of Indian Affairs, Office of the Indian  
Registrar, which is a government office or agency.

(2) set forth matters that are authorized by the laws of  
Canada to be reported and recorded or filed.

Description of Documents:

(1) Registered Indian Record dated October 23, 2008  
confirming that Johnnie Graham, date of birth, August 13, 1955  
is currently registered as an Indian under section 6(1)(c) of  
the *Indian Act* as registration number 493-00294-01, with band  
membership in the Champagne Indian Band which is located in  
Yukon Territory, Canada. Please note that this record confirms  
that Mr. Graham was issued a wallet-sized identity card, known  
as a Certificate of Indian Status, on July 10, 1995 by the  
Yukon Regional Office of DIAND, bearing card registration  
number 461194, but we do not retain a copy of that document.



\_\_\_\_\_  
(Signature)

(Seal)

November 7, 2008  
\_\_\_\_\_  
(Date)

CERTIFICATE OF AUTHENTICITY OF OFFICIAL RECORDS


I, Allan Tallman, attest that my position with the  
(Name)  
Government of Canada is Indian Registrar and that in  
that position I am authorized by the laws of Canada to attest  
that the documents attached hereto and described below:

- (1) are true copies of official records that are authorized  
by the laws of Canada to be recorded or filed in  
the Department of Indian Affairs, Office of the Indian  
Registrar, which is a government office or agency.
- (2) set forth matters that are authorized by the laws of  
Canada to be reported and recorded or filed.

Description of Documents:

(1) Registered Indian Record dated October 23, 2008  
confirming that Annie May Maloney (birth name Pictou) date of  
birth, March 27, 1945, who died on February 25, 1976 was  
registered as an Indian under section 6(1)(a) of the *Indian Act*  
as registration number 025-00498-01, with band membership in  
the Shubenacadie Indian Band which is located in Nova Scotia,  
Canada. Please note that this record indicates that there is  
no record of Ms. Maloney having been issued a wallet-sized  
identity card, known as a Certificate of Indian Status.

(Seal)

  
\_\_\_\_\_  
(Signature)

November 7, 2008  
\_\_\_\_\_  
(Date)