

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. 08-50079

DEFENDANT MARSHALL'S  
REPLY TO GOVERNMENT'S  
MEMORANDUM IN OPPOSITION TO  
MOTION FOR CONTINUANCE

NOW COMES Defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and hereby replies to the government's memorandum in opposition to the defendant's motion for continuance to correct certain factual errors in the government's memorandum.

The government's memorandum in opposition to the defendant's motion for continuance (doc. 158) puts forth lack of necessity and witness security as grounds to oppose the motion for continuance.

First, it is factually incorrect that defendant Marshall has been provided with transcripts of the taped conversations in the United States Attorney's possession, as asserted on page 3 of the government's memorandum. It is accurate to say that the government has provided transcripts of some of the taped conversations in its possession. However, most of the taped conversations in the government's possession have not even been transcribed. These tapes were made by government witnesses. There are over 100 tapes. The government has declined defendant Marshall's request to provide those tapes to him, even though tapes were provided to counsel for co-defendant Graham. The vast majority of these tapes were made by government cooperating witnesses whom it pleases the government to refer to as "Maverick" and "Sierra." One of these witnesses, was a government witness in Arlo Looking Cloud's trial four years ago,

and therefore, any suggestion that her identity has been “outed” by defendant Marshall is frivolous. The government identified her as a cooperating witness for the prosecution in Looking Cloud’s trial four years before Richard Marshall was even indicted.

The defendant has moved the Court to direct the government to provide defendant Marshall with copies of all of the tapes that have been provided to the co-defendant. Defense counsel must listen to these tapes to prepare for trial. Counsel for defendant Marshall recently borrowed a tape of a conversation between Darlene “Kamook” Nichols-Ecoffey and Cleo Gates from the attorney for the co-defendant. This conversation was secretly recorded by Darlene “Kamook” Nichols-Ecoffey in July 2001 when she went to the home of Cleo Gates and recorded a conversation in which they discussed the very details of the subject matter of Cleo Gates’ testimony in this case. In that conversation, the two government witnesses discussed the night that Arlo Looking Cloud, Anna Mae Aquash, Theda Clarke, and co-defendant Graham arrived at the home of Richard Marshall and Cleo Gates, who was then Marshall’s wife. This tape has never been provided to defendant Marshall in discovery. It is clearly Jencks Act material and is potential impeachment evidence.

It is now obvious that defense counsel for Marshall will have to listen to all of the tapes to determine whether they contain information or evidence, particularly statements by government witnesses, that is favorable to Richard Marshall

Finally, the government contends that witness security is a reason to deny a continuance. The government contends that defendant Marshall has identified and “targeted” a cooperating witness on a website. There is no merit to that accusation. Richard Marshall did not start a website. Friends and supporters of Richard Marshall in the Pine Ridge community started a website to gather support and resources for his defense. Defendant Marshall, who has been incarcerated since his indictment, had no direct involvement in the establishment of the website. As can be seen from the government’s exhibit, it is not accurate to say that the website identified or targeted a potential witness. The website simply states that any individual who has information or who was interviewed by Serle Chapman should contact Mr. Marshall’s attorney, giving my name and contact information. It is absolutely within the defendant’s right to gather information regarding any potential witness, however, there is nothing on the website itself that

identifies Chapman as a witness or otherwise gives any information about him at all. The government's attempt to create an atmosphere of fear as grounds to oppose providing the defendant with sufficient time to prepare a defense is without merit.

In this case, the defendant needs more time than four and a half months to investigate, gather evidence, and prepare for trial. Therefore, the motion for continuance should be granted.

Dated this 20<sup>th</sup> day of January, 2009.

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna

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### **CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing Reply to Government's Memorandum in Opposition to Motion for Continuance upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney  
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Robert Mandel, Assistant United States Attorney  
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John Murphy, Attorney for Defendant Graham  
jmurphysd@hotmail.com

Dated this 20<sup>th</sup> day of January, 2008.

/s/ Dana L. Hanna

Dana L. Hanna