

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

|                               |   |                       |
|-------------------------------|---|-----------------------|
| UNITED STATES OF AMERICA      | ) | CRIM. NO. 08-50079-01 |
| Plaintiff,                    | ) |                       |
|                               | ) | DEFENDANT GRAHAM'S    |
| vs.                           | ) | MOTION TO SUPPLEMENT  |
|                               | ) | RECORD                |
| JOHN GRAHAM, a/k/a            | ) |                       |
| JOHN BOY PATTON and           | ) |                       |
| VINE RICHARD MARSHALL, a/k/a) | ) |                       |
| RICHARD VINE MARSHALL, a/k/a) | ) |                       |
| DICK MARSHALL                 | ) |                       |
| Defendant.                    | ) |                       |

Defendant John Graham moves this Court to allow him to supplement his previously filed Motion to Dismiss Count III in Indictment (File Doc. 49) and Motion to Dismiss All Counts of Indictment (File Doc. 152). Specifically, Mr. Graham asks that the Court consider United States v. Norquay, 905 F.2d 1157, 1162 (8<sup>th</sup> Cir. 1990) when addressing these motions. This case supports the arguments made by Mr. Graham in those pleadings, specifically: (1) that the determination as to a defendant's status is a jurisdictional inquiry, not a proof matter; and, (2) that a non-Indian accomplice is not subject to the federal court's jurisdiction under 18 U.S.C. §§ 1152 or 1153 even if his Indian co-accomplice is subject to federal prosecution.

Mr. Graham also asks the Court to consider the arguments and authority set forth in the Appellee's Brief filed in United States v. Graham, Appeal No. 08-3580, which contains a complete discussion of the jurisdictional and accomplice liability issues raised in the motions to dismiss pending in this file.

Dated January 21, 2009.

/s/ John R. Murphy

John R. Murphy  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing document upon the person(s) herein next designated, on the date shown below by placing the same in the service indicated, addressed as follows:

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

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

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

Dated January 21, 2009.

/s/ John R. Murphy  
John R. Murphy