

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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UNITED STATES OF AMERICA,

CR08-50079

Plaintiff,

v.

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

Defendants.

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**UNITED STATES' BRIEF  
REGARDING NOTICE OF  
APPEAL AND MOTION TO  
SEVER**

In its May 1, 2009, Order Regarding Notice of Appeal and Motion to Sever, the Court directed the parties to submit briefs addressing whether it had authority to revisit Defendant Marshall's earlier severance motion, and, if so, whether the Court should proceed with a separate trial for Defendant Marshall. Pursuant to the Court's Order, the United States respectfully submits this response.

**1. DOES THE COURT HAVE AUTHORITY TO RECONSIDER DEFENDANT MARSHALL'S MOTION TO SEVER?**

It appears as though the Court does have the authority to reconsider Defendant Marshall's Motion to Sever. The United States' Notice of Appeal of the Court's determination of Defendant Graham's Motions to Dismiss did not involve Defendant Marshall, and, though the United States was unable to find

an Eighth Circuit Court of Appeals decision on point, it appears as though the Court is not divested of jurisdiction with respect to Marshall.

**2. IF THE COURT CONCLUDES THERE IS AUTHORITY TO RECONSIDER ITS PRIOR DECISION REGARDING THE MOTION TO SEVER, SHOULD THE COURT HOLD SEPARATE TRIALS OF THE DEFENDANTS IN THIS CASE AND PROCEED WITH THE TRIAL OF DEFENDANT MARSHALL?**

The Court should not proceed with a separate trial of Defendant Marshall. Defendant Marshall and the United States intend to submit a joint motion for a sixty day continuance of the trial and of the determination of any severance issues. The joint motion indicates, at least at this time, that neither Defendant Marshall nor the United States believe a separate trial is necessary. Piecemeal litigation in this matter at this time will not serve the interests of justice or judicial economy, and there exist no speedy trial issues.

Dated and electronically filed this 4th day of May 2009.

MARTY J. JACKLEY  
United States Attorney

/s/ Marty J. Jackley

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies on May 4, 2009, 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

/s/ Marty J. Jackley

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Marty J. Jackley