UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

CR08-50079

UNITED STATES' MOTION FOR CONTINUANCE

COMES NOW the United States of America, by and through Acting United States Attorney Dennis R. Holmes and Assistant United States Attorney Robert A. Mandel, and respectfully files its Motion for Continuance of the trial in the above-captioned matter on the following grounds:

1. The trial in this action is currently set for October 6, 2009.

2. The United States has sought rehearing of its appeal regarding the count of the Indictment dismissed against John Graham aka John Boy Patton. The Eighth Circuit has allowed the United States until September 25, 2009, to file its motion for rehearing or rehearing en banc. The United States must receive permission from the Solicitor General prior to seeking rehearing en banc. Assuming such permission is granted, it is the intention of the United States to file its motion not later than the date currently set by the Court of Appeals.

3. The issue on appeal is the count of the indictment which charges Defendant Graham as an aider and abettor in this action. As this is one of the alternative counts charged, the United States feels that it is precluded from going forward on the two remaining counts without a final resolution of this issue by the Court of Appeals.

4. It has been anticipated by counsel to this action that the trial of this case would take approximately two weeks. Numerous witnesses will be called by the United States, many of whom will be attending from out-of-state and possibly a witness from outside the United States. Because of the potential length and complexity of this trial, it is the position of the United States that it is appropriate to continue this action as to both Defendants until the appellate issue is ultimately resolved in this case.

Accordingly, the United States asks that the trial of this matter be continued until such time as the pending issue is resolved before the United States Court of Appeals for the Eighth Circuit.

Dated and electronically filed this 4th day of September, 2009.

DENNIS R. HOLMES
Acting United States Attorney

By: /s/ Robert A. Mandel
ROBERT A. MANDEL
Assistant US Attorney
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Rapid City, SD 57701

CERTIFICATE OF SERVICE

The undersigned hereby certifies on September 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/ Robert A. Mandel
ROBERT A. MANDEL