

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. CR 08-50079

DEFENDANT MARSHALL'S  
OPPOSITION TO  
CONTINUANCE; REQUEST FOR  
SPEEDY TRIAL; RENEWED MOTION  
FOR SEVERANCE

NOW COMES defendant Richard Marshall, by and through his attorney Dana L. Hanna, and hereby files his response in opposition to the government's motion for a continuance of his trial, and requests that his trial proceed on October 6, 2009. Mr. Marshall further renews his previous motions for severance of his trial from that of co-defendant Graham.

In support of Mr. Marshall's request for a speedy trial and a severance, attorney Dana L. Hanna hereby affirms:

1. On September 4, 2009, the government filed a motion seeking a continuance of Mr. Marshall's trial (Doc. No. 449). Mr. Marshall opposes the government's motion for continuance and affirms to the court that he is ready to proceed with his trial on October 6, 2009. He requests that the government be ordered to proceed with his trial on that date, and he respectfully submits that the if the government is allowed to delay his trial beyond October 6, 2009, that delay would constitute a violation of his statutory and constitutional rights to a speedy trial.

2. Mr. Marshall has been incarcerated in the Pennington County Jail without bond, awaiting trial in this case for more than one year. If his trial proceeds on October 6, 2009, when the trial starts, he will have been in pre-trial incarceration, held without bond at the government's request, for almost 14 months. He has twice made motions to be released on strict conditions, the

government has twice opposed his release and his motion for release has been twice denied by the court. Now the government is seeking another indefinite continuance of his trial, until some indefinite time in the future after the Eight Circuit Court of Appeals decides whether to grant the government a re-hearing in the government's interlocutory appeal of this court's dismissal of one count in the indictment against the co-defendant Graham.

3. After this court dismissed one of the counts in the indictment against co-defendant John Graham, the United States filed an interlocutory appeal. A unanimous Eight Circuit Court panel affirmed the trial court. The government now intends to petition for a re-hearing of the appeal. Since the decision by the panel was unanimous and there is no conflict on the issue of law among Circuits, it is the professional judgment of the undersigned counsel that the government's chances of being granted a re-hearing are practically nil and the government's chances of being granted a re-hearing and then persuading the Court of Appeals to reverse the trial court are infinitesimal. Therefore the government's most recent, second request for an indefinite continuance of Mr. Marshall's trial is be purely dilatory and another continuance would serve no legitimate judicial purpose.

4. In support of its motion to continue, the prosecution states: "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." (Doc. 449, paragraph #3) There is no legal authority to support the government's feeling on this matter.

5. This court has informed the government that if the prosecution chooses to go forward with a trial of Graham, unless the government can prove that John Graham was a member of a federally recognized United States American Indian tribe, the court will dismiss the case against Graham at the end of the government's case. It is uncontested that Graham is not a member of any Indian tribe that is recognized as such by the United States. Therefore, with regard to the prosecution of the co-defendant Graham, the government has two options: (1) dismiss the indictment against John Graham or (2) proceed with the trial against John Graham, knowing that the court will order a judgment of acquittal at the conclusion of the prosecution's case. To proceed with the trial of a case the government knows it cannot prove would be both irresponsible and unethical. Therefore, for all practical purposes, the overwhelming likelihood in

this case is that at some time in the future, the government will have to dismiss the indictment against Graham and then try Richard Marshall without the co-defendant.

6. Given the posture of the case, the government can no longer credibly oppose a severance on the grounds of judicial economy. It would be neither a reasonable nor a responsible expenditure of judicial resources to try defendant John Graham in federal court when the government has been fully and fairly informed by the trial court that the court will grant a motion for acquittal at the end of the government's case. There is no rational benefit the government could achieve by going forward with a trial against John Graham other than to prejudice Richard Marshall's right to a fair trial by means of spill-over prejudice. Therefore, since the practical reality is that a joint trial is now highly unlikely, Richard Marshall's rights to a speedy trial outweigh any purely hypothetical economy of judicial resources that would result from a joint trial.

7. All other grounds, facts and legal authority set forth in support of Marshall's previous motions for severance and in his memoranda of law in support of those motions are hereby repeated and incorporated herein by reference.

8. The defense has interviewed and requested service of subpoenas on more than a dozen witnesses, many of whom live outside the state of South Dakota, some of whom regularly travel beyond their home states to other parts of the United States and to other countries. They have made arrangements to be present in Rapid City, South Dakota for the trial in this case in October.

WHEREFORE defendant Richard Marshall respectfully urges the Court to deny the government's request for continuance, to order a severance of his trial from that of his co-defendant and to allow him to proceed with trial on October 6, 2009.

Dated this 8<sup>th</sup> day of September, 2009.

(Signature block on next page)

VINE RICHARD MARSHALL, Defendant

BY: /s/ Dana L. Hanna

Dana L. Hanna  
Attorney for Defendant Marshall  
PO Box 3080  
Rapid City, SD 57709  
(605) 791-1832  
dhanna@midconetwork.com

**CERTIFICATE OF SERVICE**

I hereby certify that I a true and correct copy of the foregoing Opposition to Continuance; Request for Speedy Trial; Renewed Motion for Severance was electronically served upon the other parties in this case via the electronic mail addresses listed below:

Marty Jackley, United States Attorney  
kim.nelson@usdoj.gov

Robert Mandel, Assistant United States Attorney  
Robert.Mandel@usdoj.gov

John Murphy, Attorney for Defendant Graham  
jmurphysd@hotmail.com

Dated this 8th day of September, 2009.

/s/ Dana L. Hanna

Dana L. Hanna