

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED
SEP 09 2009
[Signature]
CLERK

UNITED STATES OF AMERICA,

CR 08-50079

Plaintiff,

vs.

ORDER GRANTING MOTION
FOR CONTINUANCE

JOHN GRAHAM, a/k/a/ John Boy Patton,
VINE RICHARD MARSHALL, a/k/a
Richard Vine Marshall, a/k/a
Dick Marshall,

Defendant.

The Defendants have each filed resistances to the Motion for Continuance filed by the United States. This Court is reluctant to again continue this case. However, there is little alternative as the Eighth Circuit Court of Appeals granted the United States until September 25, 2009, to determine whether or not the United States would file a Motion for Rehearing or a Rehearing En Banc regarding the Eighth Circuit Court of Appeals July 21, 2009, affirmance of this Court's decision. If such a Motion is filed, permission to file must come from the Solicitor General of the United States. If the Motion is filed, then the Eighth Circuit Court of Appeals will not have time enough to rule on the Motion before the present trial date of October 6, 2009.

The Court has considered the alternatives suggested by the Defendants of trying only Mr. Marshall on that trial date, and the other alternative of releasing the Defendants pending a new trial date. The Court on April 23, 2009 denied a severance, and the basis for that decision has not changed. The possibility of a failure to prove membership of either a Defendant or an alleged victim in a United States American Indian Tribe does not preclude the United States from proceeding to trial with Defendant Graham. The request for separate trials is again denied. Also, the reasons for detaining the Defendants have not changed, despite the delay in trying this case. Accordingly, those alternatives are rejected and the continuance is granted. If the United States does not file a Motion

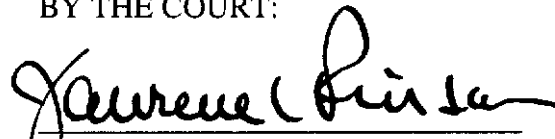
for Rehearing or Rehearing En Banc, this Court will then set another trial date. If a Motion for Rehearing or Rehearing En Banc is filed and after a ruling is entered, then this Court will again set a new trial date. Accordingly,

IT IS ORDERED:

1. That the United States' Motion for Continuance, Doc. 449, is granted.

Dated this 9th day of September, 2009.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:  _____

DEPUTY