

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

*
UNITED STATES OF AMERICA, * CR 08-50079
*
Plaintiff, *
*
vs. * THE STATE'S RESPONSE RE:
* COURT ORDER
* OF SEPTEMBER 17, 2009
*
JOHN GRAHAM, a/k/a John Boy *
Patton, VINE RICHARD MARSHALL, *
a/k/a Richard Vine Marshall, *
a/k/a Dick Marshall, *
*
Defendant. *
*

Comes now, the State of South Dakota, by and through Attorney General Marty J. Jackley and Assistant Attorney General Rod L. Oswald and respectfully files its response pursuant to the Court's Order of September 17, 2009.

On September 11, 2009, Defendant Graham filed a Motion to File Motions Past filing Deadline. Defendant Graham specifically alleged that he has been given limited access to the State Court file which "shows a deliberate attempt to prevent him from obtaining discovery." There has been no deliberate attempt by neither the State Court, nor the State prosecutors to prevent discovery or hide anything. Contained in the State Court file under seal is a proper indictment listing all witnesses that testified before the state grand jury. He will be provided a copy of the unredacted indictment at his arraignment, and there is clearly no violation of SDCL 23A-8-2.

The unsealed grand jury indictment was redacted in the interest of protecting witnesses, the need for which has been enhanced by the collective¹ activities of the defendants, which include but are not necessarily limited to the following:

1. Directly filing federal grand jury witness materials into the public record without redaction; placing said grand jury information on the Graham defense website; and requiring the United States Attorney's Office to file motions to seal defense pleadings referencing said grand jury witness testimony;
2. Specifically referencing cooperating and confidential witnesses by name into the public record, despite specific cautions by the Magistrate Court regarding the same;
3. Repeated and deliberate credibility attacks upon witnesses based upon speculation and conjecture without supporting factual basis;
4. Generating witnesses complaints regarding unwelcome and continued contact by defense representatives.

The State fully intends to provide both State defendants John Graham and Thelma Rios with all the discovery they are entitled to including the grand jury transcripts. However, given the nature of this case and the above history, it is the State's intent to request the State Court to put in place discovery safeguards to avoid the disclosure of the grand jury testimony and other sensitive witness materials. To the extent it is this Honorable Court's intent to order discovery of the State grand jury testimony, the State respectfully request the Court similarly put in place adequate protections for witnesses, including but not limited to the following:

1. No copying of discovery materials without leave of Court;

¹ The State is not intending to single out any defense counsel nor infer that Defendant Graham is responsible for all of these activities. The State is simply establishing the basis for the redacted indictment and the need for additional protections for witnesses and grand jury material.

2. Review of discovery material limited to the Defendant, defense counsel and defense representatives;

3. No public display of grand jury material including in pleadings or websites without proper redaction or filing under seal.

The State is also willing to enter into a discovery stipulation that reasonably protects witnesses and provides the grand jury materials to defendants within a reasonable period of time.

Respectfully submitted this 28th day of September, 2009.

A handwritten signature in black ink that reads "Marty J. Jackley". The signature is written in a cursive, flowing style.

Marty J. Jackley
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of September, 2009, a true and correct copy of the State's Response Re: Court Order of September 17, 2009, was served through United States mail, first class, postage prepaid.

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/s/ Marty J. Jackley
Marty J. Jackley
Attorney General