FILED

FEB 1 9 2009

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA WESTERN DIVISION

CLERK

UNITED STATES OF AMERICA, Plaintiff,

Case No. 08-50079

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.

MOTION TO SEAL EX PARTE
AFFIDAVIT AND APPLICATION FOR AN
ORDER FOR THE ISSUANCE OF A
SUBPOENA DUCES TECUM

NOW COMES Defendant Richard Marshall, by and through his attorney, Dana L. Hanna, and hereby moves the Court to file the attached Ex Parte Affidavit and Application for an Order for the Issuance of a Subpoena *Duces Tecum* under seal.

Pursuant to Local Criminal Rule 47.1(3), counsel represents that there are good reasons for sealing this documents: it is an ex parte application for a subpoena, filed pursuant to Rule 17 of the Federal Rules of Criminal Procedure; it contains the defendant's theory of defense at trial, which the government is not entitled to know prior to trial and premature disclosure of the defense theory would be prejudicial to the defendant. No alternatives to sealing would provide sufficient protection.

WHEREFORE Defendant Marshall moves the Court to file the attached Affidavit and Application for an Order for the Issuance of a Subpoena *Duces Tecum* under seal.

Dated this 18th day of February, 2009.

RICHARD MARSHALL, Defendant

BX:

Dana L. Hanna

Attorney for Defendant Marshall PO Box 3080, Rapid City, SD 57709

(605) 791-1832

dhanna@midconetwork.com