

UNITED STATES DISTRICT COURT

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.

CR 08-50079

UNITED STATES' RESPONSE TO
DEFENDANT GRAHAM'S
MOTION TO HAVE COUNSEL
APPOINTED

COMES NOW the United States of America, through its attorneys, United States Attorney Brendan V. Johnson and Assistant United States Attorney Robert A. Mandel, and respectfully responds to Defendant Graham's Motion to Have Counsel Appointed as follows:

1. The case against John Graham a/k/a John Boy Patton is dismissed. It is the position of the United States that counsel should not be appointed for the purpose of seeking change of the Court's order dismissing without prejudice.

2. The motion made by counsel seeking appointment does not accurately convey the facts regarding this case. Although a lengthy quotation is taken from a letter by Assistant United States Attorney Dennis Holmes, a quotation from the initial paragraph is not made to the Court, namely, where Mr. Holmes states

regarding the letter that he has written that “this letter constitutes my personal perspective on the case and is not an official statement by the United States Attorney or the Department of Justice.” It is not unusual for differences of opinion to exist as to the applicable law in a given case.

3. The question of jurisdiction over Canadian Indians is one that is not well settled in the law. There are many factors that can enter into the determination of Indian status for defendants or victims. Those vary on a case by case basis. No final determination has ever been made in that regard in this case, and it is not appropriate to litigate this when the case has been dismissed.

Accordingly, the United States requests that Defendant’s Motion to Have Counsel Appointed be denied.

Respectfully submitted this 6th day of April, 2010.

/s/ Robert A. Mandel

ROBERT A. MANDEL
Assistant United States Attorney
515 9th Street #201
Rapid City, SD 57701
605.342..7822
FAX: 605.342.1108
Robert.Mandel@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2010, I served by electronic transmission, a true and correct copy of the foregoing United States' Response to Defendant Graham's Motion to Have Counsel Appointed on:

John Murphy
Attorney at law

/s/ Robert A. Mandel

Robert A. Mandel