

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

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|-------------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, | * | CR. 08-50079 |
| | * | |
| Plaintiff, | * | |
| | * | |
| | * | |
| vs. | * | APPLICATION AND AFFIRMATION |
| | * | IN SUPPORT OF AN ORDER FOR THE |
| JOHN GRAHAM, a.k.a. | * | ISSUANCE OF SUBPOENA |
| JOHN BOY PATTON, and | * | |
| VINE RICHARD MARSHALL, a.k.a. | * | |
| RICHARD VINE MARSHALL, a.k.a. | * | |
| DICK MARSHALL, | * | |
| Defendants, | * | |

NOW COMES the defendant Richard Marshall, by and through his counsel, Dana L. Hanna, and pursuant to Rule 17 of the Federal Rules of Criminal Procedure, hereby makes application to the Court to order the issuance of a subpoena duces tecum to

Douglas G. Moring
National Records Center
150 Space Center Loop
Lee's Summit, Missouri 64064

to produce, on or before December 11, 2009, the following evidence:

All records, documents, correspondence and writings of any kind in the possession or control of the United States Citizenship and Immigration Services concerning a British citizen named Serle L. Chapman, presently residing in the United States, and whose present address is believed to be : 5 Means Drive, Sheridan, Wyoming, including copies of all documents and writings in Mr. Chapman's "A-file" or alien file.

Defendant requests that said subpoena be issued at the expense of the United States government.

This motion is based on the following affirmations of undersigned counsel.

In support of the defendant's motion. Dana L. Hanna, attorney for defendant Richard Marshall, hereby affirms under penalty of law:

1. I make these affirmations on the basis of information and belief, the sources of which are the documents in the court's case file, discovery provided to me, and my own investigation.

2. Serle Chapman is a government witness against the defendant Marshall and his credibility will be a key issue of fact for the jury to determine in Mr. Marshall's trial.

Chapman is a British citizen living in the United States under a visa or permanent alien "green card." As a direct benefit for his cooperation with the government in this case, the United States Attorney's office in South Dakota intervened on his behalf with immigration authorities, seeking favorable treatment for Chapman from federal immigration authorities when Chapman was seeking to have his visa renewed. I have read copies of correspondence from Chapman to federal prosecution authorities in which Chapman and his wife request and acknowledge the prosecutors' assistance and intervention with federal immigration authorities in consideration for his cooperation in the investigation and prosecution of the government's case against the defendants. Records and documents, including writings by Chapman concerning the assistance he has provided to the government as a government informant, will be found in his "A-file". Chapman's immigration records and his A-file will therefore contain Giglio material that the defendant intends to offer as evidence to show the benefits and rewards this witness received from the government in return for his testimony against the defendant. Therefore, I have good reason to believe and I do in fact believe, that this individual's "A-file" contains favorable evidence the defendant can and will use in his trial. The evidence sought by this subpoena is necessary to provide the defendant with his constitutional rights to present evidence in his defense, to confront his accusers, and to be represented in trial by effective counsel.

3. No other means of acquiring this evidence are available to the Defendant other than through subpoena. Mr. Moring is the custodian of the documents sought by this subpoena.

4. The Defendant, Richard Marshall, is indigent. I have been appointed to act as his counsel because he has been found by the court to be indigent. Therefore, defendant seeks service of this subpoena by the United States Marshall or Deputy Marshall, pursuant to Federal Rule of Criminal Procedure Rule 17 (b), with costs to be paid by the United States.

Dated this 13th day of November, 2009.

RICHARD MARSHALL, Defendant

By

Dana L. Hanna
HANNA LAW OFFICE, P.C.
PO Box 3080
816 Sixth Street
Rapid City, SD 57709
605-791-1832

Attorney for Defendant Marshall

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Application and Affirmation in Support of an Order for the Issuance of Subpoena on the government by e-mailing a copy of the same to AUSA Robert Mandel (Robert.Mandel@usdoj.gov) and John Murphy (jmurphysd@hotmail.com) on the 13th day of November, 2009.

/s/ Dana L Hanna

Dana L. Hanna