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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTBI, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828-DN-EJF</p> <p><b>DEFENDANT NELDON JOHNSON’S MOTION FOR LIMITED RELIEF FROM ASSET FREEZE ORDER (Doc. 444)</b></p> <p>Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Pursuant to 42 U.S.C. §407, Defendant Neldon Johnson seeks limited, specific, relief from the order freezing his assets to release the Bank of American Fork account that receives and holds Social Security income benefits (“SSI”). This motion is supported by the accompanying declaration of Neldon Johnson (“Johnson Declaration”). The appointed Receiver, Wayne Klein, has been contacted regarding this motion and responded that he does not oppose a motion to

release the asset freeze to the extent it allows Mr. Johnson to receive future SSI payments. A copy of Mr. Klein's email on that topic is attached here to as Exhibit 1.

**FACTS IN SUPPORT OF MOTION**

1. Mr. Johnson receives \$1,386.00 per month in SSI under Title 42 of the United States Code. (See Johnson Declaration at ¶2, and Exhibit 1 thereto).
2. This SSI is directly deposited into account with Bank of American Fork (Account No. \*\*\*\*233). (See Johnson Declaration at ¶3).
3. No other funds from any other source are deposited into this account. (See Johnson Declaration at ¶4).
4. On August 29, 2018, Bank of American Fork made these funds unavailable to Mr. Johnson. (See Johnson Declaration at ¶5).
5. Mr. Johnson learned that Bank of American Fork had received a copy of the Memorandum Decision and Order Freezing Assets and to Appoint a Receiver [Doc. 444], and Bank of American Fork proceeded to freeze the assets in this account. (See Johnson Declaration at ¶6).
6. The total amount to date of SSI that is frozen is \$4,358.18. (See Johnson Declaration at ¶7, and Exhibit 1 thereto).

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## ARGUMENT

The United States lacks authority as a creditor to freeze Mr. Johnson's account that contains only his SSI. 42 U.S.C. § 407 states:

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, ***and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process***, or to the operation of any bankruptcy or insolvency law.

(Emphasis added).

The overall objective of the Social Security system is "the protection of its beneficiaries from some of the hardships of existence."<sup>1</sup> The exemption of benefits from legal process has the purpose of furthering this objective by ensuring that a beneficiary has uninterrupted use of moneys received as benefits.<sup>2</sup> This includes accounts which contain solely SSI.<sup>3</sup>

In this case, since August 29, 2018, the United States has unlawfully caused funds exempt from levy, attachment, garnishment, or other legal process, to be frozen to Mr. Johnson's detriment. The United States lacks any authority to execute against Mr. Johnson's SSI pursuant to Title 42 U.S.C. § 407. For this reason, Mr. Johnson seeks immediate relief from this Court to unfreeze the account at Bank of American Fork and exempt funds which the United States has unlawfully made unavailable to Mr. Johnson.

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<sup>1</sup> [\*United States v. Silk\*](#), 331 U.S. 704, 711, 67 S. Ct. 1463, 1467, 91 L. Ed. 1757 (1947).

<sup>2</sup> [\*Finberg v. Sullivan\*](#), 634 F.2d 50, 63 (3d Cir. 1980)

<sup>3</sup> [\*Collins, Webster & Rouse v. Coleman\*](#), 776 S.W.2d 930, 931 (Mo. Ct. App. 1989) (holding bank account consisting entirely of direct deposits of Social Security benefits is not subject to garnishment by judgment creditor) (citing [\*Philpott v. Essex County Welfare Board\*](#), 409 U.S. 413, 34 L. Ed. 2d 608, 93 S. Ct. 590 (1973)).

### CONCLUSION

For the reasons stated above, Mr. Johnson requests that this Court release the asset freeze order over the account with Bank of American Fork in account 6209233 and return to Mr. Johnson any social security funds removed from that account by the Receiver. A form of Order is attached hereto as Exhibit 2 and provide to chambers via email.

Dated this 4<sup>th</sup> day of December, 2018.

NELSON SNUFFER DAHLE & POULSEN

/s/ Steven R. Paul

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **DEFENDANT NELDON JOHNSON’S MOTION FOR LIMITED RELIEF FROM ASSET FREEZE ORDER (Doc. 444)** was sent to counsel for the United States in the manner described below.

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