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U.S. COURT OF APPEALS
10TH CIRCUIT
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Case No. 19-4066
(D.C. No. 2:15-CV-00828-DN-EJF) (D. Utah)

Neldon P. Johnson
2730 West 4000 South
Oasis, Utah
(801) 372-4838
Pro Se Plaintiff

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

UNITED STATES OF AMERICA

Plaintiff-Appellee,

vs.

NELDON PAUL JOHNSON,
Defendant-Appellant, and
INTERNATIONAL AUTOMATED
SYSTEMS, et. Al.

Defendants.

**RULE 40 PETITION FOR
REHEARING**

Case No. 19-4066

Appellant, Neldon P. Johnson, appears Pro Se, and submits this
Petition for Rehearing under Rule 40 of the Federal Rules of Appellate
Procedure:

This is a timely petition under Rule 40 of an Order entered June 24th.
The original appeal in this case included a request to dismiss the

proceedings in the lower court because there is no jurisdiction to hear the case. My appeal stated, “The District Court lacks jurisdiction over foreign national investments, and has and is taking steps to damage these foreign rights without due process or respect for international law.” (See Appendix 1.) In an Order dismissing my appeal, the 10th Circuit decided that the matter was not ripe for a decision because there is a pending receivership below. The 10th Circuit stated, “The orders Mr. Johnson seeks to appeal are interim procedural orders, which are not suitable for application of any exception to the final judgment rule. See *Mohawk Indus. v. Carpenter*, 558 U.S. 100, 107 (2009).” (See Appendix 2.) This is incorrect and fails to address the challenge to the lower court’s jurisdiction raised as an issue in my appeal.

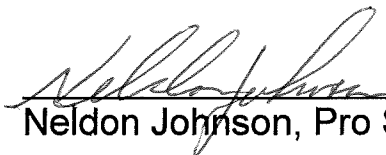
It is well settled that the question of jurisdiction can be raised at any stage of the proceedings. *McNutt v. General Motors Acceptance Corporation*, 298 U.S. 178, 56 S. Ct. 780, 80 L. Ed. 1135; *Scroggin Farms Corporation v. McFadden*, 8 Cir., 165 F.2d 10; *Burks v. Texas Co.*, 5 Cir., 211 F.2d 443; *Johnson v. Fredrick*, 8 Cir., 9 F.R.D. 616. The burden to prove jurisdiction is not on me but on the government that is asserting its

existence. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006). I raised the issue. I do not have the burden to prove there is a problem with the lower court's jurisdiction. By dismissing my appeal without considering the heart of the reason for my appeal the 10th Circuit Court's June 24, 2019 Order dismissing my appeal was an error that should be corrected. Among other things, the case below is not ripe because of changes to the applicable law.

I should be allowed to appeal and the 10th Circuit should allow this to be fully briefed before deciding the matter.

I certify under Rule 32(g) that this Petition complies with the type-volume limitation because it is less than the 15 pages permitted under the rules.

Dated this 1 day of July, 2019



Neldon Johnson, Pro Se

CERTIFICATE OF SERVICE

I certify a copy of the foregoing was sent to counsel for the United States through the Electronic Service by the Utah Court's e-filing program

/s/ Neldon Johnson, Pro, Se

Appendix:

1. Copy of Notice of Appeal
2. Copy of Order Dismissing Appeal

Appendix 1

Neldon Johnson
2800 West 4000 South
Delta, UT 84624
Tel. (801) 372-4838
Defendant, Pro Se

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

<p>UNITED STATES OF AMERICA, Plaintiff, vs. RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN, Defendants.</p>	<p>Civil No. 2:15-cv-00828-DN-EJF NELDON JOHNSON'S NOTICE OF APPEAL (ORDERS Doc. 619, 624) Judge David Nuffer Magistrate Judge Evelyn J. Furse</p>
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Neldon Johnson, appearing pro se, gives notice that he appeals to the United States Court of Appeals for the Tenth Circuit from the District Court's Minute Order (Doc. 619) entered on April 26, 2019; and Order Denying Motion to Dismiss Receiver and Case (Doc. 624) entered on April 29, 2019. Copies of these are attached to this Notice. The District Court lacks jurisdiction over foreign national investments, and has and is taking steps to damage these foreign rights without due process or respect for international law.

April 30, 2019.

/s/ Neldon Johnson
Pro Se Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NELDON JOHNSON'S PRO SE NOTICE OF APPEAL** was sent to counsel for the United States in the manner described below.

Erin Healy Gallagher
Erin R. Hines
Christopher R. Moran
US Dept. of Justice
P.O. Box 7238
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 Electronic Service via Utah Court's e-filing program

/s/ Neldon Johnson.
Pro Se Defendant

Appendix 2

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 24, 2019

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NELDON P. JOHNSON,

Defendant - Appellant,

and

INTERNATIONAL AUTOMATED
SYSTEMS; LTB1; RAPOWER-3, LLC; R.
GREGORY SHEPARD,

Defendants.

No. 19-4066
(D.C. No. 2:15-CV-00828-DN-EJF)
(D. Utah)

ORDER

Before **HARTZ, HOLMES, and EID**, Circuit Judges.

Defendant Neldon Johnson filed a pro se notice of appeal of two district court orders, one directing him to appear at a deposition called by the receiver and the other denying his motion to dismiss both the receiver and the case against him. This court challenged the appellant to demonstrate appellate jurisdiction. *See* 10th Cir. R. 27.3(B). The appellant filed a memorandum brief in response urging the court to allow the appeal to continue because he believes the underlying case should have ended, at least as to him. At the court's direction, the government also filed a memorandum brief addressing

appellate jurisdiction. The government agreed with the court's assessment that appellate jurisdiction is lacking and asked for the appeal to be dismissed. Mr. Johnson also filed a reply to the government's response. After considering the parties' submissions, the district court record and the applicable law, we dismiss this appeal for lack of appellate jurisdiction.

This court generally has jurisdiction to review only final decisions. 28 U.S.C. § 1291. District court orders entered while a receivership continues are not final orders for purposes of appeal. *See generally S.E.C. v. American Principals Holdings, Inc.*, 817 F.2d 1349, 1350 (9th Cir. 1987) ("Because the receivership proceeding is continuing, the order from which [the appellant] attempts to appeal is not a final judgment appealable under 28 U.S.C. § 1291.") As the district court record shows, the receivership in the underlying case has not concluded. The district court has not disassociated itself from the case. *See Gelboim v. Bank of America Corp.* – U.S. --, 135 S. Ct. 897, 902 (2015). Because the receivership has not been wrapped up or otherwise terminated, appellate jurisdiction cannot be established under § 1291.

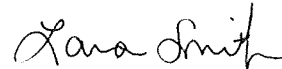
The orders Mr. Johnson seeks to appeal are interim procedural orders, which are not suitable for application of any exception to the final judgment rule. *See Mohawk Indus. v. Carpenter*, 558 U.S. 100, 107 (2009) ("[T]he chance that the litigation at hand might be speeded, or a particular injustice averted, does not provide a basis for jurisdiction under § 1291." (internal quotations omitted)). Further, this court has already decided that discovery orders like the one directing Mr. Johnson to appear at a deposition and orders denying motions to dismiss are not immediately appealable. *Boughton v.*

Cotter Corp., 10 F.3d 746, 748-50 (10th Cir. 1993) (discovery orders); *Dababneh v. FDIC*, 971 F.2d 428, 432 n.6 (10th Cir. 1992) (denial of motion to dismiss). Mr. Johnson's arguments do not persuade us otherwise.

In sum, the interlocutory district court orders for which Mr. Johnson seeks review are not immediately appealable. *F.D.I.C. v. McGlamery*, 74 F.3d 218, 221 (10th Cir. 1996) (preferring to avoid piecemeal appellate disposition of what is in practical terms a single controversy).

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk