

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEPHEN BLACKBURN,

Defendant.

Case No. 09-20133

MEMORANDUM AND ORDER

Defendant Stephen Blackburn has consistently challenged this court's jurisdiction over him in this criminal case. And this court has repeatedly denied his motions to dismiss and found that it does, in fact, have jurisdiction to hear the case. Mr. Blackburn filed a notice of appeal in an effort to challenge that determination (doc. 610), and the Tenth Circuit dismissed his appeal (doc. 655).

Mr. Blackburn has now filed in the Tenth Circuit a petition for a writ of mandamus, again disputing this court's jurisdiction (doc. 682). In response, the Government has filed a motion (doc. 722) asking the court to certify that to the extent that Mr. Blackburn's mandamus petition is another attempt at an interlocutory appeal it is frivolous, with the result that the court maintains jurisdiction over the case. Jury trial in this matter is set to commence on April 7, 2011.

The court has reviewed its prior orders and the mandamus petition, and it agrees

that the issues raised in Mr. Blackburn's petition for mandamus are frivolous. Therefore, to the extent that the petition was intended as an interlocutory appeal, the court certifies it as frivolous and retains jurisdiction over the case, which may proceed to trial. *See United States v. Rodriguez-Aguirre*, 73 F.3d 1023, 1024 n.2 (10th Cir. 1996) (district court's order certifying the defendant's appeal as frivolous "had the effect of reinstating jurisdiction in the district court so that the trial could proceed, even while [the defendant's] interlocutory appeal was pending in this court").

IT IS THEREFORE ORDERED BY THE COURT that the Government's motion (doc. 722) is **granted**.

IT IS SO ORDERED this 17th day of March, 2011.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge