

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
CINCINNATI, OHIO**

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**05-3708**

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<b>UNITED STATES OF AMERICA,</b>	)	<b>Appeal from the United States District</b>
<b>Plaintiff-Appellant,</b>	)	<b>Court for the Northern District of Ohio,</b>
<b>v.</b>	)	<b>Western Division</b>
	)	<b>No. 3:02 CR 708</b>
<b>JAMES M. FUNK,</b>	)	
<b>Defendant-Appellee.</b>	)	<b>Hon. James G. Carr,</b>
	)	<b>Judge</b>
	)	

**MOTION TO DISMISS APPEAL**

Comes now the United States of America, by counsel, David E. Hollar, and pursuant to Federal Rule of Appellate Procedure 42(b) moves this Court for the entry of an Order dismissing with prejudice the Plaintiff-Appellant's appeal in the above-entitled case. In support of its motion, the government states as follows.

1. The undersigned is the attorney primarily responsible for the prosecution of this appeal.
2. Pursuant to 18 U.S.C. § 3742(b), the United States may not prosecute an appeal without the personal approval of the Solicitor General. Solicitor General Paul Clement authorized this appeal on September 20, 2005.
3. On December 16, 2008, this court granted defendant James Funk's motion to rehear this case en banc and ordered the parties to file supplemental briefs.
4. After reviewing the supplemental brief filed by Funk, the undersigned conferred

with Acting Solicitor General Edwin Kneedler. Acting Solicitor General Kneedler has now authorized dismissal of the appeal.

5. Pursuant to Federal Rule of Appellate Procedure 42(b), an “appeal may be dismissed on the appellant’s motion on terms agreed to by the parties, or fixed by the court.”

6. The undersigned has spoken to Spiros Cocoves, counsel for Funk, who represents that he has no objection to dismissal of the government’s appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on March 11, 2009, I electronically filed the foregoing Motion to Dismiss Appeal with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

S/ David E Hollar  
DAVID E. HOLLAR  
Attorney for the United States