

RECOMMENDED FOR FULL-TEXT PUBLICATION  
Pursuant to Sixth Circuit Rule 206

File Name: 09a0120p.06

**UNITED STATES COURT OF APPEALS**  
**FOR THE SIXTH CIRCUIT**

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellant,*

v.

JAMES M. FUNK,  
*Defendant-Appellee.*

No. 05-3708

Filed: March 27, 2009

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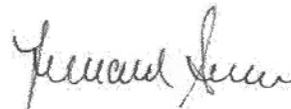
**ORDER**

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This matter now comes before the court upon the motion of the appellant United States, to which motion the appellee has not objected, to dismiss the appeal with prejudice pursuant to FED. R. APP. P. 42(b).

The court GRANTS the unopposed motion to dismiss. The opinion of the panel, which was vacated pursuant to the court's order of December 18, 2008 granting en banc review, 6 Cir. R. 35(a), remains vacated.

ENTERED BY ORDER OF THE COURT



Leonard Green, Clerk