

NOTE: This order is nonprecedential.

**United States Court of Appeals for the Federal Circuit**

2009-3126

CARLOS A. RAMOS,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent,

and

DEPARTMENT OF HOMELAND SECURITY,

Intervenor.

Petition for review of the Merit Systems Protection Board in  
DA0752080539-I-1.

ON MOTION

Before MAYER, Circuit Judge.

**ORDER**

The Department of Homeland Security (DHS) moves to reform the caption to name the Merit Systems Protection Board as respondent and moves for leave to intervene in this petition for review. Carlos A. Ramos opposes and submits a supplemental response.

Pursuant to 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board's decision concerns the procedure or jurisdiction of the Board. The employing agency is designated as the respondent when the Board reaches the merits of the underlying case.

Ramos filed an appeal challenging his termination from his position as a Customs and Border Protection Officer. The Administrative Judge dismissed the case for lack of jurisdiction because he found that that Ramos was in the excepted service, had not served a two year probationary period, and was not preference eligible and thus did not have the right to seek Board review of his termination. Because the Board did not address the merits of the case, the Board is the proper respondent.

Accordingly,

IT IS ORDERED THAT:

(1) The motion to reform the caption and to intervene is granted. The revised official caption is reflected above.

(2) The Board and DHS should calculate the due date for their briefs from the date of filing of this order.

FOR THE COURT

**JUL 22 2009**

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Carlos A. Ramos  
Stacey K. Grigsby, Esq.  
Jeffrey Gauger, Esq.

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**FILED**  
**U.S. COURT OF APPEALS FOR**  
**THE FEDERAL CIRCUIT**

**JUL 22 2009**

**JAN HORBALLY**  
**CLERK**