

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

2009-3279

DAVID GALLOWAY,

Petitioner,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Petition for review of the Merit Systems Protection Board  
in AT0752061173-C-3.

ON MOTION

Before GAJARSA, Circuit Judge.

## ORDER

The Department of Agriculture moves to dismiss David Galloway's petition for review for lack of jurisdiction. Galloway moves without opposition for extensions of time to file his brief.

This court received Galloway's petition from an initial decision of an Administrative Judge of the Merit Systems Protection Board on August 31, 2009. On July 29, 2009, Galloway had also filed a petition from the same initial decision with the full Board. On October 27, 2009, the full Board denied Galloway's petition. Meanwhile, Galloway's petition was processed, including the filing of his entry of appearance on December 22, 2009.

The Department moves to dismiss this petition for lack of jurisdiction, arguing that at the time Galloway filed his petition it was premature and that he had not filed a second petition for review within the 60-day statutory time period from the full Board's

October 27, 2009 decision. Although Galloway did not file a formal, second petition within 60 days from the date of the full Board's decision, we construe his December 22, 2009 filing as a timely petition. His entry of appearance is timely, names the party seeking review, names the agency as the respondent, and reasonably notifies to this court and the respondent that Galloway seeks review. See Fed. R. App. P. 15(a)(2).

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to dismiss is denied.
- (2) The motions for extensions of time are granted. Galloway's brief is due within 30 days from the date of filing of this order.

FOR THE COURT

**MAY 18 2010**

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: David Galloway  
Jessica R. Toplin, Esq.

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

**MAY 18 2010**

**JAN HORBALY  
CLERK**