

NOTE: This order is nonprecedential

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

ROBERT A. BERMAN,
Petitioner,

v.

DEPARTMENT OF THE INTERIOR,
Respondent.

2010-3052

Petition for review of the Merit Systems Protection Board in case no. DC0752090294-I-1.

ON MOTION

Before LINN, *Circuit Judge.*

O R D E R

Robert A. Berman moves to summarily reverse the judgment of the Merit Systems Protection Board in *Berman v. Dep't of Interior*, No. DC0752090294-I-1, and for this court to instruct the Board to order the Department of Interior to compensate Berman for all losses and restore him to his prior position at the Department. The Department opposes. Berman replies.

Berman was employed as an economist at the Department. In November 1998, Berman accepted a monetary award from the Project on Government Oversight (POGO) for his work related to a qui tam action involving payments for the extraction of oil on federal lands. Subsequently, the United States filed a civil suit in the United States District Court for the District of Columbia asserting that POGO and Berman violated 19 U.S.C. § 209 which prohibits private parties from making, and Government employees from receiving, payments that compensate employees for government service. In February of 2008, a jury found that POGO and Berman violated § 209. POGO and Berman appealed, seeking review by the United States Court of Appeals for the District of Columbia Circuit.

Meanwhile, the Department sought to remove Berman for misconduct based on his acceptance of the award. The administrative judge sustained the Department's removal, relying in part on the jury verdict. The Board denied Berman's petition for review and Berman sought review of the Board's decision by this court.

This court stayed the briefing schedule in this case pending the District of Columbia Circuit's disposition in *United States v. Project on Gov't Oversight*, 616 F.3d 544 (D.C. Cir. 2010). In its decision, the Court of Appeals for the District of Columbia Circuit vacated and remanded in part for a new trial, concluding that intent was a required element of a § 209 violation and that the district court's jury instruction failed to properly instruct the jury on the intent element.

Berman argues that *United States v. Project on Gov't Oversight* controls the disposition of this case. The United States argues that *United States v. Project on Gov't Oversight* does not control disposition of this case.

This court deems it the better course for the parties to raise these arguments in their briefs.

Accordingly,

IT IS ORDERED THAT:

(1) Berman's motion for summary reversal is denied without prejudice to the parties raising their arguments in the briefs. The stay of the briefing schedule is lifted. Berman's opening brief is due within 30 days of the date of filing of this order.

(2) Any other pending motions are denied as moot.

FOR THE COURT

FEB 02 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Robert A. Berman (informal brief form enclosed)
Joshua E. Kurland, Esq.

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

FEB 02 2011

**JAN HORBALY
CLERK**