

FILED

MAR 15 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STATE OF WASHINGTON; STATE OF
MINNESOTA,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, President of the
United States; U.S. DEPARTMENT OF
HOMELAND SECURITY; REX W.
TILLERSON, Secretary of State; JOHN F.
KELLY, Secretary of the Department of
Homeland Security; UNITED STATES
OF AMERICA,

Defendants-Appellants.

No. 17-35105

D.C. No. 2:17-cv-00141
Western District of Washington,
Seattle

ORDER

Before: CANBY, CLIFTON, and FRIEDLAND, Circuit Judges.

This court in a published order previously denied a motion of the government for a stay of a restraining order pending appeal. 847 F.3d 1151 (9th Cir. 2017). That order became moot when this court granted the government's unopposed motion to dismiss its underlying appeal. Order, Mar. 8, 2017. No party has moved to vacate the published order. A judge of this court called for a vote to determine whether the court should grant

en banc reconsideration in order to vacate the published order denying the stay. The matter failed to receive a majority of the votes of the active judges in favor of en banc reconsideration. Vacatur of the stay order is denied. See *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, (1994) (holding that the "extraordinary remedy of vacatur" is ordinarily unjustified when post-decision mootness is caused by voluntary action of the losing party).

This order is being filed along with the concurrence of Judge Reinhardt and the dissent of Judge Bybee. Filings by other judges may follow.