

No. 21-16118

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STATE OF ARIZONA, et al.,
Plaintiff-Appellants.

v.

U.S. DEPARTMENT OF HOMELAND SECURITY et al.,
Defendant-Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
Case No. 2:21-cv-00186-SRB

PLAINTIFFS STATES' PETITION FOR REHEARING

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Dated: July 15, 2022

PETITION FOR LIMITED PANEL REHEARING

Plaintiff-Appellants (the “States”) respectfully seek limited panel rehearing on a narrow issue: the panel’s failure to address States’ unopposed request that this Court vacate the decisions below under *United States v. Munsingwear*, 340 U.S. 36 (1950), if it concluded this action were moot. *See* Dkt #48 at 2-3, 12 (“Alternatively, if this Court concludes that this case is moot, it should vacate the decisions below under *Munsingwear*. DHS has indicated it does not oppose such a vacatur if this case is moot.” (citation omitted)). This Court dismissed the States’ appeal on mootness grounds, but did not address the States’ unopposed request for a *Munsingwear* vacatur of the decision below.

Under *Munsingwear*, when a civil case becomes moot on appeal, “the established practice ... in the federal system ... is to reverse or vacate the judgment below and remand with a direction to dismiss.” 340 U.S. at 39. That is precisely what occurred here: the events giving rise to mootness occurred while the States’ appeal was pending, and the States played no role in causing the case to become moot.¹

¹ Because the States played no role in the actions causing mootness, the exception of *U.S. Bancorp Mortg. Co. v. Bonner Mall Partnership* does

Given the manifest applicability of *Munsingwear* doctrine, as well as the lack of any opposition by Federal Defendants to a *Munsingwear* vacatur, this Court should grant limited rehearing to issue such a vacatur. Because the States’ request was prominently raised in both the introduction to its response (at 2-3), and as a separate section (Roman IV, at 12), and went unopposed, the States are unable to discern any basis for withholding *Munsingwear* vacatur here.

Alternatively, to the extent that this Court has concerns as to whether *Munsingwear* applies, it should order supplemental briefing so that the States can address any such concerns.

CONCLUSION

This Court should grant limited rehearing and grant the States’ unopposed request for vacatur of the judgment below under *Munsingwear*.

not apply. 513 U.S. 18, 25 (1994) (recognizing exception to *Munsingwear* vacatur where a party “caused the mootness” because “suitor’s conduct in relation to the matter at hand may disentitle him to the relief he seeks”).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

9th Cir. Case Number(s) 21-16118

I am the attorney or self-represented party.

I certify that pursuant to Circuit Rule 35-4, the attached petition for panel rehearing/petition for rehearing en banc/response to petition is *(select one)*:

Prepared in a format, typeface, and type style that complies with Fed. R. App. P. 32(a)(4)-(6) and **contains the following number of words: 366**
(Petitions and responses must not exceed 4,200 words)

OR

In compliance with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 15 pages.

Signature s/ Drew C. Ensign **Date:** 7/15/22.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2022, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing and transmittal of a Notice of Electronic Filing to CM/ECF registrants.

s/ Drew C. Ensign

Drew C. Ensign