No. 05-3708

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

٧.

JAMES M. FUNK,

Defendant-Appellee.

**FILED** 

Dec 18, 2008 LEONARD GREEN, Clerk

ORDER

BEFORE: BOGGS, Chief Judge; MARTIN, BATCHELDER, DAUGHTREY, MOORE, COLE,

CLAY, GILMAN, GIBBONS, ROGERS, SUTTON, COOK, McKEAGUE, GRIFFIN,

KETHLEDGE, and WHITE, Circuit Judges.

A majority of the Judges of this Court in regular active service have voted for rehearing of this case en banc. Sixth Circuit Rule 35(a) provides as follows:

"The effect of the granting of a hearing en banc shall be to vacate the previous opinion and judgment of this court, to stay the mandate and to restore the case on the docket sheet as a pending appeal."

Accordingly, it is **ORDERED**, that the previous decision and judgment of this court is vacated, the mandate is stayed and this case is restored to the docket as a pending appeal.

**ENTERED BY ORDER OF THE COURT** 

Leonard Green Clerk

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