

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

[REDACTED]

Appellant

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[REDACTED]

APPELLANT'S MOTION TO HOLD CASE IN ABEYANCE

In his opening brief, Defendant/Appellant (henceforth "Appellant"), asked this Court to hold this appeal in abeyance pending a decision in United States v. Simmons, No. 08-4475 (4th Cir. filed May 5, 2008). The United States Supreme Court remanded Simmons for reconsideration in light of Carachuri-Rosendo v. Holder, 130 S.Ct. 2577 (2010). Counsel is informed that Simmons will be argued before this Court today, December 8, 2010, so a decision is expected in the Simmons case in the near future.

In his appeal, the Appellant raises the issue of whether he has a qualifying prior felony conviction, which was settled against him in United States v. Harp, 406 F.3d 242 (4th Cir.), cert. denied, 546 U.S. 919 (2005). In Simmons, however, this Court is reconsidering its holding in Harp. That opinion might well be dispositive, if not informative, for the instant appeal. So, judicial economy would be served by waiting for the Simmons panel

to issue its opinion.

The Government's attorney in this case, Mr. Michael A. DeFranco, consents to this motion.

Accordingly, pursuant to Fourth Circuit Local Rule 12(d), the Defendant moves to hold this appeal in abeyance pending a decision in Simmons.

Respectfully submitted this the 8th day of December, 2010.

LOUIS C. ALLEN III
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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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