

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 24-2606

Caption [use short title]

Motion for: to hold appeal in abeyance

Set forth below precise, complete statement of relief sought:

Sean Combs requests that this Court hold this appeal in abeyance pending a District Court decision on his renewed bail application.

United States of America v. Combs

MOVING PARTY: Sean Combs

OPPOSING PARTY: United States of America

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Alexandra A.E. Shapiro

OPPOSING ATTORNEY: Mary Christine Slavik

[name of attorney, with firm, address, phone number and e-mail]

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United States Attorney's Office, SDNY 26 Federal Plaza, New York, NY 10278 (212) 637-1113; mary.slavik@usdoj.gov

Court- Judge/ Agency appealed from: Hon. Andrew L. Carter / U.S. District Court for the Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Has this relief been previously sought in this court? Yes No Yes No

Requested return date and explanation of emergency:

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Is the oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set? Yes No If yes, enter date: 11/4/2024

Signature of Moving Attorney:

/s/ Alexandra A.E. Shapiro Date: October 17, 2024 Service: Electronic Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

SEAN COMBS,

Defendant-Appellant.

No. 24-2606-cr

MOTION TO HOLD APPEAL IN ABEYANCE

Pursuant to Federal Rule of Appellate Procedure 27, Appellant Sean Combs moves to hold this appeal in abeyance pending further motion practice in the district court.

This is an appeal from the district court’s September 18, 2024 order (the “Detention Order”) denying pretrial release on conditions and ordering Mr. Combs detained pending trial. Mr. Combs filed his notice of appeal on September 30, 2024, and filed a motion for bail in this Court on October 8, 2024. The government filed an opposition on October 18, 2024, and Mr. Combs’ reply is due October 23, 2024. This Court scheduled oral argument on the motion for November 4, 2024.

On October 10, 2024, a pretrial conference was held before the district court to address discovery, scheduling, and other issues in the case. At the conclusion of

those proceedings, the district court indicated that “[i]f the defense has any [bail] application they would like to raise, then [it will] certainly hear it.” Oct. 10, 2024 Tr. 26.

Because certain relevant new information has come to light since the Detention Order, Mr. Combs intends to file a renewed motion for pretrial release on conditions, with an updated proposed bail package, in the district court. The renewed request is based on changed circumstances warranting a new bail hearing, which the district court is best suited to consider in the first instance. *See* 18 U.S.C. § 3142(f)(2) (“The hearing may be reopened ... at any time ... if the judicial officer finds that [material] information exists that was not known to the movant at the time of the hearing[.]”).

If the district court grants the motion or issues an indicative ruling that it would do so,¹ Mr. Combs will move to dismiss his appeal as moot. On the other hand, if the district court denies the motion, and Mr. Combs appeals that ruling, the two appeals can be consolidated, and the matter adjudicated on a full record, before this Court rules.

It will promote efficiency and preserve the resources of the Court and parties to hold this appeal in abeyance until after the anticipated proceedings in the District Court are completed. *Cf. United States v. Owen*, 553 F.3d 161, 164-65 (2d

¹ *See* Fed. R. Crim. P. 37; Fed. R. App. 12.1.

Cir. 2009) (discussing cases where appeal held in abeyance pending factual hearings and resolution of Rule 33 motions in district court).

Accordingly, Mr. Combs requests that this Court hold in abeyance these appeal proceedings pending the district court's decision on his renewed request for pretrial release on conditions.

If this motion is granted, Mr. Combs will promptly update this Court of any such decision in due course.

We contacted the prosecutors to request their position on this motion, and they advised us that the government plans to oppose this motion and file a response. Although the government suggested that we dismiss the appeal if we pursue a renewed motion for bail in the district court, this Court's preferred practice is to hold the appeal in abeyance pending further district court proceedings. *Cf. United States v. Camacho*, 302 F.3d 35, 37 (2d Cir. 2002) (party seeking reconsideration on Rule 33 motion should "move in this Court for the briefing in the pending appeal to be deferred or held in abeyance" pending district court decision).

Dated: New York, NY
October 17, 2024

/s/Alexandra A.E. Shapiro
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