

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Criminal Action No. 2:05cr22

DEREK D. BENEDICT,

Defendant.

RESPONSE TO MOTION TO DISMISS THE APPEAL

COMES NOW Defendant, Derek D. Benedict, in response to the United State's Motion to Dismiss the Appeal, and states that he disputes the Government's claim that he has failed to pursue his appeal.

As indicated by the docket of the above matter, Defendant Benedict filed his Reply Brief in the above matter on November 30, 2006 (Doc # 28).

There has been no ruling by the court since that date, and defendant asserts that his due process rights would be violated by dismissal of his appeal when this matter has been pending ruling by the Court.

Respectfully Submitted,

Derek D. Benedict, Defendant

By: /s/ Patrick S. Cassidy
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CERTIFICATE OF SERVICE

I hereby certify that on **February 3, 2010**, I electronically filed the foregoing **RESPONSE TO MOTION TO DISMISS THE APPEAL** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participant:

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