

NO:

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2014

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DANA E. TUOMI,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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## **QUESTION PRESENTED FOR REVIEW**

Should the residual clause of U.S.S.G. § 4B1.2 be declared void for vagueness?

## **INTERESTED PARTIES**

There are no parties to the proceeding other than those named in the caption of the case.

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**On Petition for Writ of Certiorari to the  
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for the Eleventh Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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Dana Tuomi respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 14-15184 in that court on May 27, 2015, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

## **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Tuomi*, 14-15184, 605 Fed.Appx. 956 (11th Cir. 2015) (unpublished), which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

## **STATEMENT OF JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on May 27, 2015. Accordingly, this petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.



## **STATUTORY AND OTHER PROVISIONS INVOLVED**

Petitioner intends to rely on the following constitutional and statutory provisions:

### **18 U.S.C. § 924(e)**

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, . . . . that –

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; . . .

### **U.S.S.G. § 4B1.2**

(a) the term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that –

(2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

### **Fifth Amendment**

[No person shall be] deprived of life, liberty, or property, without due process of law.

## STATEMENT OF THE CASE

Dana Tuomi waived his right to be charged by an indictment. On June 10, 2014, an Information was filed in the Southern District of Florida charging Dana Tuomi with two counts of bank robbery in violation of Title 18 U.S.C. § 2113(a), one bank robbery occurring on April 17, 2014, and the other on April 18, 2014. The Information alleged that both robberies occurred at a TD Bank.

On August 7, 2014, Tuomi entered a guilty plea pursuant to a written plea agreement. Under the terms of the plea agreement, Tuomi pled guilty to one count of bank robbery, with the government agreeing to seek dismissal of the other count of bank robbery at sentencing.

Prior to sentencing a presentence investigation report (PSR) was prepared by the probation department. The probation department calculated Tuomi's guideline level pursuant to U.S.S.G. § 2B3.1, assessing a base offense level of 20, but increasing that offense level by 2 because property of a financial institution was taken, and another 2 levels because a threat of death was made. This resulted in an adjusted offense level of 24. However, because Tuomi had two prior convictions for fleeing and eluding, that were considered crimes of violence, the probation department classified him as a career offender, and increased his offense level to 32. With a 3-level reduction for acceptance of responsibility, Tuomi's total offense level was 29. With a criminal history category VI, Tuomi's advisory guideline range was 151-188 months imprisonment.

At sentencing the district court, varying slightly downward from the advisory guideline range of 151 to 188 months, sentenced Tuomi to 132 months imprisonment. Before the district court Tuomi did not object to the fleeing and eluding convictions as improperly classified as violent felonies because the “residual” clause was void for vagueness. Tuomi did raise this claim on appeal. Nonetheless, the United States Court of Appeals for the Eleventh Circuit rejected Tuomi’s constitutional challenge stating:

In *United States v. Gandy*, we expressly held that the residual clause of the Armed Career Criminal Act (“ACCA”) is not unconstitutionally vague. 710 F.3d 1234, 1239 (11th Cir. 2013), *cert. denied*, \_\_ U.S. \_\_, 134 S. Ct. 304 (2013). We have since applied our holding in *Gandy* to claims concerning the residual clause in the career offender enhancement, since the residual clauses in these two provisions are virtually identical.

*United States v. Tuomi*, 605 Fed.Appx. at 956-957.

The Eleventh Circuit held that Tuomi “has shown no error, plain or otherwise, as his argument is squarely foreclosed by our decision in *Gandy*.” *Id.* at 957.

## REASON FOR GRANTING THE WRIT

The Eleventh Circuit Court of Appeals has decided an important federal question – that the career offender “residual clause” of U.S.S.G. § 4B1.2 is not unconstitutionally vague – in a way that conflicts with a relevant decision of this Court.

“It is a fundamental tenet of due process that ‘[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.’” *United States v. Batchelder*, 442 U.S. 114, 123, 99 S. Ct. 2198, 2203 (1979) (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S. Ct. 618, 619 (1939)) (alteration in *Batchelder*). “A criminal statute is therefore invalid” – or void for vagueness – “if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.” *Batchelder*, 442 U.S. at 123, 99 S. Ct. at 2203 (internal quotation marks and citation omitted). The doctrine also applies to “vague sentencing provisions that ‘do not state with sufficient clarity the consequences of violating a given criminal statute.’” *Id.*; see also *United States v. Evans*, 333 U.S. 483, 68 S. Ct. 634 (1948) (refusing to enforce vague punishment provision for alien-harboring).

A defendant is subject to an enhanced penalty if he has a prior conviction for a violent felony. Tuomi was subject to an enhanced penalty due to his two prior convictions for fleeing and eluding which the Eleventh Circuit held to constitute a violent felony under the “residual clause.” *United States v. Smith*, 742 F.3d 949, 954 (11th Cir. 2014) vacated by *Smith v. United States*, \_\_ U.S. \_\_, 135 S.Ct. 2935 (2015).

The Armed Career Criminal Act, 18 U.S.C. § 924(e), and the career offender provision of the United States Sentencing Guidelines, U.S.S.G. § 4B1.2, have an identical “residual clause” that defines a violent felony as “conduct that presents a serious potential risk of physical injury to another.” The Court held in *Johnson v. United States*, \_\_ U.S. \_\_, 135 S. Ct. 2551 (2015) “that imposing an increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution’s guarantee of due process.” *Id.* at 2563. Because the Sentencing Guidelines are a “lodestone” for federal sentencing, they are subject to constitutional challenge, like statutes. *Peugh v. United States*, \_\_ U.S. \_\_, 133 S. Ct. 2072, 2084 (2013) (holding that the Sentencing Guidelines are subject to *ex post facto* analysis). Therefore, just as the Court found the “residual clause” void for vagueness under the Armed Career Criminal Act, it should do the same as to the career offender provision of the Sentencing Guidelines.

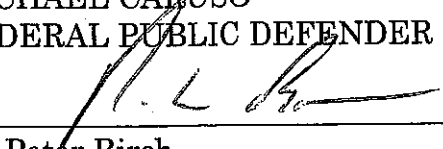
Tuomi was sentenced as a career offender for two fleeing and eluding convictions that were considered crimes of violence. On appeal, the Eleventh Circuit affirmed Tuomi’s sentence based upon its precedent that the “residual clause” was not unconstitutionally vague. The Eleventh Circuit’s decision expressly conflicts with the Court’s holding in *Johnson*. Accordingly, the Court should grant cert and reverse the decision of the Eleventh Circuit Court of Appeals.

## CONCLUSION

Based on the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

MICHAEL CARUSO  
FEDERAL PUBLIC DEFENDER

By:   
Peter Birch  
Assistant Federal Public Defender  
Counsel for Petitioner

West Palm Beach, Florida  
August 21, 2015

## **APPENDIX**

## APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit  
Affirming Judgment and Sentence,

*United States v. Tuomi*, 605 Fed. Appx. 956 (May 27, 2015) ..... A-1

Judgment Imposing Sentence ..... A-2



**A-1**

605 Fed.Appx. 956

(Cite as: 605 Fed.Appx. 956)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2.

United States Court of Appeals,  
Eleventh Circuit.  
UNITED STATES of America, Plaintiff–Appellee,  
v.  
Dana E. TUOMI, Defendant–Appellant.

No. 14– 15184  
Non–Argument Calendar.  
May 27, 2015.

Nicole D. Mariani, Alexandra Chase, Assistant U.S. Attorney, Wifredo A. Ferrer, Kathleen Mary Salyer, U.S. Attorney's Office, Miami, FL, for Plaintiff–Appellee.

Peter Vincent Birch, Federal Public Defender's Office, West Palm Beach, FL, Michael Caruso, Federal Public Defender, Federal Public Defender's Office, Miami, FL, for Defendant–Appellant.

Appeal from the United States District Court for the Southern District of Florida. D.C. Docket No. 9:14–cr–80105–DTKH–1.

Before TJOFLET, WILSON, and JULIE CARNES,  
Circuit Judges.

PER CURIAM:

Defendant Dana Tuomi appeals his 132–month sentence, imposed below the advisory guideline range of 151 to 188 months, after pleading guilty, pursuant

to a written plea agreement, to one count of bank robbery, in violation of 18 U.S.C. § 2113(a). After review, we affirm.

# I.

Defendant argues for the first time on appeal that the residual clause of the career offender enhancement, pursuant to U.S.S.G. § 4B1.2(a)(2), that was used to enhance his sentence based on his prior convictions, is unconstitutionally vague. Generally, we review a constitutional sentencing issue *de novo*, provided the objection was raised in the district court. *United States v. Steed*, 548 F.3d 961, 978 (11th Cir.2008). However, because Defendant failed to challenge the constitutionality of the residual clause below, we review this claim only for plain error. *United States v. Weeks*, 711 F.3d 1255, 1261 (11th Cir.2013). Therefore, in order to prevail, Defendant must demonstrate that there was error, the error was plain, the error affects his substantial rights, and the error seriously affects the fairness, integrity, or reputation of the judicial proceedings. *United States v. Rodriguez*, 398 F.3d 1291, 1298 (11th Cir.2005).

In *United States v. Gandy*, we expressly held that the residual clause of the Armed Career Criminal Act (“ACCA”) is not unconstitutionally vague. 710 F.3d 1234, 1239 (11th Cir.2013), *cert. denied*, — U.S. —, 134 S.Ct. 304, 187 L.Ed.2d 216 (2013). We have since applied our holding in *Gandy* to claims concerning the residual clause in the career offender enhancement, since the residual clauses in these two \*957 provisions are virtually identical. *United States v. Travis*, 747 F.3d 1312, 1314 n. 1 (11th Cir.2014) (noting that the argument that the career offender guideline residual clause is unconstitutionally vague is foreclosed by this Court's decision in *Gandy*), *cert. denied*, — U.S. —, 135 S.Ct. 148, 190 L.Ed.2d 47 (2014); *see also Gilbert v. United States*, 640 F.3d 1293, 1309 n. 16 (11th Cir.2011) (*en banc*) (noting

605 Fed.Appx. 956

(Cite as: 605 Fed.Appx. 956)

that this Court has held that the residual clauses in the ACCA and career offender provision are “virtually identical” “so that decisions about one apply to the other”). Accordingly, Defendant has shown no error, plain or otherwise, as his argument is squarely foreclosed by our decision in *Gandy*. And, “[w]e are bound by prior precedent decisions unless or until we overrule them while sitting *en banc*, or they are overruled by the Supreme Court.” *United States v. Jordan*, 635 F.3d 1181, 1189 (11th Cir.2011).

END OF DOCUMENT

## II.

Defendant also argues on appeal that the district court erred by applying the career offender enhancement because the prior convictions used as the predicate offenses for the enhancement were not alleged in the charging information. Because Defendant raised this objection in the district court, we review this constitutional issue *de novo*. See *Steed*, 548 F.3d at 978.

In *Almendarez-Torres v. United States*, the Supreme Court held that a defendant's prior convictions could be considered and used to enhance a defendant's sentence without having been alleged in the indictment or proven beyond a reasonable doubt. 523 U.S. 224, 226–27, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998). This holding still stands, and “we are bound to follow *Almendarez-Torres* unless and until the Supreme Court itself overrules that decision.” *United States v. Thomas*, 242 F.3d 1028, 1035 (11th Cir.2001). Accordingly, we conclude that the district court did not err when it relied on prior convictions not alleged in the charging information to enhance Defendant's sentence.

For these reasons, Defendant's sentence is **AF-FIRMED**.

C.A.11 (Fla.),2015.

U.S. v. Tuomi

605 Fed.Appx. 956

**A-2**

**United States District Court**  
**Southern District of Florida**  
**WEST PALM BEACH DIVISION**

**UNITED STATES OF AMERICA**

**JUDGMENT IN A CRIMINAL CASE**

**v.**

**Case Number - 9:14CR80105-001**

**DANA ELLIS TUOMI**

**USM Number: 03035-017**

Counsel For Defendant: AFDP Peter V. Birch  
Counsel For The United States: AUSA Alexandra Hui  
Court Reporter: Tammy Nestor

The defendant pleaded guilty to Count ONE of the Information on August 7, 2014. The defendant is adjudicated guilty of the following offense:


<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 2113 (a)	Bank Robbery.	April 17, 2014	ONE

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Count TWO of the Information is dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

Date of Imposition of Sentence:  
November 4, 2014

  
DANIEL T. K. HURLEY  
United States District Judge

November 6<sup>th</sup>, 2014

DEFENDANT: DANA ELLIS TUOMI  
CASE NUMBER: 9:14CR80105-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 132 months, to commence immediately. This is the total term of imprisonment imposed as to Count ONE of the Information. [The court has no objections to this term of imprisonment running concurrent with any term of imprisonment that may be imposed by the State of Florida in Docket No. 01-CF-6574 and Docket No. 02-MM-26381.]

The Court makes the following recommendations to the Bureau of Prisons:

The court recommend the defendant be permitted to participate in the 500 hour drug / alcohol rehabilitation program; and the term of imprisonment be served at a facility in South Florida.

The defendant is remanded to the custody of the United States Marshal.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

DEFENDANT: DANA ELLIS TUOMI  
CASE NUMBER: 9:14CR80105-001

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years**. This is the total term of supervised release imposed as to **Count ONE** of the Information.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

**The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.**

**The defendant shall cooperate in the collection of DNA as directed by the probation officer.**

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

### **STANDARD CONDITIONS OF SUPERVISION**

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DANA ELLIS TUOMI  
CASE NUMBER: 9:14CR80105-001

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall also comply with the following additional conditions of supervised release:

The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

The defendant shall submit to a search of his person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

The defendant shall obtain prior written approval from the Court before entering into any self-employment.

The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.



DEFENDANT: DANA ELLIS TUOMI  
CASE NUMBER: 9:14CR80105-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$100.00	\$	\$2,320.00

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
As indicated in the PreSentence Investigation Report	\$2,320.00	\$2,320.00	

The Court has determined that the defendant does not have the ability to pay interest, and it is ordered that:

The interest requirement is waived for the restitution.

\*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DANA ELLIS TUOMI  
CASE NUMBER: 9:14CR80105-001

### **SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A lump sum payment of \$100.00 is due immediately.

It is further ordered that the defendant shall pay restitution in the amount of \$2,320.00. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order.

Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The assessment and restitution are payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
400 NORTH MIAMI AVENUE, ROOM 8N09  
MIAMI, FLORIDA 33128-7716**

The assessment and restitution are payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

No:

IN THE  
SUPREME COURT OF THE UNITED STATES

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DANA E. TUOMI,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

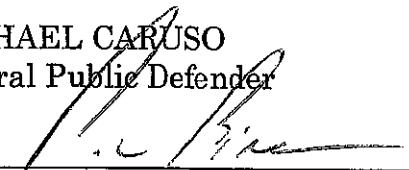
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Petitioner, DANA E. TUOMI, pursuant to SUP CT. R. 39.1, respectfully moves for leave to file the accompanying petition for writ of certiorari in the Supreme Court of the United States without payment of costs and to proceed *in forma pauperis*.

Petitioner was previously found financially unable to obtain counsel and the Federal Public Defender of the Southern District of Florida was appointed to represent Petitioner pursuant to 18 U.S.C. § 3006A. Therefore, in reliance upon RULE 39.1 and § 3006A(d)(6), Petitioner has not attached the affidavit which would otherwise be required by 28 U.S.C. § 1746.

MICHAEL CARUSO  
Federal Public Defender

West Palm Beach, Florida  
August 21, 2015

By:   
Peter Birch  
Assistant Federal Public Defender  
450 Australian Avenue South,  
Suite 500  
West Palm Beach, Florida 33401  
Tel. (561) 833-6288

No:

IN THE  
SUPREME COURT OF THE UNITED STATES

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DANA E. TUOMI,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
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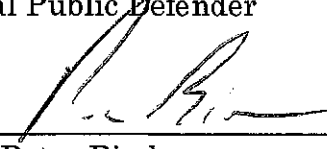
**CERTIFICATE OF SERVICE**

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I certify that on this 21<sup>st</sup> day of August, 2015, in accordance with SUP. CT. R. 29, copies of the (1) Petition for Writ of Certiorari, (2) Motion for Leave to Proceed *In Forma Pauperis*, (3) Certificate of Service, and (4) Declaration Verifying Timely Filing, were served by third party commercial carrier for delivery within three days upon the United States Attorney for the Southern District of Florida, 99 N.E. 4th Street, Miami, Florida 33132-2111, and upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

MICHAEL CARUSO  
Federal Public Defender

West Palm Beach, Florida  
August 21, 2015

By:   
Peter Birch  
Assistant Federal Public Defender  
450 Australian Avenue South,  
Suite 500  
West Palm Beach, Florida 33401  
Tel. (561) 833-6288

No:

IN THE  
SUPREME COURT OF THE UNITED STATES

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DANA E. TUOMI,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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**DECLARATION VERIFYING TIMELY FILING**

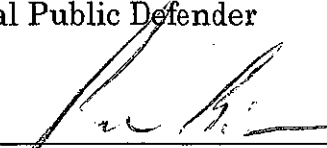
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Petitioner, DANA E. TUOMI, through undersigned counsel and pursuant to SUP. Ct. R. 29.2 and 28 U.S.C. § 1746, declares that the **Petition for Writ of Certiorari** filed in the above-styled matter was sent in an envelope via third party commercial carrier for delivery within three days, addressed to the Clerk of the Supreme Court of the United States, on the 21<sup>st</sup> day of August, 2015, which is prior to the time the petition for writ of certiorari is due, on August 25<sup>th</sup>, 2015.

MICHAEL CARUSO  
Federal Public Defender

West Palm Beach, Florida  
August 21, 2015

By: \_\_\_\_\_

  
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