Nos. 17-3306 and 17-3307

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DEDRICK BUFKIN AND DIAMOND TONEY,

Petitioners-Appellees,

v.

UNITED STATES OF AMERICA,

Respondent-Appellant.

On Appeal from the United States District Court
for the Northern District of Indiana (Hammond)
Nos. 2:16-cv-00236-JVB and 2:16-cv-00181-JVB
Judge Joseph S. Van Bokkelen, Presiding

RESPONSE BRIEF OF PETITIONERS-APPELLEES DEDRICK BUFKIN AND DIAMOND TONEY

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Dated: March 29, 2018

ORAL ARGUMENT REQUESTED

CIRCUIT RULE 26.1 DISCLOSURE STATEMENTS

Appellate Court No. 17-3306 and 17-3307

Short Caption: Dedrick Bufkin and Diamond Toney v. United States **(new)**

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.
The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[X] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Dedrick Bufkin and Diamond Toney

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the District Court or before an administrative agency) or are expected to appear for the party in this court:

Northern District of Indiana Federal Community Defenders, Inc. **(new)**
Stracci Criminal Defense PC **(new)**
Jenner & Block Supreme Court and Appellate Clinic at The University of Chicago Law School
Jenner & Block LLP

(3) If the party or amicus is a corporation:
i) Identify all of its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature s/ Sarah M. Konsky Date: March 29, 2018

Attorney's Printed Name: Sarah M. Konsky

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Attorney's Signature s/ David A. Strauss Date: March 29, 2018

Attorney's Printed Name: David A. Strauss

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Attorney's Signature s/ Matthew S. Hellman Date: March 29, 2018

Attorney's Printed Name: Matthew S. Hellman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

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JURISDICTIONAL STATEMENT

Appellees, Dedrick Bufkin and Diamond Toney, agree with and join in the government's jurisdictional statement, which is both correct and complete. *See* Gov. Br. at 1–2.

STATEMENT OF ISSUE

Mr. Bufkin and Ms. Toney agree with and join in the government's statement of the issue presented for appeal. The issue is:

Is the definition of the term "crime of violence" in 18 U.S.C. § 924(c)(3)(B) unconstitutionally vague?

STATEMENT OF THE CASE

In 2013, the Northern District of Indiana, Hammond Division, entered judgments convicting Mr. Bufkin and Ms. Toney solely of violating 18 U.S.C. § 924(c), which makes it illegal to brandish a firearm during and in relation to a "crime of violence." Dkt. 56; Dkt. 69. A "crime of violence" is defined under the statute as:

> [A]n offense that is a felony and --
>
> (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3). The purported "crime of violence" in this case was kidnapping, as both Mr. Bufkin and Ms. Toney were also charged with the federal offense of kidnapping under 18 U.S.C. § 1201(a)(1) in the indictment,

although neither of them was convicted of that offense. *See* Dkt. 15; *see also* Gov. App. 2–3.

On May 20, 2016 and June 16, 2016, respectively, Ms. Toney and Mr. Bufkin filed motions to vacate their sentences under 28 U.S.C. § 2255 in light of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). Dkt. 71; Dkt. 74. On September 15, 2017, the Northern District of Indiana granted Mr. Bufkin's and Ms. Toney's motions and vacated their convictions, holding that their convictions could not stand under either provision of § 924(c)(3). Gov. App. 1–4.

With respect to § 924(c)(3)(A), the district court applied this Court's holding in *United States v. Jenkins*, 849 F.3d 390 (7th Cir. 2017), that the federal offense of kidnapping is not a "crime of violence" under § 924(c)(3)(A). Gov. App. 3–4. The district court therefore held that Mr. Bufkin's and Ms. Toney's convictions could not stand under § 924(c)(3)(A). Gov. App. 4. The government has not appealed that holding.

The district court also held that kidnapping did not qualify as a crime of violence under § 924(c)(3)(B), because this Court held in *Jenkins* and other cases that "the Residual Clause, § 924(c)(3)(B), is unconstitutionally vague." Gov. App. 3. The district court therefore granted Mr. Bufkin's and Ms. Toney's § 2255 motions and vacated their convictions. Gov. App. 4.

Whether § 924(c)(3)(B) is unconstitutionally vague is the sole issue that the government has appealed to this Court.

SUMMARY OF THE ARGUMENT

Section 924(c)(3)(B) is unconstitutionally vague. As the government concedes, this Court has repeatedly held this, and its precedent regarding the unconstitutionality of § 924(c)(3)(B) is well-settled. The government's appeal is thus without merit, and this Court should affirm the district court's grant of Mr. Bufkin's and Ms. Toney's § 2255 motions.

The government's argument that this Court should overturn its precedent is also meritless. Since 2016, this Court has been presented with the question of § 924(c)(3)(B)'s constitutionality three times and has reached the same result in each case: § 924(c)(3)(B) is unconstitutionally vague. That conclusion is correct because the language of § 924(c)(3)(B) is virtually indistinguishable from the residual clause in the Armed Career Criminal Act (the "ACCA"), which the Supreme Court held was unconstitutionally vague in *Johnson*. Like the ACCA residual clause, § 924(c)(3)(B) requires district courts to undertake the impossible task of assessing the risk posed by the "ordinary case" of a particular offense. While the government urges the Court to reconsider its precedent based on the holdings of other circuits, the government overstates the disagreement in the circuits on this issue, and this Court has already expressly considered and decided not to follow the out-of-circuit case law upon which the government relies. This Court should affirm the grant of § 2255 relief below.

ARGUMENT

I. 18 U.S.C. § 924(c)(3)(B) Is Unconstitutionally Vague.

A. Standard of Review.

"To succeed on a § 2255 petition, a defendant must demonstrate that the sentence imposed upon him was in violation of the Constitution or the laws of the United States." *Arango-Alvarez v. United States*, 134 F.3d 888, 890 (7th Cir. 1998). This Court reviews a district court's grant or denial of a § 2255 motion "regarding questions of law *de novo* and the court's factual findings for clear error." *Id.*; *see also McCleese v. United States*, 75 F.3d 1174, 1177 (7th Cir. 1996); *Light v. Caraway*, 761 F.3d 809, 812 (7th Cir. 2014). Since the only issue raised on appeal is a question of law, review is *de novo*.

B. The Government Concedes That 18 U.S.C. § 924(c)(3)(B) Is Unconstitutionally Vague Under Seventh Circuit Precedent.

The government appeals a single issue to this Court: whether the definition of "crime of violence" in § 924(c)(3)(B) is unconstitutionally vague. As the government concedes, the answer to this question is yes under settled Seventh Circuit precedent. *See* Gov. Br. at 8. Indeed, this Court has considered this question three times in the last two years, and it has held unequivocally in each case that § 924(c)(3)(B) is unconstitutionally vague. *See United States v. Cardena*, 842 F.3d 959 (7th Cir. 2016); *United States v. Jenkins*, 849 F.3d 390 (7th Cir. 2017); *United States v. Jackson*, 865 F.3d 946 (7th Cir. 2017). Moreover, the government also concedes that its sole reason for bringing this appeal is to preserve this issue for further review. *See* Gov. Br. at 8. The

district court thus correctly held that § 924(c)(3)(B) is unconstitutionally vague. This Court is bound by its own precedent and should affirm the district court's grant of § 2255 relief.

II. The Government's Argument That The Court Should Overturn Its Precedent Is Meritless.

Having conceded that the district court decided this case correctly under this Court's precedent, the government devotes the bulk of its brief to arguments that this Court should overturn that precedent. A three-judge panel cannot overturn circuit precedent by itself. *See, e.g.*, *United States v. Wolvin*, 62 F. App'x 667, 668 (7th Cir. 2003). To the extent the government is seeking to have the panel poll the Court as a whole, this Court should reject that invitation. This Court's holding that § 924(c)(3)(B) is unconstitutionally vague is well-settled and correct, and its reasoning has been adopted by several other circuits.

A. The Seventh Circuit Precedent Is Well-Settled.

Since 2016, this Court has held that the language of § 924(c)(3)(B) is "virtually indistinguishable from the [ACCA's residual clause] in *Johnson* that was found to be unconstitutionally vague." *Cardena*, 842 F.3d at 996, *citing Johnson v. United States*, 135 S. Ct. 2551 (2015), and *United States v. Vivas-Ceja*, 808 F.3d 719 (7th Cir. 2015). As a result, § 924(c)(3)(B), too, is unconstitutionally vague. *See Cardena*, 842 F.3d at 996; *Jenkins*, 849 F.3d at 394; *Jackson*, 865 F.3d at 952–54.

Indeed, as recently as August 2017, this Court explicitly rejected the government's call for it to reconsider this well-settled precedent since it had "already rejected the arguments other courts have found persuasive" when reaching the opposite conclusion. *Jackson*, 865 F.3d at 953–54. "Stare decisis principles dictate that [this Court] give [its] prior decisions considerable weight unless and until other developments . . . undermine them." *Id.* at 953 (internal quotation marks and citation omitted). Thus, this Court has consistently reaffirmed that "stare decisis and [its] recent precedents compel the conclusion that § 924(c)(3)(B) is unconstitutionally vague." *Id.* at 954.

B. The Seventh Circuit Precedent Is Correct.

The Seventh Circuit's precedent is correct. In *Johnson*, the Supreme Court held that the residual clause of the ACCA was unconstitutionally vague because its "categorical approach" required courts to analyze "a judicially imagined 'ordinary case' of a crime, not [ ] real-world facts or statutory elements," and thus "le[ft] uncertainty about how much risk it takes for a crime to qualify as a violent felony." *Johnson*, 135 S. Ct. at 2557–58, 2562. As this Court has repeatedly held, the language of § 924(c)(3)(B) is "virtually indistinguishable from the clause in *Johnson* that was found to be unconstitutionally vague" because it too mandates the use of this two-step categorical approach to determine whether an "ordinary case" of an act is a "crime of violence." *Cardena*, 842 F.3d at 996, *citing Johnson*, 135 S. Ct. at 2557; *see also Vivas-Ceja*, 808 F.3d at 720–21. While the two statutes are not identical, both incorporate the categorical approach by "[tying] the judicial

assessment of risk to a judicially imagined 'ordinary case' of a crime" without any guidance as to how to "decid[e] what kind of conduct the 'ordinary case' of a crime involves" or how much risk is required for this "ordinary case" to classify as a crime of violence. *Johnson*, 135 S. Ct. at 2557, *cited in Vivas-Ceja*, 808 F.3d at 722, and *Cardena*, 842 F.3d at 996. Because of this, *Johnson* extends to invalidate the indeterminate language in § 924(c)(3)(B).[1]

The government argues that slight differences between the language of § 924(c)(3)(B) and the residual clause of the ACCA save the former statute from the vagueness that besets the latter. Gov. Br. at 9–10. This Court has already considered and dismissed these linguistic differences as insufficient to render § 924(c)(3)(B) permissible under the guarantee of due process. *See Jackson*, 865 F.3d at 953 (recognizing that the Seventh Circuit had "already rejected the arguments other courts have found persuasive in concluding that *Johnson*'s rationale does not extend to either § 16(b) or § 924(c)(3)(B)"); *see also Cardena*, 842 F.3d at 996; *Vivas-Ceja*, 808 F.3d at 722.

[1] This language also appears in 18 U.S.C. § 16(b), a general provision in the criminal code that defines the term "crime of violence" and is incorporated into other statutory provisions. As the government notes, this Court has ruled that the identical statutory language of § 16(b), when incorporated into the Immigration and Nationality Act's (the "INA") provisions for the removal of an alien, is unconstitutionally vague. *See Vivas-Ceja*, 808 F.3d at 722. This Term, the Supreme Court is considering whether § 16(b) is unconstitutionally vague when incorporated into the INA. *See Sessions v. Dimaya*, Docket No. 15-1498. The Supreme Court's holding in that case could have implications for this Court's precedent under § 16(b). But in any event, the constitutionality and vagueness concerns with the statutory language are more grave in the context of § 924(c)(3)(B) than in the context of § 16(b). Unlike § 16(b), § 924(c) defines an independent, substantive crime. *Dimaya* also raises the question of whether, and to what extent, the due process considerations underlying a void for vagueness challenge apply to civil removal proceedings. Since § 924(c) is a domestic criminal statute, that same threshold inquiry simply does not apply.

The government also argues that § 924(c)(3)(B) is constitutional because it lacks both an enumerated offenses clause and a history of courts grappling to confine its scope. Since both were present in *Johnson*, the government argues, both also must be present for § 924(c)(3)(B) to be unconstitutionally vague under *Johnson*. *See* Gov. Br. at 9–10. However, this overreads the Court's analysis in *Johnson*. *See Vivas-Ceja*, 808 F.3d at 723. Neither was a necessary condition to render the statute unconstitutionally vague: "[t]he list [of enumerated offenses] wasn't one of the 'two features' that combined to make the clause unconstitutionally vague" and "[t]he chaotic state of the caselaw was not a necessary condition to the Court's vagueness determination." *Id.*

The government also relies on the fact that § 924(c)(3)(B) requires courts to look at the risk of "physical force" rather than of "physical injury" (as in the provision at issue in *Johnson*), and to consider only the risk present "in the course of committing the offense." Gov. Br. at 9. These linguistic differences are not sufficient to render § 924(c)(3)(B) constitutional, however, because they do not alleviate the need for courts to consider the quantum of risk posed by the "ordinary case" of a crime absent any concrete consideration of the facts before it. As the Supreme Court has emphasized, "[t]he vagueness of the residual clause rests in large part on its operation under the categorical approach. . . . The residual clause failed not because it adopted a 'serious potential risk' standard but because applying that standard under the categorical approach required courts to assess the hypothetical risk posed by an abstract generic version of the offense." *Welch v. United States*, 136 S. Ct. 1257, 1262 (2016).

This Court therefore is correct in holding that the indeterminacy of the residual clause struck down in *Johnson* is replicated in § 924(c)(3)(B), rendering it unconstitutionally vague. *Cardena*, 842 F.3d at 996; *Jackson*, 865 F.3d at 952–53; *Jenkins*, 849 F.3d at 394.

C. There Is A Circuit Split On The Issue But The Seventh Circuit's Reasoning Is Not An Outlier.

In addition to its erroneous attempt to distinguish § 924(c)(3)(B) from the ACCA residual clause, the government also invokes decisions from other appellate courts and contends that this Court has taken an outlier position that it should reconsider. The government is wrong. The Seventh Circuit already has explicitly acknowledged this out-of-circuit precedent and has "already rejected the arguments [these] other courts have found persuasive." *Jackson*, 865 F.3d at 953 (rejecting the government's reliance on out-of-circuit precedent in a challenge to the constitutionality of § 924(c)(3)(B)).

Moreover, while the government is correct that the circuit courts are not in agreement on the constitutionality of this statutory language, the government overstates that disagreement. To be sure, other circuits that have heard the issue have held that § 924(c)(3)(B) is constitutional. *See United States v. Hill*, 832 F.3d 135, 150 (2d Cir. 2016); *United States v. Davis*, 677 F. App'x 933, 936 (5th Cir. 2017); *United States v. Taylor*, 814 F.3d 340, 379 (6th Cir. 2016); *United States v. Prickett*, 839 F.3d 697, 699–700 (8th Cir. 2016); *Ovalles v. United States*, 861 F.3d 1257, 1265 (11th Cir. 2017); *United States v. Eshetu*,

863 F.3d 946, 954–55 (D.C. Cir. 2017).[2] But other circuits have held that the identical language in 18 U.S.C. § 16(b), which defines "crime of violence" in the general provisions of the criminal code, is unconstitutionally vague under *Johnson*. Those courts have recognized that, because § 16(b) has the "same combination of indeterminate inquires" as the ACCA residual clause, it is "subject to the same constitutional defects." *Dimaya v. Lynch*, 803 F.3d 1110, 1115 (9th Cir. 2015), *cert. granted,* 137 S. Ct. 31 (2016); *see also Shuti v. Lynch*, 828 F.3d 440, 446 (6th Cir. 2016);[3] *Baptiste v. Attorney General*, 841 F.3d 601, 604 (3d Cir. 2016); *Golicov v. Lynch*, 837 F.3d 1065, 1067 (10th Cir. 2016). Though the Third, Ninth, and Tenth Circuits have not yet had the opportunity to consider the constitutionality of § 924(c)(3)(B), their reasoning in these § 16(b) cases presumably would apply in equal force to reach the same conclusion under § 924(c)(3)(B), especially since the constitutional concerns are even more stark in the context of § 924(c)(3)(B). *See* note 1, *supra*. This Court's reasoning, then, is not as inconsistent with its sister circuits as the government would posit. *See* Gov. Br. at 8–9.

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[2] The cases cited by the government from the First and Fourth Circuits are not on point. *See* Gov. Br. at 8–9. The First Circuit cited the lack of agreement between the circuits but stopped short of analyzing the issue itself and ultimately dismissed the case on procedural grounds. *See United States v. Ponzo*, 853 F.3d 558 (1st Cir. 2017). The Fourth Circuit case focused exclusively on the scope of a search under the Fourth Amendment and did not address the constitutionality of § 924(c)(3)(B). *See United States v. Graham*, 824 F.3d 421 (4th Cir. 2016).

[3] Indeed, the Sixth Circuit's precedent highlights the lack of uniformity between the courts, since two different panels of the Sixth Circuit reached opposite conclusions with respect to identical language within months of one another, and the opinion upholding § 924(c)(3)(B) was accompanied by a dissent that echoed the reasoning of this Court in *Vivas-Ceja* and *Cardena*. *Compare United States v. Taylor*, 814 F.3d 340 (6th Cir. 2016), *with Shuti v. Lynch*, 828 F.3d 440 (6th Cir. 2016).

III. The Plain Error Standard Of Review Is Irrelevant To This Case.

Because the only question raised by the government in this appeal is the constitutionality of § 924(c)(3)(B), the proper standard of review in this case is *de novo*. *Arango-Alvarez*, 134 F.3d at 890. The government nonetheless contends that "this Court should consider the merits of defendants' claim only through the lens of plain error" because Mr. Bufkin and Ms. Toney did not raise their constitutional argument through a motion to dismiss the indictment. Gov. Br. at 6–7. To the extent that the government is arguing that the Court should apply plain error review in this case, that argument has been waived by the government, is erroneous, and is irrelevant to the final disposition of this appeal. Notably, the government makes no effort to develop this argument in its brief; it does not even mention "plain error" outside of the "Standard of Review" section of its brief (except in one parenthetical citing to an out-of-circuit case that arose out of a direct appeal of a jury verdict), much less apply any plain error framework to the case at hand.

First, the government did not raise the plain error argument (or any other argument regarding waiver, forfeiture, or default) in the district court; it instead concedes that "the United States responded to the defendants' Section 2255 motion in the district court on the merits." *Id.* at 6–7. It also failed to develop any such argument in its brief in this appeal. The government has therefore waived any such argument under this Court's precedents. *See, e.g.*, *Cossel v. Miller*, 229 F.3d 649, 653 (7th Cir. 2000) ("A litigant that fails to present an argument to the district court cannot rely on that argument in the

court of appeals."); *United States v. Prado*, 743 F.3d 248, 251 (7th Cir. 2014) (holding that, because the government failed to raise the issue of forfeiture, the Court could hear the merits of a case even if it would otherwise be precluded from doing so); *see also Williams v. United States*, 879 F.3d 244, 248 (7th Cir. 2018) (holding that "procedural default is an affirmative defense and can itself be waived" and that the government's failure to raise this issue at the district court constitutes a waiver of that defense); *Eichwedel v. Chandler*, 696 F.3d 660, 669 (7th Cir. 2012) (same); *Williams v. United States*, 150 F.3d 639, 639–40 (7th Cir. 1998) (holding that the Court will not consider whether vacating a conviction given the defendant's plea is appropriate when the government does not raise the issue on appeal).

Second, waiver notwithstanding, the government's suggestion that plain error review applies is incoherent. The government's sole authority on this point is two out-of-circuit cases about the appropriate standards of review on direct appeal following a trial. *See* Gov. Br. at 7. It is undisputed that Mr. Bufkin and Ms. Toney raised the issue on appeal here in their § 2255 motions below and that their § 2255 motions were timely. *See* Gov. Br. at 5; Gov. App. 1; Dkt. 71; Dkt. 74. The long-standing rule in this Court is that legal questions arising out of a § 2255 motion are reviewed *de novo* on appeal. *See Arango-Alvarez*, 134 F.3d at 890; *Light*, 761 F.3d at 812.

Finally, even assuming for sake of argument that plain error review somehow is appropriate in this case, it would not change the outcome. In light of the Supreme Court's holding in *Johnson* and this Court's clear precedent in

Cardena, *Jackson*, and *Jenkins*, "the unconstitutionality of § 924(c)(3)(B) is plain," meaning that a "conviction under 924(c) was in error and that error is plain at the time of this review." *Jenkins*, 849 F.3d at 394. This error affected Mr. Bufkin's and Ms. Toney's substantial rights since it "resulted in [their] receiving a longer sentence than [they] otherwise would without the error." *See id.*; Gov. App. 1, 4. As discussed above (*see supra* at 1–2), Mr. Bufkin and Ms. Toney were convicted and imprisoned solely for violating § 924(c). Because the government does not appeal the district court's holding (*see* Gov. App. 3–4) that their convictions cannot not stand under § 924(c)(3)(A), the sole remaining basis for their convictions and sentences is the second half of that provision—§ 924(c)(3)(B)—which is unconstitutionally vague. Moreover, the error "seriously impugned the fairness of the judicial proceedings" because it resulted in Mr. Bufkin and Ms. Toney being subjected to imprisonment for a "non-existent crime." *Jenkins*, 849 F.3d at 394–95. This kind of sentence "undermines the fairness of judicial proceedings and cannot stand." *Id.* at 395. The government's passing reference to the plain error standard of review thus is of no consequence here.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgments of the District Court for the Northern District of Indiana.

Respectfully submitted,

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Dated: March 29, 2018

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)

1. This Brief complies with page limitation of Rule 32(a)(7)(A) of the Federal Rules of Appellate Procedure because it does not exceed 30 pages.

2. This Brief complies with the typeface and type style requirements in Rules 32(a)(5) and (6) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 12-point Bookman Old Style font for the main text and 11-point Bookman Old Style font for footnotes.

Dated: March 29, 2018

s/ Sarah M. Konsky
Sarah M. Konsky

CERTIFICATE OF SERVICE

I, Sarah M. Konsky, an attorney, hereby certify that on March 29, 2018, I caused the foregoing **Response Brief of Petitioners-Appellees Dedrick Bufkin and Diamond Toney** to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Pursuant to ECF Procedure (h)(2) and Circuit Rule 31(b), and upon notice of this Court's acceptance of the electronic brief for filing, I certify that I will cause 15 copies of the **Response Brief of Petitioners-Appellees Dedrick Bufkin and Diamond Toney** to be transmitted to the Court via hand delivery within 7 days of that notice date.

Dated: March 29, 2018

s/ Sarah M. Konsky
Sarah M. Konsky