

No.

In the
Supreme Court of the United States

JAMIELL SIMS,
Petitioner

v.

UNITED STATES,
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

What is the base offense level for conspiracy to commit sex trafficking by force, fraud, or coercion in violation of 18 U.S.C. §1594(c)?

PARTIES TO THE PROCEEDING

Jamiell Sims was the Defendant/Appellant in proceedings before the United States District Court and the Appeal before the United States Court of Appeals for the Third Circuit. The United States of America was the prosecutor for the United States District Court and the Appellee in the appeal before the United States Court of Appeals for the Third Circuit.

**CORPORATE DISCLOSURE STATEMENT
AND STATEMENT OF
FINANCIAL INTEREST**

Petitioner is not a corporation and, therefore, does not have a parent, subsidiary or affiliates that issue shares to the public.

Neither Petitioner nor Petitioner's counsel has any financial interest in this appeal.

TABLE OF CONTENTS

QUESTION PRESENTED	-i-
PARTIES TO THE PROCEEDING	-ii-
CORPORATE DISCLOSURE STATEMENT AND STATEMENT OF FINANCIAL INTEREST	-iii-
TABLE OF CONTENTS	-iv-
TABLE OF AUTHORITIES	-v-
PETITION FOR WRIT OF CERTIORARI	1
JURISDICTION	1
OPINIONS BELOW	1
CONSTITUTIONAL AND STATUTORY	
PROVISIONS INVOLVED	2
(1) §1B1.2 Applicable Guidelines	3
(2) §2G1.1 Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor	4
(3) §2X1.1 Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)	4
STATEMENT OF THE CASE	6
REASON FOR GRANTING THE PETITION	9
CONCLUSION	13
RULE 33.1(H) CERTIFICATE OF COMPLIANCE	14
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

<u>United States v. Jamiell Sims</u> , 957 F.3d 362 (3d Cir. 2020)	1
<u>United States v. Wei Lin</u> , 841 F.3d 823 (2016)	9, 10

PETITION FOR WRIT OF CERTIORARI

Petitioner, Jamiell Sims, respectfully requests that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit affirming the District Court's judgment of conviction and sentence in this case.

JURISDICTION

This Petition invokes the jurisdiction of this Court pursuant to 28 U.S.C. §1254(1) to review the judgment of the Third Circuit affirming Jamiell Sims' conviction and sentence. The Judgment of the Third Circuit was filed and entered on April 24, 2020 (App. 1a). No Petition for rehearing or Reconsideration was filed. The Petition is timely under Supreme Court Rule 13.3.

OPINIONS BELOW

The precedential Opinion and Judgment of the Third Circuit Court of Appeals are attached hereto (App. 1a-11a). United States v. Jamiell Sims, 957 F.3d 362 (3d Cir. 2020).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves 18 U.S.C. §1591(a) and (b)(1) and (2) which read:

(a) Whoever knowingly –

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains; or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is –

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18

years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

This case also involves 18 U.S.C. §1594 which reads in relevant part as follows:

- (a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.
- (b) Whoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592 shall be punished in the same manner as a completed violation of such section.
- (c) Whoever conspires with another to violate section 1591 shall be fined under this title imprisoned for any term of years or for life, or both.

The case also involves several sections of the United States Sentencing Guidelines as follows:

(1) §1B1.2 Applicable Guidelines

- (a) Determine the offense guideline section in Chapter Two (Offense Conduct) applicable to the offense of conviction (*i.e.*, the offense conduct charged in the count of the indictment or information of which the defendant was convicted). However, in the case of a plea agreement (written or made orally on the record) containing a stipulation that specifically establishes more serious offense than the offense of conviction, determine the offense guideline section in Chapter Two applicable to the stipulated offense.

Refer to the Statutory Index (Appendix A) to determine the Chapter Two offense guideline, referenced in the Statutory Index or the offense of conviction. If the offense involved a conspiracy, attempt, or solicitation, refer to §2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline referenced in the Statutory Index or the substantive offense. For statutory provisions not listed in the Statutory Index, use the most analogous guideline. *See* §2X5.1 (Other Offenses). The guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction. *See* §1B1.9 (Class B or C Misdemeanors and Infractions).

- (b) After determining the appropriate offense guideline section pursuant to subsection (a) of this section, determine the applicable guideline range in accordance with §1B1.3 (Relevant Conduct).
- (2) **§2G1.1 Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor.**
 - (a) Base Offense Level:
 - (1) **34**, if the offense of conviction is 18 U.S.C. §1591(b)(1); or
 - (2) **14**, otherwise.
 - (3) **§2X1.1 Attempt, Solicitation, or Conspiracy (Not Covered by a Specific Offense Guideline)**
 - (a) Base Offense Level; The base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty.

(b) Specific Offense Characteristics

- (1) If an attempt, decrease by **3** levels, unless the defendant completed all the acts the defendant believed necessary for successful completion of the substantive offense or the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant's control.
- (2) If a conspiracy, decrease by **3** levels, unless the defendant or co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive offense or the circumstances demonstrate that the conspirators were about to complete all such acts but for apprehension or interruption by some similar event beyond their control

STATEMENT OF THE CASE

On October 18, 2016, an 11-Count Superceding Indictment was returned in the Middle District of Pennsylvania against Jose Velazquez a/k/a “Sev”, Sean Griffin a/k/a “Kritical”, Jamiell Sims a/k/a “Millz”, and Brianni Gomez a/k/a “Nani”. Jamiell Sims was charged in all counts: Conspiracy to Distribute and Possess with Intent to Distribute in Excess of 100 grams of heroin, cocaine base (crack), and percocet (schedule II) in violation of 21 U.S.C. §846 (Count 1), Distribution and Possession with Intent to Distribute Heroin in violation of 21 U.S.C. §841(a)(1) (Counts 2 thru’ 5), Conspiracy to Commit Sex Trafficking by Force or Coercion in violation of 18 U.S.C. §1594(c) (Count 6), Sex Trafficking by Force or Coercion in violation of 18 U.S.C. §§1591(a) and (b)(1) and 2 (Counts 7 thru’ 10), and Witness Intimidation in violation of 18 U.S.C. §§1512(b)(1) and 2 (Count 11). A 14-Count Second Superceding Indictment was returned on January 30, 2018, against Jamiell Sims a/k/a “Millz”, Arthur Taylor a/k/a “Arty”, and Jordon Capone a/k/a “Angel”. With the exception of Count 6, Jamiell Sims was charged in all remaining Counts: Conspiracy to Distribute and Possess with Intent to Distribute in excess of 100 grams of heroin, “Molly” (MDMA), Marijuana, Cocaine Base (Crack), and Percocet (Schedule II) in violation of 21 U.S.C. §846 (Count 1), Distribution and Possession with Intent to Distribute Heroin in violation of 21 U.S.C. §841(a)(1) (Counts 2 thru 5),

Conspiracy to Commit Sex Trafficking by Force or Coercion in violation of 18 U.S.C. §1594(c) (Count 7), Sex Trafficking by Force or Coercion in violation of 18 U.S.C. §§1591(a) and (b)(1), and 2 (Counts 8 thru' 11), and Witness Intimidation in violation of 18 U.S.C. §§1512(b)(1) and (2) (Count 12). Jamiell Sims appeared on June 18, 2018, before the Honorable Malachy E. Mannion and, pursuant to a written plea agreement, pled guilty to Counts 2, 3, 4, 5 and 7 of the Second Superceding Indictment. After sentencing, the Government will move for dismissal of the remaining counts in the Second Superceding Indictment. Importantly, the guilty plea was to Count 7 Conspiracy to Commit Sex Trafficking by Force or Coercion (*emphasis added*).

A Pre-Sentence Investigation Report was prepared on August 28, 2018, and presented to the Court on January 4, 2019.

The Pre-Sentence Report calculated a total Offense Level of **31** and a Criminal History Category of **IV**. Based upon a total Offense Level of **31** and a Criminal History Category of **IV**, the Guideline imprisonment is **151 to 188** months.

Sims objected to the calculation of the total offense level of 31. It was Sims' position that his base offense level was **14**. After subtracting points for adjustment for role in the offense, his adjusted Offense Level was **12**. After an increase in the Offense Level pursuant to the number of units assigned by the amount indicated in

the table at USSG §3D1.4, his base Offense Level was **16**. Adjustment for role in the offense as a minor participant resulted in a 2-level subtraction, resulting in an adjusted Offense Level of **14**. An additional 2 offense levels should be subtracted for acceptance of responsibility pursuant to USSG §3D1.1 resulting in a total Offense Level of **12**. Based upon a total Offense Level of **12** and a Criminal History Category of **IV**, the Guideline imprisonment range is **21 to 27** months.

The Government argued that, under USSG §2G1.2, the Base Offense Level should be determined by reference to the offense Defendant conspired to commit (18 U.S.C. §1591) and not by reference to the crime for which he pleaded guilty (conspiracy in violation of 18 U.S.C. §1594(c)).

At Sentencing on January 17, 2019, the District Court, after discussing the allegations in the indictment and the conduct to which Defendant agreed in his guilty plea colloquy, agreed with the Government that the base Offense Level should be determined by reference to the base Offense Level of the conduct which was the object of the conspiracy (18 U.S.C. §1591(a) and (b)(1)). Accordingly, under USSG §2X.1.1, the base Offense Level is **34**.

The Court sentenced Defendant to 151 months.

REASON FOR GRANTING THE PETITION

Only two Circuit Courts of Appeal have addressed the question of what is the United States Sentencing Guidelines base offense level for conspiracy to commit sex trafficking by force, fraud, or coercion in violation of 18 U.S.C. §1594(c): the Ninth Circuit Court of Appeals *United States v. Wei Lin*, 841 F.3d 823 (2016), and the Third Circuit Court of Appeals in this case. The decisions are diametrically opposed to one another.

In *United States v. Wei Lin*, the defendant pled guilty to a §1594(c) sex trafficking conspiracy in exchange for the Government agreeing to dismiss the substantive §1591 sex trafficking count. Pleading guilty to the sex trafficking conspiracy allowed Lin to avoid the 15-year mandatory minimum sentence that would have been required by the substantive §1591 sex trafficking count. The same occurred in Sims' case.

The Sentencing Guidelines direct that for conspiracy offenses, the Court should find the Base Offense Level in the section used for the underlying offense. The Guidelines section for the underlying offense for the sex trafficking of adults is §2G1.1. It states:

§2G1.1. Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor

(a) Base Offense Level

- (1) 34, if the offense of conviction is 18 U.S.C. §1591(b)(1); or
- (2) 14, otherwise.

In Lin's case as in Sims case, the "offense of conviction" was §1594(c) sex trafficking conspiracy and not §1591 sex trafficking. Analyzing both §2G1.1(a)(1) and 18 U.S.C. §1591(b)(1), the Ninth Circuit determined that the Base Offense Level of 34 only applies if the "offense of conviction" is 18 U.S.C. §1591(b)(1). In *Lin*, as in Sims' case, the "offense of conviction" was 18 U.S.C. §1594(c). If read literally, the Base Offense Level of 34 can never be applied in sex trafficking cases because the "offense of conviction" can never be §1591(b)(1). To avoid this outcome, the trial court and the Ninth Circuit elected different ways to reinterpret the plain language of the Guidelines so it could have some application. The trial court, as the Third Circuit in Sims' case, focused on whether the underlying conduct was punishable by §1591(b). In Lin's sex trafficking conspiracy, the underlying conduct was a substantive sex trafficking offense punishable under §1591(b). Therefore, the trial court used the higher Base Offense Level based on Lin's underlying conduct. The Ninth Circuit rejected this analysis calling it "tortured". (841 F.3d 823, 826). Instead, it decided to ask if the "offense of conviction" (and not the underlying

conduct) is punishable by §1591(b). In doing so, it allowed the higher-based Offense Level to apply to those convicted of substantive sex trafficking crimes, but not those convicted of other offenses. The result for Lin was a Base Offense Level of 14 because his “offense of conviction” was not punishable by §1591(b). The Ninth Circuit observed:

If the Sentencing Commission wanted §2G1.1(a)(1) to apply whenever the defendant’s offense involved conduct described in 18 U.S.C. §1591(b)(1), the Commission would have used the same language in §2G1.1(a)(1) as it used in §2G1.1(c)(1). The Commission’s choice not to use that language indicates that it was not their intention to require an offense conduct comparison.

The Third Circuit in Sims’ case did exactly the opposite of the Ninth Circuit and compared other offenses. The Third Circuit ignored the clear language of §2G1.1(a)(1) and ignored the Commission’s choice not to use language requiring an offense conduct comparison.

The diametrically opposed interpretations of the Ninth and Third Circuits create a rift that not only makes the accurate interpretation and application of §2G1.1(a)(1) uncertain but also implicate interpretation of the Guidelines as a whole. Should a particular Guideline be read according to the clear language of the Guideline or should a Guideline be construed as requiring an analysis of the underlying conduct? The answer has implications not only to the Guidelines but to the range of

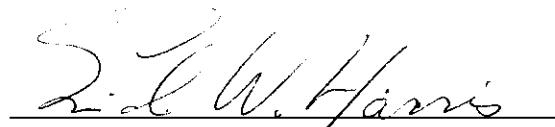
punishments. In Sims' case as in Lin's case, if a total offense level of 12 is used, the Guideline imprisonment range is 21 to 27 months. If a total Offense Level of 34 is used, the Guideline imprisonment range is 151 to 188 months.

This Court should grant certiorari to resolve this important and far-reaching split in the Circuits.

CONCLUSION

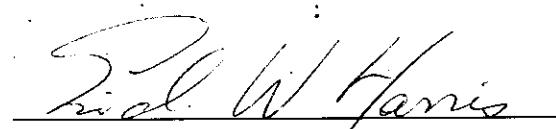
The Petition for Writ of Certiorari should be granted.

Respectfully submitted,


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RULE 33.1(H) CERTIFICATE OF COMPLIANCE

I, Enid W. Harris, Esquire, do hereby certify that the Petition for a Writ of Certiorari in the foregoing case has 2,526 words, in compliance with Rules 33.1(d) & (g) of this Court.


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No.

In the

Supreme Court of the United States

JAMIELL SIMS,
Petitioner

v.

UNITED STATES,
Respondent

CERTIFICATE OF SERVICE

I, Enid W. Harris, Esquire, do hereby certify that on this 17th day of July, 2020, I caused one copy of the Petition for Writ of Certiorari in the foregoing case to be served by regular mail, postage prepaid, on the following parties:

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1172

UNITED STATES OF AMERICA

v.

JAMIELL SIMS a/k/a "Millz",
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3-15-cr-00214-008)
District Judge: Honorable Malachy E. Mannion

Argued September 11, 2019

Before: HARDIMAN, GREENAWAY, JR., and BIBAS, *Circuit Judges*.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued on September 11, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED that the judgment of the United States District Court for the Middle District of Pennsylvania entered January 18, 2019 is hereby AFFIRMED. All of the above in accordance with the Opinion of this Court.

No costs shall be taxed.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: April 24, 2020

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-1172

UNITED STATES OF AMERICA

v.

JAMIELL SIMS a/k/a "Millz",
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3-15-cr-00214-008)
District Judge: Honorable Malachy E. Mannion

Argued September 11, 2019

Before: HARDIMAN, GREENAWAY, JR., and BIBAS,
Circuit Judges.

(Filed: April 24, 2020)

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OPINION OF THE COURT

HARDIMAN, *Circuit Judge.*

This appeal presents a legal question arising under the United States Sentencing Guidelines: What is the base offense level for conspiracy to commit sex trafficking by force, fraud, or coercion in violation of 18 U.S.C. § 1594(c)? We hold that level 34 applies.

I

Between 2011 and 2014, Appellant Jamiell Sims was a member of the “Black P-Stones,” an interstate gang that trafficked drugs and women. In his capacity as a “respect[ed]” member of the gang, Sims prostituted women online and provided them security while they worked. App. 73. He also collected money from the women and supplied them with drugs. Sims and his fellow gang members used force and coercion to trap women in a vicious cycle of drug addiction and prostitution.

Sims eventually pleaded guilty to, *inter alia*, one count of conspiracy to commit sex trafficking by force, fraud, or coercion in violation of 18 U.S.C. § 1594(c). In its Presentence Investigation Report, the Probation Office assigned Sims a base offense level of 34 for the conspiracy offense. The Government agreed with that calculation, but Sims requested a base offense level of 14, which the Court of Appeals for the Ninth Circuit had applied to the same crime in the case of *United States v. Wei Lin*, 841 F.3d 823 (9th Cir. 2016).

The District Court agreed with the Government and the Probation Office, opining that the Ninth Circuit’s decision in *Wei Lin* “defies the written words of the Guidelines. It defies logic.” App. 32. According to the District Court, when a conspiracy offense (like Sims’s conviction under 18 U.S.C. § 1594(c)) is not covered by a specific section of the Sentencing Guidelines, then § 2X1.1 of the Guidelines applies. That section requires courts to apply the base offense level for the *substantive offense underlying the conspiracy*. U.S.S.G. § 2X1.1(a). And because the substantive offenses underlying Sims’s conspiracy conviction were 18 U.S.C. § 1591(a) and (b)(1), Guidelines § 2G1.1(a)(1) mandated a base offense level

of 34. When the District Court combined that base offense level (after some adjustments not at issue here) with Sims's criminal history category of IV, his advisory Guidelines range was 151–188 months' imprisonment. The District Court imposed a sentence at the bottom of the Guidelines range and Sims filed this timely appeal.¹

II

A

The Sentencing Guidelines explicitly provide base offense levels for many federal crimes. But some crimes—including the conspiracy at issue in this appeal—have not been directly assigned a base offense level. For conspiracy offenses not covered by a specific guideline, sentencing judges must use the following progression to calculate the base offense level.

At first, the judge turns to Guidelines § 1B1.2, which explains: “[i]f the offense involved a conspiracy, attempt, or solicitation, refer to §2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline referenced in the Statutory Index for the substantive offense.” U.S.S.G. § 1B1.2(a) & cmt. n.1. Conspiracy under § 1594(c) is not covered by a specific guideline in the Statutory Index, so courts must follow § 2X1.1 to determine the appropriate base offense level. *See United States v. Boney*, 769 F.3d 153, 162–63 (3d Cir. 2014).

¹ The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We review the District Court's interpretation of the Guidelines de novo. *United States v. Aquino*, 555 F.3d 124, 127 (3d Cir. 2009).

Section 2X1.1(a), in turn, directs courts to apply “[t]he base offense level from the guideline for the substantive offense.” U.S.S.G. § 2X1.1(a); *United States v. Wright*, 642 F.3d 148, 151 n.2 (3d Cir. 2011).

After determining the substantive offense underlying the conspiracy, the judge must apply the base offense level associated therewith. In this appeal, Sims pleaded guilty to violating § 1594(c) by conspiring to violate § 1591(a) and (b)(1). Guidelines § 2G1.1(a) applies to violations of those substantive offenses and provides for a base offense level of 34 if the “offense of conviction” is § 1591(b)(1) or 14 “otherwise.” U.S.S.G. § 2G1.1(a)(1)–(2). The base offense level of 34 for the substantive offense therefore applies to Sims’s conviction under § 1594(c).

B

Sims’s heavy reliance on *Wei Lin* does not alter our conclusion. There, the Ninth Circuit interpreted § 2G1.1(a)(1)’s reference to a defendant’s “offense of conviction” to mean that a base offense level of 34 applies only to defendants “actually *convicted* of an offense subject to the punishment provided in 18 U.S.C. § 1591(b)(1).” *Wei Lin*, 841 F.3d at 826 (emphasis added). The court emphasized that Wei Lin’s plea agreement and judgment did not mention § 1591(b)(1). *Id.* at 825. Instead, he pleaded guilty to violating § 1594(c) with the underlying substantive offense being § 1591(a). *Id.* But Sims pleaded guilty to conspiring to violate both § 1591(a) and (b)(1), so his reliance on that portion of *Wei Lin* is misplaced.

Moreover, following the Ninth Circuit’s *Wei Lin* opinion would lead to absurd results. Consider the following example.

A defendant convicted of a *substantive* sex trafficking offense involving force, fraud, or coercion in the Ninth Circuit will receive a base offense level of 34, while a defendant convicted of a substantive labor trafficking offense will receive a base offense level of 22. *Compare* U.S.S.G. § 2G1.1(a)(1), *with* U.S.S.G. § 2H4.1(a)(1). This is unsurprising because sex trafficking is an especially pernicious form of labor trafficking. Yet a defendant convicted of a sex trafficking *conspiracy* in the Ninth Circuit will receive a base offense level of just 14 while a defendant convicted of a labor trafficking conspiracy will still receive a base offense level of 22. *Compare* U.S.S.G. § 2G1.1(a)(2), *with* U.S.S.G. § 2H4.1(a)(1). For defendants with a criminal history category of I, it would mean an advisory imprisonment range of only 15 to 21 months for a *sex trafficking conspiracy* but an advisory imprisonment range of 41 to 51 months for a *labor trafficking conspiracy*. And for someone like Sims—whose criminal history was IV—it would mean an advisory imprisonment range of only 27 to 33 months instead of a range of 63 to 78 months.

This incongruity is further revealed when one considers facts common to cases involving violations of § 1594(c). This case is a prime example. Sims contributed to the forced prostitution, abuse, and drug addiction of numerous young women. He was a “respect[ed]” member of a gang that “sexed” women into its employ by forcing them to have sex with a succession of gang members and accepts men into the gang only after they endure a twenty-one-second beating from five others. App. 69, 73. Given these facts, we are unpersuaded by Sims’s reliance on *Wei Lin* and think it inconceivable that the Sentencing Commission designed a system that would recommend punishing forced labor conspiracies more than twice as harshly as forced sex-labor conspiracies.

III

Sims disagrees with the District Court's finding that his base offense level was 34 by reverting to the fact that he was convicted of violating 18 U.S.C. § 1594(c). He argues that applying a base offense level of 34 is contrary to the plain language of § 2G1.1. This approach fails for several reasons.

First, § 2G1.1 cannot be interpreted in isolation. When that section is considered in context, it's clear that applying anything other than a base offense level of 34 would contravene the Guidelines progression as a whole. Sims was convicted of conspiring to commit the offenses in § 1591(a) and (b)(1). So the base offense level in Guidelines § 2G1.1(a)(1) applies because that section specifically references convictions under § 1591(b)(1). *See* U.S.S.G. § 2X1.1, cmt. n. 2 ("Under §2X1.1(a), the base offense level will be the same as that for the substantive offense."). Section 2X1.1 does not—as Sims's approach suggests—-instruct courts to apply the "Guidelines section" for the substantive offense. Instead, it requires courts to apply the "base offense level" for the substantive offense. U.S.S.G. § 2X1.1(a). The "base offense level" applicable to the substantive offenses underlying Sims's conviction is 34. U.S.S.G. § 2G1.1(a)(1). So the base offense level for Sims's conspiracy conviction under § 1594(c) is likewise 34.

Second, Sims argues that § 2G1.1(a)(1) is not the proper Guidelines subsection because § 1591(b)(1) "was never specifically indicated as the object of the conspiracy." Sims Br. 10. The record states otherwise. Sims pleaded guilty to conspiring with others "knowing and in reckless disregard of the fact that force, threats of force, fraud, and coercion would be used to cause [several victims] to engage in a commercial

sex act, in violation of 18 U.S.C. Section 1591(a) and (b)(1)." Supp. App. 10–11.

Third, Sims's approach fails to recognize that § 1591(b)(1) is not a standalone offense; rather, it's the punishment for violating § 1591(a) "if the offense was effected by means of force, threats of force, fraud, or coercion." 18 U.S.C. § 1591(b)(1). As one district court astutely noted, "[i]f the Court interpreted 'offense of conviction' [in Guidelines § 2G1.1] literally, a base offense level of 34 would never be proper because the offense of conviction would always be 18 U.S.C. § 1591(a), not (b)(1)." *United States v. Yanchun Li*, 2013 WL 638601, at *2 (D. N. Mar. 1. 2013) (citing *United States v. Todd*, 627 F.3d 329, 334 (9th Cir. 2010) ("Section (b) . . . does not create a new crime. It specifies the penalties for each of the crimes set out in (a).")).²

Finally, the Guidelines definition also supports our conclusion. "Offense of conviction" is defined as "the offense conduct charged in the count of the indictment or information of which the defendant was convicted." U.S.S.G. § 1B1.2(a). True, *Wei Lin* did not read § 1B1.2(a) as a "general definition." 841 F.3d at 826. But we presume that the Sentencing Commission intended the phrase "offense of conviction" to mean the same thing throughout the Guidelines. *See, e.g., Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018);

² Even if Sims had pleaded guilty only to conspiring to violate § 1591(a), § 2G1.1(a)(1) still would apply. Subsections 1591(a) and (b)(1) are inextricably linked because (b)(1) is the punishment for violations of (a)(1). So convictions under § 1594(c) for conspiracy to violate § 1591(a) by means of force, threats of force, fraud, or coercion always subject a defendant to a base offense level of 34.

United States v. Gregory, 345 F.3d 225, 229 n.2 (3d Cir. 2003) (applying the presumption of consistent usage when interpreting the Sentencing Guidelines); *see also United States v. Murillo*, 933 F.2d 195, 199 (3d Cir. 1991) (holding that the phrases “the offense,” “offense of conviction,” and “instant offense” in the Sentencing Guidelines encompass “all conduct in furtherance of the offense of conviction”).

The count of the Second Superseding Indictment to which Sims pleaded guilty charged him with conspiring with others to use “force, threats of force, fraud, and coercion” to cause numerous young women “to engage in a commercial sex act.” Supp. App. 10–11. And the relevant conduct in § 1591(b)(1) is sex trafficking through “means of force, threats of force, fraud, or coercion[,] . . . or [] any combination of such means.” Sims’s offense conduct is identical to that proscribed conduct in § 1591(b)(1). So the appropriate base offense level for his conspiracy conviction is 34.

* * *

We agree with the District Court’s Guidelines calculation. Conspiracy convictions under 18 U.S.C. § 1594(c) require the sentencing court to determine the base offense level for the substantive offense. Sims conspired to violate 18 U.S.C. § 1591(a) and (b)(1), so his base offense level was 34 under the applicable Guideline (§ 2G1.1). We will affirm Sims’s judgment of sentence.