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2 LIST OF PARTIES
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All the parties to this proceeding appear in the caption of the case on the cover page.

1 ISSUE PRESENTED

2 Whether the district court constructively amended the indictment in pet-
3 -itioner's case and if so does it rise to a Fifth Amendment violation?

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Table of Contents

	Page No.:
TABLE OF Authorities Cited	1,2
Jurisdiction	3
Constitutional and statutory provisions involved	4,5
Statement of the Case	6
Reasons for Not Filing in the Custodial Court	7
Reasons for granting the writ	8,9,10,11,12,13,14,15
Conclusion	16
Proof of Service	17

Index To Appendices

Appendix A ⁽¹⁾

A

Appendix B

B

(1) Appendix A is in reference to relevant transcripts and Appendix B is in reference to the indictments on counts 1-3.

Table of Authorities Cited

STATUTES

page no :

18 U.S.C. § 1591(a)(1)(b)(2)	6, 8, 10
28 U.S.C. § 2241	3
28 U.S.C. § 2241(g)	3, 4, 7, 14, 15
28 U.S.C. § 2242	3, 4, 7, 14, 15
28 U.S.C. § 2255	3, 7
28 U.S.C. § 2255(e)	3, 6, 15
28 U.S.C. § 2255(h)	5, 7, 15

Cases

Alaimalo v. U.S., 645 F.3d 1042, 1047 (9 th Cir. 2011)	15
In re Jackson, 2018 U.S. Dist Lexis 35814 (6 th Cir. 2018)	6
Jackson v. U.S., No: 17-2241 (6 th Cir. April 12, 2018)	6
Stephens v. Herrera, 464 F.3d 895, 897 (9 th Cir. 2006)	7, 15
United States v. Adamson, 291 F.3d 606, 615 (9 th Cir. 2002)	10, 14
United States v. Antonakeas, 255 F.3d 714, 721 (9 th Cir. 2001)	8
United States v. Davis, 854 F.3d 601 (9 th Cir. 2017)	8, 10, 13, 14
United States v. Jackson, 627 F. Appx 460 (6 th Cir. 2015)	6
United States v. Miller, 471 U.S. 130, 140, 105 S. Ct. 1811 (1985)	8, 14
United States v. Olson, 925 F.2d 1170, 1175 (9 th Cir. 1991)	14
United States v. Von Stoll, 726 F.2d 584, 586 (9 th Cir. 1984)	8
United States v. Ward, 747 F.3d 1190 (9 th Cir.)	8

Authorities Continue

Rules

Page No:

Rule 20 (4) (a) 3

Rule 29 17

Rule 30 2

Rule 33.2 and 34 2

Rule 39 2

Jurisdiction

This Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 2241(a); 2242 Under Supreme Court Rule 20 (4) (a) ("To justify the granting of a writ of Habeas Corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court discretionary powers, and that adequate relief cannot be obtained in any other form or from any other Court")

Preliminary Statement

petitioner respectfully requests that this Court be
mindful that pro se pleadings are to be construed liberally.

1 CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

2 United States Const. Amend. V (Grand Jury Clause):

3 "No person shall be held to answer for a capital, or otherwise infamous
4 crime, unless on a presentation or indictment of a Grand Jury, except in cases
5 arising in the land or naval force, or in militia, when in actual service in
6 time of war or public danger."

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12 28 U.S.C. § 2241(a)" Writs of Habeas Corpus may be granted by the Supreme Court
13 and justice thereof, the district courts and any circuit judge within their
14 respective jurisdictions. The order of a circuit judge shall be entered in the
15 records of the district court of the district wherein the restraint complained
16 of is had."

17

18 28 U.S.C. § 2242 "If addressed to the Supreme Court, a justice therof or a
19 circuit judge it shall state the reasons for not making the application to the
20 district court of the district in which the applicant is held."

21

22 28 U.S.C. § 2255(e)" An application for a Writ of Habeas Corpus in behalf of a
23 prisoner who is authorized to apply for relief by motion pursuant to this sect-
24 -ion, shall not be entertained if it appears that the applicant has failed to
25 apply for relief, by motion, to the court which sentenced him, or that such
26 court has denied him relief, unless it also appears that the remedy by mo-
27 -tion is inadequate or ineffective to test the legality of his detention."

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1 28 U.S.C. § 2255(h) "A second or successive motion must be certified as provided
2 in section 2244 by a panel of the appropriate court of appeals to contain-

3 (1) newly discovered evidence that, if proven and viewed in light of the
4 evidence as a whole, would be sufficient to establish by convincing
5 evidence that no reasonable factfinder would have found the movant
6 guilty of the offense; or
7 (2) A new rule of Constitutional law, made retroactive to cases on
8 collateral review by the Supreme Court, that was previously
9 unavailable."

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1 STATEMENT OF THE CASE

2 Eddie Allen Jackson was indicted by a federal grand jury of three Counts
3 of Child Sex Trafficking, in violation of 18 U.S.C. § 1591(a)(1) and (b)(2).

4 A federal jury convicted Mr. Jackson on all three Counts of Child Sex
5 Trafficking, in violation of 18 U.S.C. § 1591(a)(1) and (b)(2). The district
6 court sentenced Mr. Jackson to a 360-month term of imprisonment. On direct
7 appeal, Mr. Jackson argued that the district court improperly excluded evidence
8 of the minor's prostitution history and that his sentence was both procedurally
9 and substantially unreasonable. The Sixth Circuit affirmed Mr. Jackson's convi-
10 ction and sentence. United States v. Jackson, 627 F. App'x 460, 465 (6th Cir
11 2015)(unpublished).

12 In 2017, Mr. Jackson filed a § 2255 motion, in which he raised eighteen
13 grounds and subgrounds for relief, including an assertion of actual innocence.
14 The district court denied Mr. Jackson's § 2255 motion, and the Sixth Circuit
15 declined to issue a Certificate of appealability. See Jackson v. United States
16 No. 17-2241 (6th Cir. April. 12, 2018)(Order), cert. denied, 139 S.Ct. 274,
17 202 L.Ed. 2d 182, 2018 WL 3757761 (U.S. 2018).

18 Subsequently, Mr. Jackson moved the Sixth Circuit for authorization to file
19 a second § 2255 motion, in which he reasserted his claim of actual innocence as
20 to Count 2 of the indictment. See In Re Jackson, 2018 U.S. Dist. lexis 35814
21 (6th Cir. December 19, 2018). This application was denied. Id.

22 Mr. Jackson has tried all other avenues of relief to no avail. Id.

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1 REASONS FOR NOT FILING IN THE CUSTODIAL COURT

2 28 U.S.C. § 2242 requires petitioner to give this Court "reasons for not
3 filing the application to the district court of the district in which the app-
4 licant is held." Petitioner is held in the Ninth Circuit where a federal pri-
5 soner may properly bring a application for habeas corpus relief challenging
6 the leagality of his conviction and sentence under 28 U.S.C. § 2241 if the
7 "escape hatch" or "savings clause: provision of 28 U.S.C. § 2255(e) applies.

8 See Stephen v. Herrera, 464 F.3d 895, 897 (9th Cir. 2006). The "savings Clause"
9 applies in the Ninth Circuit ONLY when the "petitioner (1) makes a claim of
10 actual innocence, and (2) has not had a procedural shot at presenting that
11 cliam."Id.

12 This is a narrow interpretation for receiving a ruling on the merits un-
13 der 28 U.S.C. § 2255(e). Thus under this interpretation petitioner's claim
14 would be dismissed at the screening stage of his petition in the custodial
15 court for lack of jurisdiction. See Stephens, 464 F.3d at 898(internal quot-
16 ation marks omitted). This Court has the correct interpretation of 28 U.S.C.
17 § 2255(e). See Rule 20.

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1 REASONS FOR GRANTING THE WRIT

2 First, "The Fifth Amendment's grand jury requirement establishes the 'sub-
3 -stantial right to be tried only on charges presented in a indictment returned
4 by a grand jury.'" United States v. Antonakeas, 255 F.3d 714, 721 (9th Cir.
5 2001)(quoting United States v. Miller, 471 U.S. 130, 140, 105 S.Ct. 1811, 85
6 L.Ed. 2d 99 (1985)). "A constructive amendment occurs when the charging terms
7 of the indictment are altered, either literally or in effect, by the prosecut-
8 -ion or a court after the grand jury has last passed upon them." Ward, 747
9 F.3d at 1190 (internal quotation marks and citations omitted). There are two
10 types of constructive amendment; First, where "there is a complex of facts
11 [presented at trial] distinctly diffrent from those set forth in the charging
12 instrument," and Second, where "the crime charged [in the indictment] was
13 substantially altered at trial, so that it was impossible to know whether the
14 grand jury would have indicted for the crime actually proved." United States
15 v. Adamson, 291 F.3d 606, 615 (9th Cir. 2002)(quoting United States v. Von
16 Stoll, 726 F.2d 584, 586 (9th Cir. 1984)). Here, petitioner is concerned with
17 the second type of amendment.

18 The decision in United States v. Davis, 854 F.3d 601 (9th Cir. April 14,
19 2017), is an instructive example of the second type. In Davis, the court
20 considered a constructive amendment challenge to a conviction for violating
21 18 U.S.C. § 1951(a) the same statute of conviction in this case. The indictment
22 in count 2 of Davis charged that he violated § 1591(a) when he;
23 ...knowingly attempted to recruit, entice, harbor,
24 transport, provide, obtain, and maintain by any
25 means, a person to engage in a commercial sex
26 act, to wit: a minor female,...KNOWINGLY OR IN
27 RECKLESS DISREGARD OF THE FACT TAHT THE PERSON
28 HAD NOT ATTAINED THE AGE OF 18 YEARS[.]^c(emph-

1 asis added). At trial, however, the jury instruct-
2 -ion as to Count 2 provided, in relevan part:
3

4 The elements of sex trafficking are:... (2) Know-
5 -ing that Bianca had not attained the age of 18
6 years, or recklessly disregarded that fact, OR THE
7 DEFENDANT HAD A REASONABLE OPPORTUNITY TO OBSERVE
8 BIANCA, and that Bianca would be caused to engage
9 in a Commercial Sex Act...[.](emphasis added).

10 Elsewhere in the same instruction, the district
11 court charged:

12
13 In Count 2 of the Indictment, the defendant is ch-
14 -arged with Attempted Sex Trafficking of Children.

15 For the defendant to be found guilty, the Govern-
16 -ment need not prove that the defendant knew Bianca
17 had not attained the age of 18 SO LONG AS THE DEFE-
18 -NDANT HAD A REASONABLE OPPORTUNITY TO OBSERVE BIA-
19 -NCA.(emphasis added). In it's closing argument, the
20 Government adopted much the same approach, arguing:

21
22 [W]e, again, submit the evidence showing both, that
23 Bianca had not attained the age of 18, or the defen-
24 -dant recklessly disregarded that fact, OR HE HAD A
25 REASONABLE OPPORTUNITY TO OBSERVE BIANCA, and that
26 she would be caused to engage in a Commercial Sex
27 Act.(emphasis added).

28 It is evident that the language of the indictment differs substantially

1 from the jury instruction and the Government's closing argument. Specifically,
2 the indictment charged that Davis knew Bianca was a minor or that he recklessly
3 disregarded this fact. Thus, under the indictment, the Government was required
4 to prove, beyond a reasonable doubt, either that Davis affirmatively
5 knew of Bianca's age, or alternatively, that he recklessly disregarded her minority
6 status. In contrast, the jury instruction afforded jurors a THIRD option
7 for convicting Davis: namely, they could convict, even without a finding as
8 to knowledge or recklessness, as long as they determine that Davis "HAD A REASONABLE
9 OPPORTUNITY TO OBSERVE BIANCA."(emphasis added twice).

10 The Ninth Circuit thus concluded that a Constructive Amendment occurred in
11 Davis because "the crime charged [in the indictment] was substantially altered
12 at trial, so that it was impossible to know whether the grand jury would have
13 indicted for the crime actually proved." Adamson, 291 F.3d at 615. See also
14 United States v. Stewart Clinical Lab, Inc., 652 F.2d 804, 807 (9th Cir. 1981)
15 ("The Court may not substantially amend the indictment through its instructions
16 to the jury.")(citation omitted)). Davis' conviction under § 1591 was reversed.
17 See Davis, 854 F.3d 601 (9th Cir. April 14, 2017).

18 This case is closely analogous to Davis. Here, Count 1,2, and 3 of the
19 indictment charges that Mr. Jackson violated § 1591(a)(1) and (b)(2) when he:
20 ...did knowingly recruit, entice, harbor, transport,
21 obtain, and maintain by any means in and affecting
22 interstate and foreign commerce minor #1, knowing
23 [1]
and in reckless disregard of the fact that minor #1
24 had not attained the age of 18 years and that minor
25 #1 would be caused to engage in Commercial Sex Acts.

27 The defendant can be found guilty of each of these

28 crimes only if all the following facts are proven be-

[1] The indictment for Counts one, two, and three are identical including the jury instructions, but Count one list minor#1, Count two list minor#2 and Count #3 list minor#3, but for practical purposes Mr. Jackson is only using Count one as illustrative to his claims.

1 -yound a reasonable doubt: First the defendant
2 knowingly recruited, enticed, harbored, trans-
3 -ported, provided, obtained, or maintained by
4 any means the minors that were identified to
5 you as Adrianna, Alissa, and Alexander (sic).

6 Second, the defendant did so knowingly OR in
7 reckless disregard of the fact that the person
8 had not attained the age of 18 years and would
9 be caused to engage in Commercial... a Commer-
10 -cial Sex act. Third, that the defendant's acts
11 were in and affecting interstate OR foreign com-
12 -merce.(emphasis added). Elsewhere in the same
13 instruction, the district court instructed the
14 jury:

15
16 In determining whether the defendant's conduct
17 was in or affecting interstate OR foreign comm-
18 -erce, you may consider whether the defendant
19 used means or facilities of interstate commerce
20 such as Telephones, Internet, Hotels that service
21 interstate travelers, or whether his conduct sub-
22 -stantially affected interstate commerce by virtue
23 of the fact that he purchased iteams that had
24 moved in interstate commerce.(emphasis added).

25
26 If the United States proves beyond a reasonable
27 doubt that the DEFENDANT HAD A REASONABLE OPPOR-
28 -TUNITY TO OBSERVE THE PERSONS recruited, enticed,

1 harbored, transported, provided, obtained, or
2 maintained, then the government does not have
3 to prove that the defendant knew the person had
4 not attained the age of 18 years. (emphasis add-
5 ed). In it's closing argument the Government
6 adapted much of the same approach, arguing:
7

8 So let's take a look at the second element,
9 that the defendant knowingly OR recklessly
10 disregarded that the person was under 18 and
11 be caused to engage in a Commercial Sex Act.

12 So for this element we need both things in the
13 left hand column there. (emphasis added).

14
15 Now, the defendant's knowledge of the girls age
16 can be proven by the defendant having a REASON-
17 -ABLE OPPORTUNITY TO OBSERVE THEM such that he
18 recklessly disregarded that they were under 18.
19 (emphasis added).

20
21 Now, these thins on the left, ladies and gentle-
22 -man, these are not elements of the offense. You
23 dont need to find that each one of these happened
24 even though the parties have stipulated that they
25 do affect INTERSTATE COMMERCE. You do need to find
26 that some of these activites involved some of these
27 things and that Eddie Jackson's prostituting of these
28 three minors affected something that touched on INTER-

1 -STATE COMMERCE, WHICH IS WHAT MAKES IT A FEDERAL CRIME.

2 (emphasis added twice).

3

4 It is evident that the language of the indictment differs substantially
5 from the jury instruction and the government's closing argument. Specifically,
6 the indictment charged Mr. Jackson with three Counts that Mr. Jackson affected
7 interstate AND foreign commerce, knowing AND in reckless disregard of the fact
8 that minor #1, #2, and #3 had not attained the age of 18 years. (emphasis add-
9 -ed). Thus, under the indictment, the government was required to prove, beyo-
10 -und a reasonable doubt, that Mr. Jackson's crime affected interstate AND
11 foreign commerce, and that Mr. Jackson affirmatively knew of the minors ages
12 AND that he was in reckless disregard of the fact the minors had not attained
13 the age of 18 years. In contrast, the jury instructions afforded jurors other
14 options in each of these elements: namely they could convict, even without a
15 finding as to the interstate and foreign commerce, so long as they determine
16 that Mr. Jackson's acts were in and affecting interstate OR foreign commerce.
17 (emphasis added)(at APP. A). They could convict, even without a finding as to
18 knowledge and recklessness, so long as they determined that Mr. Jackson knew
19 the minors ages OR reckless disregarded the fact that the minors had not att-
20 -ained the age of 18 years.(emphasis added)(at APP. A). Finally, they could
21 convict, even without a finding as to knowledge or recklessness, so long as
22 they determine that Mr. Jackson "HAD A REASONABLE OPPORTUNITY TO OBSERVE THE
23 MINORS."(emphasis added)(at APP. A). This last instruction to the jury was at
24 issue in Davis and the Ninth Circuit found that a constructive amendment occ-
25 -ured.

26 As the Ninth Circuit in Davis, this Court should conclude that a constru-
27 -ctive amendment occurred three diffrent times on each count of conviction
28 because "the crime charged [in the indictment] was substantially altered at

1 trial, so that it was impossible to know whether the grand jury would have
2 indicted for the crime actually proved." Adamson, 291 F.3d at 615. (quoting
3 Davis, 854 F.3d 601 (9th Cir. April 14, 2017)). Because the district court in
4 Mr. Jackson's case constructively amended his indictment, this conviction
5 should be vacated. United States v. Olson, 925 F.2d 1170, 1175 (9th Cir. 1991).

6 Second, 28 U.S.C. § 1651(a) is not a matter of right, but of discretion
7 that is sparingly exercised. To justify granting of this Writ under 28 U.S.C.
8 § 2241(a), Mr. Jackson MUST demonstrate that (1) exceptional circumstances
9 warrant the exercise of this Court's discretionary powers, and (2) that adequa-
10 -te relief cannot be obtained in any other form from any other court. *Id.* (em-
11 -hasis added). Mr. Jackson will address each in this order.

12 (1) EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THIS COURT'S DISCR-
13 -ETIONARY POWERS:

14 As Mr. Jackson just demonstrated the district court constructively amend-
15 -ed his indictment three diffrent times on each of his three counts of convict-
16 -ion during the jury instructions. (APP. A and B at 1-3). The Fifth Amendment's
17 grand jury requirement establishes the 'substantial right to be tried ONLY on
18 charges presented in a indictment returned by a grand jury.'" United States v.
19 Miller, 471 U.S. 130, 140, 105 S.Ct. 1811, 85 L.Ed 2d 99 (1985)(emphasis added).
20 Thus, when the crime charged [in the indictment] was substantially altered at
21 trial so that it was impossible to know whether the grand jury would have indi-
22 -cted for the crime ACTUALLY PROVED, the conviction should be vacated. United
23 States v. Olson, 925 F.2d 1170, 1175 (9th Cir. 1991)(emphasis added). This
24 Fifth Amendment violation warrants the exercise of this Court's discretionary
25 powers in this exceptional circumstance.

26 (2) ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM FROM ANY OTHER
27 COURT.

28 Mr. Jackson's case is a extraordinary case that ALL available avenues are

1 blocked so that Mr. Jackson has no other way of obtaining adequate relief from
2 any other form or from any other court.(emphasis added). Mr. Jackson has prev-
3 iously filed a § 2255 motion in 2017.Id. Absent Authorization from the Sixth
4 Circuit Court of Appeals, Mr. Jackson may not file a second or successive § 22-
5 55 motion. A second § 2255 is narrow it must be based on a "new rule of const-
6 itutional law made retroactive by this Court," or based on"newly discovered
7 evidence that would demonstrate Mr. Jackson is actually innocent." See 28 U.S.
8 C. § 2255(h). Mr. Jackson's claim does not rely on neither, thus he may not
9 file a second § 2255 motion.

10 In this case normally Mr. Jackson could file under the "escape hatch" or
11 "savings clause" of 28 U.S.C. § 2255(e) if he can demonstrate that § 2255 is
12 inadequate or ineffective to test the legality of his detention. This may be
13 done in the custodial court under 28 U.S.C. § 2241(1). See Stephens v. Herrera,
14 464 F.3d 895, 897 (9th Cir. 2006). The proble now facing Mr. Jackson is §2255
15 (e) is narrow in the Ninth Circuit were he is currently incarcerated. The
16 savings clause applies when the petitioner (1) makes a claim of actual innocen-
17 -ce, and (2) has not had an unobstructed shot at presenting that claim. Stephe-
18 ns, 464 F.3d at 898.(internal quotation marks omitted). Thus, assuming the
19 constructive amendment claim, could be an actual innocence claim, because he
20 was convicted for other conduct than charged, he cannot meet the second prong
21 in the Ninth Circuit because Mr. Jackson's claim is not based on a new rule
22 of law that was not available at the time of his direct appeal and first § 2255.
23 Alaimalo v. United States, 645 F.3d 1042, 1047 (9th Cir. 2011)(quotation marks
24 and citations omitted). Thus, because Mr. Jackson cannot file a second § 2255
25 or a § 2241 Mr. Jackson Cannot obtaine adequate relief from any other form or
26 from any other court. Mr Jackson ask that this Court intervene to correct a
27 complete miscarriage of justice.

28

1 CONCLUSION

2 This petition presents an exceptional circumstance that relief should be
3 granted and no other Court is adequate for the relief sought as it would be
4 ineffective to bring this petition in any other form or with any other Court.
5 This Court should intervene in this Fifth Amendment violation to Mr. Jackson's
6 Constitution and grant Mr. Jackson's Writ of Habeas Corpus.

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Respectfully Submitted,

Eddie Jackson

APPEARING PRO SE,

DATE: 5 /26/2020