NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

SARINA ANN WILLIAMS,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the crime of Conspiracy to Engage in Sex Trafficking by Force, Fraud, and Coercion, in violation of 18 U.S.C. § 1594(c), carries a base offense level of 34 under USSG § 2G1.1(a)(1) or a base offense level of 14 under USSG § 2G1.1(a)(2).

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

LIST OF PROCEEDINGS

United States v. Darren Coleman et al., United States District Court for the Southern District of Iowa, # 4:18-cr-0053 (judgment entered January 16, 2019)

United States v. Mark Carter et al., United States Court of Appeals for the Eighth Circuit, No. 19-1153 (Mark Carter), No. 19-1172 (Breeanna Brown), No. 19-1177 (Sarina Williams), No. 19-1344 (Ronzell Williams), No. 19-1345 (Darren Coleman) (opinion and judgment entered May 29, 2020)

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OPINION BELOW

The Petitioner, Sarina Williams, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in Case No. 19-1177 entered on May 29, 2020. The opinion of the Court of Appeals appears at Appendix Pages (A-1— A-12) and is reported as *United States v. Mark Carter et al.*, 960 F.3d 1007 (8th Cir. 2020).

JURISDICTION

The panel of the Court of Appeals for the Eighth Circuit entered its decision on May 29, 2020. No petition for rehearing was filed. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 and is timely under Rule of Supreme Court 13(3).

PROVISIONS INVOLVED

18 U.S.C. § 1594(c) states:

(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.

18 U.S.C. § 1591 states:

§ 1591. Sex trafficking of children or by force, fraud, or coercion

(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, advertises, maintains, patronizes, or solicits 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, except where the act constituting the violation of paragraph (1) is advertising, 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, obtained, advertised, patronized, or solicited 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, obtained, advertised, patronized, or solicited 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.

United States Sentencing Commission, Guidelines Manual, §2X1.1(a) (Nov. 2018) states:

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.

United States Sentencing Commission, Guidelines Manual, §2G1.1 (Nov. 2018) states:

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.

(b) Specific Offense Characteristic

(1) If (A) subsection (a)(2) applies; and (B) the offense involved fraud or coercion, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) or 18 U.S.C. § 2242, apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(d) Special Instruction

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of a commercial sex act or prohibited sexual

conduct in respect to each victim had been contained in a separate count of conviction.

STATEMENT OF THE CASE

On August 28, 2018 the grand jury returned a second superseding indictment charging Ms. Sarina Williams with Conspiracy to Engage in Sex Trafficking by Force, Fraud, and Coercion in violation of 18 U.S.C. § 1594(c) (Count 1); Sex Trafficking by Force, Fraud, and Coercion in violation of 18 U.S.C. § 1591(a)(1), 1591(a)(2), 1591(b)(1) (Count 2); Interstate Transportation of an Individual to Engage in Prostitution, in violation of 18 U.S.C. § 2421 (Count 4); Conspiracy to Engage in Sex Trafficking by Force, Fraud, and Coercion, in violation of 18 U.S.C. § 1594(c) (Count 16); Sex Trafficking by Force, Fraud, and Coercion, in violation of 18 U.S.C. § 1591(a)(1), 1591(a)(2), 1591(b)(1) (Count 17); and Interstate Transportation of an Individual to Engage in Prostitution, in violation of 18 U.S.C. § 2421 (Count 19). The indictment named six other defendants.

On September 18, 2018 Ms. Williams plead guilty to the Interstate Transportation charge in Count 4 and the Conspiracy charge in Count 16 pursuant to a plea agreement. The remaining counts were dismissed under the agreement. The District Court sentenced her to a total term of imprisonment of 135 months on

January 16, 2019. Ms. Williams filed her Notice of Appeal was filed on January 23, 2019.

The United States District Court for the Southern District of Iowa had jurisdiction pursuant to 18 U.S.C. § 3231. The United States Court of Appeals for the Eighth Circuit had jurisdiction pursuant to 18 U.S.C. § 3742(a)(1 & 2) and 28 U.S.C. § 1291.

Sarina Williams was involved in prostitution from at least the age of 19. (PSIR, [DKT. 363], page 6). From at least 2016, co-defendant Darren Coleman acted as her pimp. He used "physical, mental and emotional coercion to cause Sarina to engage in commercial sex acts." *Id.* Ms. Williams suffered from depression and Coleman exploited this to assure she would continue to work for him. *Id.*, page 8. Ms. Williams was threatened and beaten by Coleman, "in order to control her and to control other women. Several witnesses describe Coleman being physically violent towards Sarina in front of other people." *Id.*, page 10.

Several women were recruited or forced into prostitution by co-defendants Cobb, Carter and Coleman. "Victim-1" was introduced into prostitution by Cobb. Carter and Coleman assisted or directed him with this victim. *Id.*, pages 11-12. Coleman encouraged Cobb to use psychological coercion to compel Victim-1 to continue working as a prostitute. *Id.*, page 13.

On May 17, 2017 Coleman went to the Des Moines airport to rent a car so that Ms. Williams and Victim-1 could go to Sioux Falls, South Dakota for the purpose of engaging in prostitution. *Id.*, pages 14-15. While at the airport, Ms. Williams was in the driver's seat of a car waiting for Coleman, with Cobb as a passenger. Des Moines Police spoke to her, eventually leading to her arrest for possession of marijuana and the arrest of Cobb for possession of a firearm. *Id.*, page 14, 37.

After bonding out of jail, Ms. Williams and Victim-1 took the rental car provided by Coleman and drove to South Dakota to engage in prostitution. *Id.*, page 14. While there, Ms. Williams posted Victim-1 and herself on an online escort website. They made about $5,000 on the trip and split the money. *Id.*, pages 14-15.

"Victim-4" met Coleman and co-defendant Currie in late June, 2017. *Id.*, page 16. The two men showed her several thousand dollars to induce her to stay with them. *Id.* They gave her a white substance and told her to snort it, which she did. At the time, she thought that the drug was MDMA, but it turned out to be methamphetamine. She had never used methamphetamine before and became sick. *Id.*, pages 16-17. While she was ill, she was taken by the men to a home and forced to undress. Both Currie and Coleman had sex with her without her consent.

Id., page 17.

Victim-4 was then taken to a motel room. Coleman instructed her how to interact with "johns" and she was told to give the cash back to him. *Id.* Coleman had a video chat with Ms. Williams, who was in a hotel room in South Dakota. Coleman directed Ms. Williams to get Victim-4 ready to replace her. *Id.*

While in South Dakota Ms. Williams set up calls for Victim-4. She took photographs of her to use in prostitution ads. After returning to Des Moines, Coleman punched Ms. Williams in the face in the presence of Victim-4. Victim-4 was also assaulted by Coleman, both in Des Moines and later when he took her to Atlanta, Georgia. *Id.*, pages 20-21. Williams was also beaten by Coleman in Atlanta, and on one occasion intervened with Coleman in order to stop an assault on Victim-4. *Id.*, page 22.

As noted, Ms. Williams entered into a plea agreement to resolve this case. The plea agreement provided that the sentence would be determined by the Court pursuant to Fed. R. Crim. Proc. 11(c)(1)(A). Ms. Williams plead guilty to Interstate Transportation of an Individual to Engage in Prostitution, in violation of 18 U.S.C. § 2421 as alleged in Count 4 and Conspiracy to Engage in Sex Trafficking by Force, Fraud, and Coercion, in violation of 18 U.S.C. § 1594(c) as alleged in count 16. The remaining counts, including the allegations of violations

of 18 U.S.C. § 1591(b)(1) in counts 2 and 17, were dismissed under the agreement. Plea Agreement [Dkt. 257], page 1.

On November 29, 2018 Ms. Williams objected to the presentence investigation report's use of a base offense level 34 under U.S.S.G § 2G1.1(a)(1). Defendant's Objections and Response to the Presentence Investigation Report [Dkt. 337], page 5. The objection further asserted that the appropriate offense level was 14 pursuant to USSG § 2G1.1(a)(2). *Id.* On the same date, a Motion for Joint Sentencing Hearing was filed on behalf of Ms. Williams to determine the issue for her and other co-defendants. Motion for Joint Sentencing Hearing of Determination of Base Offense Level [Dkt. 338].

The Government filed a resistance to the motion on December 6, 2018, claiming that a hearing was not necessary and that this was a legal issue that could be decided on the briefing of the parties. Government's Response to Defendant's Motion for Joint Sentencing Hearing on Determination of Base Offense Level [Dkt. 351], page 1. Defendant Breeanna Brown filed a Motion for Pre-sentence Determination of Guideline Issue and Brief in Support [Dkt. 354] on December 7, 2018. The supporting brief including a full argument for use of the lower base offense level. Brief in Support of Motion for Pre-sentence Determination of Guideline Issue [Dkt. 354-1].

On December 13, 2018, the Court issued an Order denying the motion for joint hearing and granting the motion to determine the sentencing issue. In the order, the Court found that the appropriate base offense level for the conspiracy charges under 18 U.S.C. § 1594(c) of the indictment was a level 34. Order filed December 13, 2018 [Dkt. 358], page 3.

Sentencing was held on January 16, 2019. The Court found a total offense level of 35 and a criminal history category IV. Sentencing Transcript, page 3. The Court agreed that a departure was warranted under USSG § 5K2.12 for duress or coercion. *Id.*, page 12. Ms. Williams was sentenced to 120 months on Count 4 and 135 months on Count 15, with the sentences to run concurrently. *Id.*, page 13; Judgment [Dkt. 391], page 2.

Williams and several other defendants appealed the sentences imposed in this case. On May 29, 2020, the Eighth Circuit affirmed the Ms. Williams' sentence finding:

> Conspiracies punished under § 1594(c) are not covered by a specific offense Guideline, so we begin with the catch-all provision at U.S.S.G. § 2X1.1. Section 2X1.1(a) sets the base offense level for a conspiracy conviction not covered by a specific Guideline as the "base offense level from the guideline for the [underlying] substantive offense." The indictment lists the underlying substantive offense for all three of these defendants as 18 U.S.C. § 1591(a)(1), (a)(2), & (b)(1). For those offenses, we refer to § 2G1.1, which prescribes a base offense level of 34 "if the offense of conviction is

> 18 U.S.C. § 1591(b)(1)" and 14 if "otherwise." Because the underlying substantive offense for all three defendants is § 1591(b)(1) and the applicable Guidelines provision (§ 2X1.1) directs that we treat these defendants as though they were convicted under § 1591(b)(1), we conclude the district court correctly assigned all three of these defendants base offense levels of 34.

(Opinion at 11).

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD RESOLVE THE SPLIT AMONG THE CIRCUITS AS TO WHETHER THE BASE OFFENSE FOR THIS OFFENSE IS 14 OR 34.

"The proper construction of federal sentencing statutes ... can present close questions of statutory and textual interpretation when implementing the Federal Sentencing Guidelines." *Hughes v. United States*, 138 S. Ct. 1765, 1771 (2018). What is particularly striking with this issue is that different Courts of Appeal have determined that the plain language of the guideline compels a completely opposite result. The Eighth Circuit in this case found, "'[w]hen construing the Guidelines, we look first to the plain language, and where that is unambiguous we need look no further.' And here, where the applicable Guidelines provision directs us to apply the provisions of § 2G1.1(a)(1) as though these defendants were convicted of violating § 1591(b)(1), we find no ambiguity." *United States v. Carter*, 960 F.3d 1007, 1014 (8th Cir. 2020)(citation omitted). The Court noted that the history

of the guideline may be "compelling" for a different result, but found that as long as the guideline was unambiguous that history was not relevant. *Id.* The Third Circuit reached the same conclusion stating in part, "[Section] 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." *United States v. Sims*, 957 F.3d 362, 364 (3d Cir. 2020).

In reaching the opposite conclusion, the Ninth Circuit held, "[i]n sum, common sense, the plain language of the guidelines, and the Sentencing Commission's commentary, all show that USSG § 2G1.1(a)(1) only applies to defendants who are subject to a fifteen-year mandatory minimum sentence under 18 U.S.C. § 1591(b)(1)." *United States v. Wei Lin*, 841 F.3d 823, 827 (9th Cir. 2016). The Court noted the history of the guideline, including:

> First, it is unlikely that the Sentencing Commission intended an offense conduct comparison, because the Sentencing Commission knew how to require such a comparison explicitly, and did not do so. For example, later in the same guideline section, USSG § 2G1.1(c)(1) directs courts to apply another guideline '[i]f the offense involved conduct described in 18 U.S.C. § 2241(a) . . .' 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.

> Second, the Commission likely intended § 2G1.1(a)(1) to apply only when the defendant received a fifteen-year mandatory minimum sentence, because the higher base offense level in § 2G1.1(a)(1) was created in direct response to Congress's creation of the fifteen-year mandatory minimum. See United States Sentencing Commission, Amendments to the Sentencing Guidelines 27 (2007)('[T]he Adam Walsh Act added a new mandatory minimum . . . of 15 years under 18 U.S.C. § 1591(b)(1) . . . In response, the amendment provides a new base offense level of 34 . . . if the offense of conviction is 18 U.S.C. § 1591(b)(1), but retains a base offense level of 14 for all other offenses.'). The Commission therefore likely did not want the higher base offense level to apply when the defendant was not subject to § 1591(b)(1)'s fifteen-year mandatory minimum.

Id., 841 F.3d at 827.

Both parties have agreed that the starting point for the analysis is the conspiracy guideline, which sets the "[t]he 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." USSG §2X1.1(a). The Eighth and Third Circuits disregarded the difference between the *base offense level for* the substantive offense and the *guideline for* the substantive offense. While for most crimes the result may end up the same, the history and language of this particular guideline requires an entirely different result. Here, Ms. Williams was convicted of violating 18 U.S.C. § 1594(c). It is remarkable that conviction of that statute has been plainly read to mean "the offense of conviction

is 18 U.S.C. § 1591(b)(1)" rather than "otherwise." USSG § 2G1.1.

For those convicted of the offense, the twenty point difference in base offense level is profound. In the simplest example, a person with no previous criminal history convicted of the offense in the Third or Eighth Circuit would face an offense level 34, criminal history category I. That would result in a recommended guideline range of 151-188 months. USSG, ch. 5, pt. A, Sentencing Table. In the Ninth Circuit, the same crime would have an offense level 14, criminal history category I. That person, committing the exact same crime, would have a recommended range of 15-21 months. *Id.*

In Ms. Williams' case the effect was just as dramatic. Her case involved multiple victims, which are counted as separate groups. USSG §2G1.1(d)(1). One victim was found to be vulnerable, which lead to a two point increase in that group. USSG §3A1.1(b)(1). Her guideline score was as follows:

Adjusted Offense Level:	36
Increase in Offense Level (USSG §3D1.4.):	+4
Acceptance of Responsibility:	-3
Total Offense Level	37

(PSIR, [DKT. 363], pages 34-35). This led to a recommended guideline range (at a criminal history category IV) of 292 to 365 months. (*Id.*, page 44). If the base

offense level was actually 14 rather than 34 – or she had been prosecuted in California rather than Iowa – then her total offense level would have been 19 and her recommended range would have been 46-57 months.[1]

A sentencing court must start by correctly calculating the applicable guidelines. *Peugh v. United States*, 569 U.S. 530, 536 (2013). "[T]o secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007). Such an extreme difference in guideline ranges in a unified national system cannot be tolerated. The circuit split in this case defeats the requirement to "avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). The Supreme Court should intervene to decide the issue.

II. THE EIGHTH CIRCUIT HAS DECIDED AN IMPORTANT ISSUE OF FEDERAL LAW CONTRARY TO CONGRESSIONAL INTENT.

The notion of the Court below that "[w]hen construing the Guidelines, we look first to the plain language, and where that is unambiguous we need look no further" misconstrues an important distinction between review of the acts of

[1]This assumes a four point increase under USSG §2G1.1(b)(1) for the offense involving fraud or coercion.

Congress and the pronouncements of executive agencies. *United States v. Carter*, 960 F.3d 1007, 1014 (8th Cir. 2020)(citation omitted).

Reliance on legislative history is not needed if a statute contains unambiguous language. *Bostock v. Clayton Cty*., ___ U.S. ___, ___, 140 S. Ct. 1731, 1749, 207 L.Ed.2d 218, 243-44 (2020)*; Mohamad v. Palestinian Auth.,* 566 U.S. 449, 458-59 (2012), citing *Milavetz, Gallop & Milavetz, P. A. v. United States*, 559 U.S. 229, 236, n. 3 (2010). However, with a guideline the situation is different. That is because agencies lack the authority "to develop new guidelines or to assign liability in a manner inconsistent with" an "unambiguous statute" *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002). This Court has made clear that agencies do not have the power "to revise clear statutory terms that turn out not to work in practice." *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 327 (2014).

Sentencing guidelines "are the equivalent of legislative rules adopted by federal agencies." *Stinson v. United States*, 508 U.S. 36, 45(1993). The Sentencing Commission does have broad discretion. *Mistretta v. United States*, 488 U.S. 361, 377 (1989). However it is bound by the specific directives of Congress. *United States v. Labonte*, 520 U.S. 751, 757 (1997). By foreclosing discussion of the legislative history in this case, the Eighth Circuit has found a method to avoid the

directives of Congress by a misplaced reliance on "plain language."

That history is an important consideration in determination of this issue. The original section 2G1.1 carried a base offense level 14 with a 4 point increase if physical force or coercion was used. USSG §2G1.1 (1987). That base offense level and specific offense characteristic remained the same through the 2005 guidelines. USSG § 2G1.1 (2005).

Section 1591 did not include a mandatory minimum sentence through this time period. After 2000, it provided a punishment of "a fine under this title or imprisonment for any term of years or for life, or both . . . ." Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 112 (2000). At that time, conspiracy to violate Section 1591 was an offense under Section 1594. The punishment was the same as the substantive offense. *Id.*

In 2006 Congress amended section 1591 and added the fifteen year mandatory minimum sentence that exists today. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 208 (2006). The conspiracy statute was not amended, so the penalty at that time would be the same as the substantive offense – and include the mandatory minimum sentence. That changed two years later when Congress enacted the penalty for conspiracy to violate section 1591 to what it is today, "any term of years or for life ..." William Wilberforce Trafficking

Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 222 (2008). Notably in section 1594, subsections (a and b) provide that attempts and conspiracies to violate related sections are to be punished "in the same manner as a completed violation." 18 U.S.C. § 1594(a & b). This specifically includes attempts to violate section 1591. *Id.* The 2008 amendment took conspiracies to violate section 1591 and created a new subsection with the only penalty not the same as the substantive offense. 18 U.S.C. § 1594(c).

The Sentencing Commission in 2007 reacted to the change made by Congress in the Adam Walsh Act and added current the base offense level "34, if the offense of conviction is 18 U.S.C. § 1591(b)(1)." USSG § 2G1.1(a)(1). It explained the amendment as follows:

> Sixth, section 208 of the Adam Walsh Act added a new mandatory minimum term of imprisonment of 15 years under 18 U.S.C. § 1591(b)(1) for sex trafficking of an adult by force, fraud, or coercion. In response, the amendment provides a new base offense level of 34 in §2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor) if the offense of conviction is 18 U.S.C. § 1591(b)(1), but retains a base offense level of 14 for all other offenses. In addition, the amendment limits application of the specific offense characteristic at §2G1.1(b)(1) that applies if the offense involved fraud or coercion only to those offenses receiving a base offense level of 14. Offenses under 18 U.S.C. § 1591(b)(1) necessarily involve fraud and coercion and, therefore, such conduct is built into the heightened base offense level of 34. This limitation thus avoids unwarranted double counting.

USSG, Appendix C, Amendment 701.

All of this history is important to determine if the intent of Congress has been followed. It is certainly relevant to decide the issue of which base offense level should be used for conspiracy offenses. The Court below cut off all consideration by declaring the guideline language "plain" and going no further. Allowing this unwarranted expansion of "plain language" to regulatory guidelines allows for the intent of Congress to be ignored or disregarded. The Supreme Court should grant certiorari to insure that the intent of Congress is followed in this case.

CONCLUSION

For all of the reasons stated, the Petitioner prays that the petition for writ of certiorari be granted and that the decision of the Court below be reversed and remanded to the District Court for re-sentencing.

Respectfully Submitted,

/s/

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SARINA ANN WILLIAMS

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2005

SARINA ANN WILLIAMS,

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UNITED STATES OF AMERICA,

Respondent.

APPENDIX

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APPENDIX TABLE OF CONTENTS

United States Court of Appeals
For the Eighth Circuit

No. 19-1153

United States of America

Plaintiff - Appellee

v.

Mark Phillip Carter, II

Defendant - Appellant

Human Trafficking Institute

Amicus on Behalf of Appellee(s)

No. 19-1172

United States of America

Plaintiff - Appellee

v.

Breeanna Lynae Brown, also known as BB

Defendant - Appellant

Human Trafficking Institute

Amicus on Behalf of Appellee(s)

No. 19-1177

United States of America

Plaintiff - Appellee

v.

Sarina Ann Williams

Defendant - Appellant

Human Trafficking Institute

Amicus on Behalf of Appellee(s)

No. 19-1344

United States of America

Plaintiff - Appellee

v.

Ronzell Montez Williams, also known as LV

Defendant - Appellant

Human Trafficking Institute

Amicus on Behalf of Appellee(s)

No. 19-1345

United States of America

Plaintiff - Appellee

v.

Darren O. Coleman, also known as DC

Defendant - Appellant

Human Trafficking Institute

Amicus on Behalf of Appellee(s)

Appeals from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: March 12, 2020
Filed: May 29, 2020

Before ERICKSON, GRASZ, and KOBES, Circuit Judges.

KOBES, Circuit Judge.

This case involves five defendants: Mark Philip Carter II, Darren O. Coleman, Sarina Ann Williams, Ronzell Montez Williams, and Breeanna Lynae Brown. All were members of a prostitution and sex trafficking conspiracy based in Iowa. Each pleaded guilty to at least one charged offense, and all appeal their sentences. We affirm.

I.

Carter was charged with several counts related to conspiracy to engage in sex trafficking and prostitution of five victims. He pleaded guilty to sex trafficking children. 18 U.S.C. § 1591(a)(1) & (b)(2). Coleman was charged with several counts relating to conspiracy to engage in sex trafficking and prostitution of two victims. He pleaded guilty to assisting an individual to engage in prostitution, 18 U.S.C. § 2422(a), and to coercing and enticing an individual to engage in prostitution, 18 U.S.C. § 1591(a)(1), (a)(2), & (b)(1).

Prior to sentencing, both Carter and Coleman filed extensive objections to their presentence investigation reports. Carter argued that his PSR contained information about counts dismissed as part of his plea agreement and wrongly increased his offense level for "unduly influenc[ing] a minor to engage in prohibited sexual conduct," U.S.S.G. § 2G1.3(b)(2)(B), and for "the commission of a sex act or sexual contact," U.S.S.G. § 2G1.3(b)(4)(A). Coleman claimed that his Guidelines range was improperly enhanced by additional victims when he had not pleaded guilty to conduct involving those victims. The district court[1] overruled these objections and made factual findings before imposing their sentences. Carter and Coleman were sentenced to 175 and 300 months in prison, respectively.

[1] The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.

Sarina pleaded guilty as charged to interstate transportation of an individual to engage in prostitution, 18 U.S.C. § 2421, and conspiracy to engage in sex trafficking by force, fraud, or coercion, 18 U.S.C. § 1594(c). The indictment described the conspiracy as one "to cause 'Victim 4' to engage in a commercial sex act, in violation of 18 U.S.C. § 1591(a)(1), (a)(2) & (b)(1)."

Ronzell and Brown also pleaded guilty to charges under § 1594(c), and the indictment described their offenses in the same way as Sarina's except they conspired to traffic a different victim. Based on the conspiracy charges, the district court set a base offense level of 34 for all three defendants. The district court sentenced Sarina to 135 months in prison, Ronzell to 36 months, and Brown to 50 months. Each was sentenced below their Guidelines range—Ronzell and Brown significantly so.

II.

Carter and Coleman both argue that the district court erred when applying enhancements to their offense levels. We review the district court's construction and application of the Guidelines *de novo* and its factual findings for clear error. *United States v. Cordy*, 560 F.3d 808, 817 (8th Cir. 2009).

A.

Carter argues that the district court erred when it applied an enhancement for exerting "undue influence" over Minor Victim A. *See* U.S.S.G. § 2G1.3(b)(2)(B). Whether a defendant unduly influenced a victim is a factual question subject to clear error review. *See United States v. Hagen*, 641 F.3d 268, 270 (8th Cir. 2011). The key question is "whether a participant's influence over the minor compromised the voluntariness of the minor's behavior." U.S.S.G. § 2G1.3(b)(2)(B) cmt. 3(B).

At sentencing, the evidence showed Carter had physically abused Minor Victim A. In one instance, he told her to get out of his car and then drove away while she

was still getting out, hurting her and causing her to fall. Carter's co-defendant proffered that he saw Carter hit Minor Victim A. Another victim reported seeing pictures of Minor Victim A's face when her "eye was black, literally, like black, it was swollen shut; her nose was bleeding" as a result of an altercation with Carter. Carter also emotionally abused Minor Victim A. He would get angry with her when she wouldn't "go on a date" he had arranged. Based on this evidence and given that Carter was nine years older than Minor Victim A, the district court did not clearly err when it found that Carter unduly influenced her and compromised the voluntariness of her behavior.

B.

Carter next argues that the district court erred by applying the enhancement for an offense involving "the commission of a sex act or sexual contact." *See* U.S.S.G. § 2G1.3(b)(4)(A). The Guidelines authorize a two-level increase if "the offense involved the commission of a sex act or sexual contact," *id.*, or if the offense was not one under 18 U.S.C. § 1591(b) and " involved a commercial sex act," U.S.S.G. § 2G1.3(b)(4)(B). Carter does not dispute that sex acts occurred. Rather, he makes the purely legal argument that the enhancement should not apply because his offense under § 1591(b)(1) involved *commercial* sex acts, which he views as only enhancing convictions under different statutes. Any other reading, he argues, would reduce the special rule for commercial sex acts to "mere surplusage."

We disagree. Section 2G1.3(b)(4)(A) imposes a two-level increase for any offense to which § 2G1.3 applies that "involved the commission of a sex act or sexual contact." Because Carter's offense falls under § 2G1.3 and involved the commission of a sex act, the enhancement applies. This reading does not render § 2G1.3(b)(4)(B) "mere surplusage." Where (b)(4)(A) applies to offenses that"*involved the commission of* a sex act or sexual contact," (b)(4)(B) applies only to offenses other than those under § 1591(b) but is triggered wherever the offense "*involved* a commercial sex act." Because it does not require "the commission of" a commercial sex act, the

(b)(4)(B) enhancement may be applied, for example, in a case where someone attempts to coerce a minor into committing a commercial sex act, but no sex act ultimately occurs. *See* 18 U.S.C. § 2422(b) (prohibiting, subject to jurisdictional elements, coercion of minors to engage in criminal sexual activities). The district court properly applied the enhancement here.

C.

Both Carter and Coleman challenge their enhancements for promoting commercial sex acts with additional victims (Victims 1 and 2 in Carter's case, Victims 5 through 9 in Coleman's). They argue that because they did not plead guilty to any charges involving those additional victims and because they objected to the facts related to those victims in their PSRs, it was inappropriate for the district court to consider those victims at sentencing.

Both U.S.S.G. § 2G1.3(d), which applies to Carter, and § 2G1.1(d), which applies to Coleman, prescribe how to account for additional victims. Under these provisions, where the "relevant conduct of an offense of conviction" includes promoting a commercial sex act with respect to additional individuals, whether or not those individuals are referenced in the count of conviction, each victim is treated as though they were represented by a separate count." U.S.S.G. §§ 2G1.1 cmt. 5, 2G1.3 cmt. 6. "Relevant conduct" includes "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant . . . that occurred during the commission of the offense of conviction." U.S.S.G. § 1B1.3(a)(1)(A).

Coleman's additional victims are relevant conduct under this definition. Although the charges relating to these victims were dismissed, they still may be considered to enhance Coleman's sentence. *See United States v. Williams*, 879 F.2d 454, 457 (8th Cir. 1989). The broad language in § 1B1.3 "indicates the Sentencing Commission's intent to give courts the discretion to consider a broad range of

conduct in making adjustments," and so we have declined to infer a limitation precluding courts from considering conduct related to dismissed counts. *Id.*

The claim that Coleman's enhancement lacked supporting factual findings also fails. The district court made the findings necessary to apply the enhancements to Coleman and, to the extent that he argues that his plea agreement forbids the attribution of additional victims, he is mistaken. Coleman's plea agreement left the Government free to "make whatever comment and evidentiary offer [it] deem[s] appropriate at the time of sentencing," notwithstanding the dismissal of the counts directly related to these victims.

All of the above would apply equally to Carter, but for one important difference between the Guidelines provisions at issue. Section 2G1.3(d), unlike § 2G1.1(d), specifies that the additional victims used to enhance a sentence under that section must be minors, and Carter's were not. Carter therefore argues that his sentence should not have been enhanced under § 2G1.3(d). Carter first identified this issue in his reply brief and so we can decline to consider it. *United States v. Head*, 340 F.3d 628, 630 n.4 (8th Cir. 2003). We do so here, because it is clear from the record that the district court would have given Carter the same sentence regardless of his Guidelines recommendation.

III.

Coleman makes two arguments that we cannot consider on appeal. First, he argues that the district court should not have followed U.S.S.G. § 2G1.1(a)(1) to apply a base offense level of 34 to his conviction for coercing an individual to engage in prostitution. In his view, this provision sets up an excessive disparity not based on empirical data between the base level for offenses under 18 U.S.C. § 1591(b)(1) and those under all other statutes.

We do not consider policy arguments about the Guidelines on appeal. *United States v. Riehl*, 779 F.3d 776, 778 (8th Cir. 2015) (per curiam). District courts are free to vary from the Guidelines based on them, but it is not an abuse of discretion for a district court to decline to do so. *United States v. Sharkey*, 895 F.3d 1077, 1082 (8th Cir. 2018).

Second, Coleman argues that the district court erred when it denied his motion for a downward departure for overrepresented criminal history under U.S.S.G. § 4A1.3(b)(1). We do not have authority to review that decision because the district court recognized it had the power to depart downward and Coleman does not argue it had an unconstitutional motive for failing to do so. *United States v. Woods*, 596 F.3d 445, 449 (8th Cir. 2010).

IV.

Finally, both Coleman and Carter argue the district court committed procedural error at sentencing and their sentences were substantively unreasonable. We first assess whether the district court committed significant procedural error. *United States v. Williams*, 624 F.3d 889, 896 (8th Cir. 2010). If we find none, we review the substantive reasonableness of the sentences, applying a deferential abuse of discretion standard. *United States v. Stoner*, 795 F.3d 883, 884 (8th Cir. 2015).

Both Coleman and Carter argue the district court procedurally erred by relying but never ruling on objected to facts in their PSRs. *See United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc) (A district court commits procedural error if it sentences "based on clearly erroneous facts."). Nothing in the record supports this argument. The district court made factual findings at Carter's sentencing that supported its conclusion that he behaved in a "depraved" way and that society needed protection from him. Carter has failed to identify any moment during his sentencing when the district court relied on still-disputed facts. *See* Carter Sent. Tr. 33. The record is even clearer in Coleman's case. The district court overruled all

his objections to the PSR and found that it was "factually accurate as to all material matters" and sentenced him based on that finding. Coleman Sent. Tr. 87–88.

Coleman claims that his sentence is substantively unreasonable because the district court failed to account for his history and characteristics and considered his co-defendants' actions in setting his sentence.[2] A sentence may be substantively unreasonable if a district court fails to consider a relevant factor that deserves significant weight, gives significant weight to an inappropriate factor, or commits a clear error of judgment in weighing the appropriate factors. *Stoner*, 795 F.3d at 884. Again, Coleman's argument finds no support in the record. In fact, the court considered each § 3553(a) factor, specifically mentioned Coleman's criminal history, and grappled with the "astounding depravity" of Coleman's conduct. We also note that Coleman's sentence is below his Guidelines range. It is "nearly inconceivable" that it could be substantively unreasonable. *United States v. Lazarski*, 560 F.3d 731, 733 (8th Cir. 2009).

V.

Sarina, Ronzell, and Brown all object to the base offense level of 34 for their convictions for conspiracy to engage in sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. § 1594(c). We review the proper construction of the Guidelines *de novo*. *Cordy*, 560 F.3d at 817.

[2] Carter also claims that his sentence is substantively unreasonable, Carter Br. 30, but for support he primarily rehashes his argument that the district court wrongly considered objected-to portions of his PSR. He also claims his sentence was substantively unreasonable because the district court failed to explain its sentence in a way that would facilitate our review. *Id.* at 34–35. This is really a claim of procedural error, *see Feemster*, 572 F.3d at 463, and in any case the district court provided an adequate explanation of its reasons.

Conspiracies punished under § 1594(c) are not covered by a specific offense Guideline, so we begin with the catch-all provision at U.S.S.G. § 2X1.1. Section 2X1.1(a) sets the base offense level for a conspiracy conviction not covered by a specific Guideline as the "base offense level from the guideline for the [underlying] substantive offense." The indictment lists the underlying substantive offense for all three of these defendants as 18 U.S.C. § 1591(a)(1), (a)(2), & (b)(1). For those offenses, we refer to § 2G1.1, which prescribes a base offense level of 34 "if the offense of conviction is 18 U.S.C. § 1591(b)(1)" and 14 if "otherwise." Because the underlying substantive offense for all three defendants is § 1591(b)(1) and the applicable Guidelines provision (§ 2X1.1) directs that we treat these defendants as though they were convicted under § 1591(b)(1), we conclude the district court correctly assigned all three of these defendants base offense levels of 34. *See United States v. Sims*, 957 F.3d 362, 363 (3d Cir. 2020) (following the same steps to reach a base offense level of 34).

The defendants suggest otherwise. Noting that § 2G1.1 directs that the base offense level for any convictions other than those under § 1591(b)(1) should be 14, they argue they should have received the lower base offense level for their convictions under § 1594(c). This argument only works if we read § 2G1.1 in isolation, but we cannot do that. Section 2G1.1 is not the applicable Guideline for convictions under § 1594(c). We only get there through § 2X1.1, so we must read § 2G1.1 in light of § 2X1.1. Even if that were not the case, the specific guidance from § 2X1.1 comports with the general rule that "[u]nless otherwise specified, an express direction to apply a particular factor only if the defendant was convicted of a particular statute includes the determination of the offense level where the defendant was convicted of conspiracy . . . in respect to that particular statute." U.S.S.G. § 1B1.3, cmt. 7. Following both general interpretive principles for the Guidelines and the specific provisions at issue here, the district court assigned the correct base offense levels.

The defendants rely on *United States v. Wei Lin*, 841 F.3d 823 (9th Cir. 2016) to support their reading of § 2G1.1. In *Wei Lin*, the Ninth Circuit held that the base offense level of 34 applied only in cases where defendants were subject to the statutory 15-year mandatory minimum sentence described in § 1591(b)(1). *Id.* at 826. Because conspiracies under § 1594(c) are not subject to those minimums, the *Wei Lin* rule prevents any conspiracy conviction from receiving a base offense level of 34.

We do not believe *Wei Lin* should govern our decision here. *See Sims*, 957 F.3d at 364 (noting that applying *Wei Lin* "lead[s] to absurd results"). The Ninth Circuit arrived at its rule based on what it believed was "most likely what the Sentencing Commission intended." *Id.* at 827. Because the base offense level of 34 in § 2G1.1(a)(1) was created in response to Congress adding the 15-year mandatory minimum for trafficking victims under 14 years old, the *Wei Lin* court concluded that "the Commission likely intended § 2G1.1(a)(1) to apply only when the defendant received a fifteen-year mandatory minimum sentence." *Id.* Compelling as this history might be, "[w]hen construing the Guidelines, we look first to the plain language, and where that is unambiguous we need look no further." *United States v. Bah*, 439 F.3d 423, 427 (8th Cir. 2006). And here, where the applicable Guidelines provision directs us to apply the provisions of § 2G1.1(a)(1) as though these defendants were convicted of violating § 1591(b)(1), we find no ambiguity.[3]

* * *

Finding no error in the defendants' sentences, we affirm.

---

[3] The application of the Guidelines is clearer here than it was in *Wei Lin*. Wei Lin's indictment only charged conspiracy to violate § 1591(a) and the conduct at issue would have qualified him, had he been convicted of the substantive offense, for sentencing under § 1591(b)(1). 841 F.3d at 825. By contrast, each of these three defendants were charged with conspiring to violate § 1591(b)(1) itself. We need look no further than the indictment and U.S.S.G. §§ 2X1.1 & 2G1.1 to properly set the base offense levels for these defendants.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
v.
Sarina Ann Williams

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:18-cr-00053-004

USM Number: 18613-030

J. Keith Rigg
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 4 and 16 of the Second Superseding Indictment filed on August 28, 2018.

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2421	Interstate Transportation of an Individual to Engage in Prostitution	05/23/2017	Four
18 U.S.C. § 1594(c)	Conspiracy to Engage in Sex Trafficking by Force, Fraud, and Coercion	07/2017	16

☐ See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) 1, 2, 17, and 19 ☐ is ☑ are 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 material changes in economic circumstances.

January 16, 2019
Date of Imposition of Judgment

Signature of Judge

John A. Jarvey, Chief U.S. District Judge
Name of Judge Title of Judge

January 17, 2019
Date

DEFENDANT: Sarina Ann Williams
CASE NUMBER: 4:18-cr-00053-004

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

135 months, consisting of 120 months as to Count 4 and 135 months as to Count 16 of the Second Superseding Indictment filed on August 28, 2018, to be served concurrently.

☑ The court makes the following recommendations to the Bureau of Prisons:

The defendant be placed at a facility to address her needs for mental health treatment.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Sarina Ann Williams
CASE NUMBER: 4:18-cr-00053-004

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
Five years as to each of Counts 4 and 16 of the Second Superseding Indictment filed on August 28, 2018, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☑ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: Sarina Ann Williams
CASE NUMBER: 4:18-cr-00053-004

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Sarina Ann Williams
CASE NUMBER: 4:18-cr-00053-004

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a sex offender treatment program, to include psychological testing and polygraph examinations, as directed by the U.S. Probation Officer. You must also abide by all supplemental conditions of sex offender treatment, to include abstaining from alcohol. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. You must contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. Sex offender assessments and treatment shall be conducted by therapists and polygraph examiners approved by the U.S. Probation Office, who shall release all reports to the U.S. Probation Office. The results of polygraph examinations will not be used for the purpose of revocation of supervised release or probation. If disclosure is required by mandatory reporting laws, polygraph results will be reported to appropriate treatment personnel, law enforcement, and related agencies with the approval of the Court. If polygraph results reveal possible new criminal behavior, this will be reported to the appropriate law enforcement and related agencies after obtaining approval from the Court.

You must refrain from associating with anyone engaged in the exploitation of minors whether known or unknown to local, state, or federal law enforcement.

You must not contact the victim(s), nor the victim's family without prior permission from the U.S. Probation Officer.

You must not associate with any prostitute or anyone you should reasonably know to be a prostitute or places where prostitution is a known activity.

You must comply with all sex offender laws for the state in which you reside and must register with the local sheriff's office within the applicable time frame.

You must not frequent a hotel, motel, or other commercial establishment that offers temporary lodging without the prior written permission of the U.S. Probation Officer.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Sarina Ann Williams
CASE NUMBER: 4:18-cr-00053-004

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	Assessment	JVTA Assessment *	Fine	Restitution
TOTALS	$ 200.00	$ 0.00	$ 0.00	$0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ 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.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
TOTALS	$0.00	$0.00	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Sarina Ann Williams
CASE NUMBER: 4:18-cr-00053-004

SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $ 200.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All crimnal 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.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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) JVTA assessment, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. DARREN O. COLEMAN, et al., Defendants.	No. 4:18-cr-53 **ORDER**

Defendants Sarina Williams, Ronzell Williams, and Breeanna Brown have each entered a guilty plea to sex trafficking conspiracy charges. [Dkt. Nos. 257, 262, 275] This matter comes before the Court pursuant to Defendant Sarina Williams's November 29, 2018, Motion for Joint Sentencing Hearing on Determination of Base Offense Level [Dkt. No. 338] and Defendant Brown's December 7, 2018, Motion for Pre-Sentence Determination of Guideline Issue. [Dkt. No. 354] Plaintiff responded to Sarina Williams's Motion on December 6, 2018. [Dkt. No. 351] Because the proper Base Offense Level is a purely legal issue and is determined in this Order, Sarina Williams's Motion for Joint Sentencing Hearing is **DENIED** and Brown's Motion for Pre-Sentence Determination is **GRANTED**.

Sarina Williams, Ronzell Williams, and Brown have each entered a guilty plea to conspiracy to engage in sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. § 1594(c).[1] [Dkt. Nos. 257, 262, 275] The government and U.S. Probation Office both contend that the Base Offense Level for this offense is 34. [Dkt. Nos. 317, 318, 323, 351] All three defendants argue that the correct Base Offense Level is 14. [Dkt. Nos. 338, 343, 354] For the

[1] The government brings this criminal case against seven defendants: Darren Coleman, Mark Carter, Stephen Cobb, Sarina Williams, Julyen Singleton, Ronzell Williams, and Breanna Brown. [Dkt. No. 203] The twenty-one-count Second Superseding Indictment outlines a host of sex-trafficking charges against various permutations of the seven defendants, including both substantive offenses and charges of conspiracy. [Dkt. No. 203] Coleman, Carter, and Cobb have pled guilty to substantive sextrafficking offenses. [Dkt. Nos. 231, 280, 286] Singleton has pled guilty to a violation of the Travel Act, 18 U.S.C. § 1952(a)(3)(A). [Dkt. No. 292] This Order concerns only the proper Base Offense Level for a sextrafficking *conspiracy* under 18 U.S.C. § 1594(c). Thus, while this Order may indirectly impact this Court's determination of the other defendants' sentences, it is only the Williamses and Brown whose Base Offense Level is determined *infra*.

reasons that follow, the draft Presentence Investigation Report is correct: the proper Base Offense Level is **34**.

ANALYSIS AND CONCLUSION

Determination of the appropriate base offense level begins with a look to U.S. Sentencing Guidelines § 2X1.1. *See* USSG § 2X1.1 & cmt. n.1 (covering conspiracies "not covered by a specific offense guideline" and providing an exhaustive list of conspiracies covered by other guidelines). According to § 2X1.1, the base offense level for conspiracy is the same as the base offense level for the substantive offense. *Id*. § 2X.1(a). Here, all three defendants pled guilty to conspiracy to violate 18 U.S.C. §§ 1591(a)(1), (a)(2), and (b)(1)—that is, to engage in sex trafficking by force, fraud or coercion. [Dkt. No. 203, at 4–5 (Ronzell Williams, Brown), 10 (Sarina Williams); Dkt. Nos. 257, 262, 275] For cases involving the trafficking of adults, the relevant section of the Guidelines is § 2G1.1. USSG § 2G1.1 (covering "promotion of a commercial sex act . . . with an individual other than a minor"). Section 2G1.1 provides for a base offense level of 34 "if the offense of conviction is 18 U.S.C. § 1591(b)(1)" or 14 "otherwise." *Id.* § 2G1.1(a)–(b).

Whether conspiracies under 18 U.S.C. § 1594(c) fall under the first subsection of § 2G1.1 or the second has been a matter of some confusion. *See United States v. Wei Lin*, 841 F.3d 823 (9th Cir. 2016) (wrongly determining that § 1594(c) conspiracy merits a base offense level of 14). And as Defendants point out, the Ninth Circuit Court of Appeals is the only federal appellate court to squarely address this precise issue. *See, e.g.*, *United States v. Bonner*, 713 Fed. App'x 342, 343 (5th Cir. 2018) (dealing with sex trafficking of minors and thus analyzing § 2G1.3 instead of § 2G1.1); *United States v. Hill*, 783 F.3d 842 (11th Cir. 2015) (discussing enhancements, not base offense). But the Ninth Circuit's decision in *Wei Lin* is not binding authority, nor is it correct. The Sentencing Guidelines, read as a whole, explain why.

Section 1B1.2 of the Guidelines dictates that "[a] conviction on a count charging a conspiracy to commit more than one offense shall be treated as if the defendant had been convicted on a separate count of conspiracy for each offense that the defendant conspired to commit." USSG § 1B1.2(d). And Application Note 7 to § 1B1.3 explains that "an express direction to apply a particular factor only if the defendant was convicted of a particular statute includes the determination of the offense level where the defendant was convicted of conspiracy . . . in respect

to that particular statute." USSG § 1B1.3 cmt. n.7. Here, each defendant has pled guilty to a charge accusing them not only of violating 18 U.S.C. § 1594(c), but of doing so by conspiring to violate §§ 1591(a)(1), (a)(2), and (b)(1).[2] [Dkt. No. 203, at 4–5, 10; Dkt. Nos. 257, 262, 275] Taken together, Section 1B1.2, Application Note 7, and Section 2G1.1(a) show that a conviction for conspiracy under § 1594(c), when one object of that conspiracy is to commit a violation of § 1591(b)(1), must be treated for sentencing purposes as one in which "the offense of conviction" is § 1591(b)(1).

The proper Base Offense Level for the conspiracies alleged in the Counts 6 and 16 of the Second Superseding Indictment is therefore the same as it would be for the substantive violations of § 1591(b)(1) that those counts allege were an object of those conspiracies. Accordingly, the Base Offense Level for each conviction, per USSG § 2G1.1, is **34**. Having determined this issue without a hearing, the Court **DENIES** Sarina Williams's Motion for Joint Sentencing Hearing and **GRANTS** Brown's Motion for Pre-Sentence Determination.

Upon the foregoing,

IT IS ORDERED that Defendant Sarina Williams's Motion for Joint Sentencing Hearing is **DENIED** and Defendant Brown's Motion for Pre-Sentence Determination is **GRANTED**.

DATED this 13th day of December, 2018.

JOHN A. JARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

[2] In her Brief in Support, Brown argues that her Plea Agreement does not mention § 1591(b)(1). [Dkt. No. 354-1, at 2] This is inaccurate, though literally true. Brown's Plea Agreement states that Brown "will plead guilty to Count 6 of the Second Superseding Indictment." [Dkt. No. 262] Count 6 of the Second Superseding Indictment alleges that Brown engaged in a conspiracy to act "in violation of 18 U.S.C. §§ 1591(a)(1), (a)(2) & (b)(1)." [Dkt. No. 203, at 4–5]