

Supreme Court, U.S.  
FILED

JAN 18 2021

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20-7785

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
KEVINO GRAHAM — PETITIONER

vs.

\_\_\_\_\_  
UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

\_\_\_\_\_  
U.S. Third Circuit Court of Appeals (USCA NO.: #20-1631  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
Mr. Kevino Graham

\_\_\_\_\_  
USP Terre Haute

\_\_\_\_\_  
P.O. BOX 33

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Terre Haute, IN 47808

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### **QUESTION(S) PRESENTED**

- (A.) "WHETHER PETITIONER GRAHAM WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO CHALLENGE; "WHETHER 18 U.S.C. 1591(a) IS UNCONSTITUTIONALLY VAGUE?" ;
- (B.) "WHETHER 18 U.S.C. 1591(a) IS UNCONSTITUTIONALLY VAGUE BECAUSE OF THE CLEAR UNCERTAINTY AS TO "WHETHER THE STATUTE DEFINES ONE OFFENSE OR MULTIPLE OFFENSES?"

## LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

There are no other related cases, with relation to the following petition and/or appellate challenge.

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## TABLE OF AUTHORITIES CITED

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### STATUTES AND RULES

18 U.S.C. 1591(a)  
 28 U.S.C. 2255  
 28 U.S.C. 1254(1)

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

~~XX~~ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix -A- to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
~~XX~~ is unpublished.

The opinion of the United States district court appears at Appendix -B- to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
~~XX~~ is unpublished.

[ ] For cases from **state courts**:    N/A

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

~~kxk~~ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10 - 23 - 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Dec 14, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**: N/A "Non-applicable"

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. FIFTH AMENDMENT RIGHT TO DUE PROCESS OF LAW  
U.S. SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL



## **STATEMENT OF THE CASE**

On November 20, 2014, Petitioner Kevino Graham and two co-defendant(s) were charged via indictment in a two (2) count indictment with the following: "sex trafficking; attempt to commit sex trafficking; and aiding and abetting sex trafficking.

On January 22, 2015, approximately three (3) months later, a superseding indictment was filed adding additional count(s) for the same offenses, yet allegedly including a third victim.

On June 18, 2015, approximately eight (8) months after the initial indictment was formally issued, a "second" superseding indictment was filed adding a third co-defendant to the list of alleged offender(s) contained within Count One (1). The case was designated as "complex" and placed on special management schedule, with a jury selection scheduled to ultimately commence on January 25, 2016.

On November , 2017, Petitioner Kevino Graham was subsequently found guilty of all count(s) and sentenced to an aggregate term of: 100 years. Mr. Graham appealed the judgment to the U.S. Third Circuit Court of Appeals, and the Third Circuit affirmed the district court's decision on December 24, 2018.

On February 8, 2019, Petitioner Kevino Graham, filed a timely motion pursuant to 28 U.S.C. 2255-Motion to Vacate, Set Aside, or Correct Sentence, which was arbitrarily denied on February 21, 2020.

Petitioner Kevion Graham, now timely files his "Petition for Writ of Certiorari" seeking a review of the U.S. Third Circuit Court of Appeals decision denying him both; (i.) his 28 U.S.C. 2255, and (ii.) a "Certificate of Appealability"-COA.

## REASONS FOR GRANTING THE PETITION

"WHETHER 18 U.S.C. 1591(a) IS UNCONSTITUTIONALLY VAGUE BECAUSE OF THE CLEAR UNCERTAINTY AS TO 'WHETHER THE STATUTE DEFINES ONE OFFENSE OR MULTIPLE OFFENSES)?"

Petitioner Kevino Graham, hereby formally advances that due to a conflict among appellate court's with regard to the ambiguity created by 18 U.S.C. 1591(a), this Honorable Court should resolve this question. Specifically, as perviously articulated in DAVIS vs. U.S., 139 S.Ct. 2319 (2019), in an opinion delivered by U.S. Justice Gorsuch:

"In our constitutional order, a vague law is no law at all!"

Only the people's elected representatives in Congress have the power to write new federal criminal laws. And when Congress exercised that power it has to write statutes that give ordinary people fair warning about "what the law demands of them. Vague laws, transgress both; of those constitutional requirement(s). They hand off the legislature's responsibility for defining criminal behavior to unelected prosecutors and federal judges, and they leave people with no sure way to know what consequences will attach to their conduct. when Congress passes a vague law, the role of the court's under our Constitution is not to fashion a new, clearer law to take it's place---but to treat the law as a nullity and invite Congress to try again.

Today, the question(s) presented hereto, applies to the principles of 18 U.S.C. 1591(a). This particular criminal statute, threatens long prison sentence(s) and a lifelong stigma for anyone who is charged with committing one of several crime(s). But which crime? The statute under certain circumstances points to: "sex trafficking of children---which in of itself delineates particular element(s) necessary to constitute a violation of said offense; and "sex trafficking by force, fraud, or coercion---which further---if deemed a separate offense, delineates it's own element(s) necessary for a violation of said offense to be violated. Here, the facts will unequivocally reveal that approximately Article III judges around the country can attest to the fact that this ambiguous language---read in the way nearly everyone (including the government has understood it---provides no reliable way to determine which offense is being charged and thereby makes the statute unconstitutionally vague! The record in this case will show that both ; the government and the judge, have arbitrarily attempted an alternative approach and reading....in an effort to save a conviction. But clearly condoning that reading and legal position, it turns out---cannot be squared with the statute's text, context, and relatively young history. If this Honorable Court, were

to adopt the same reasoning, as Judge Darnell Jones involved in this case, it would be effectively stepping outside its role of judges, and writing a new law rather than applying one Congress adopted in 2000. When in fact, in his 2019 order denying Petitioner Graham's 28 U.S.C. 2255 on this same question, he stated:

"A plain reading of Section 1591(a) reveals no such ambiguity"

[D.E. ;2/21/2020]

The question here then becomes one of "legislative authorization"---did Congress intend to create two crimes or one crime?, when it enacted § 1591(a)? When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should clearly be resolved in favor of lenity. It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment. BELL vs. U.S., 349 U.S. 81, 83, 75 S.Ct. 620 (1955). With this same presumption in mind, many appellate court's have identified certain factors to be considered when analyzing "whether Congress authorized a single or multiple crime(s)": (See; Attachment(s))("continued")

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Kevino Graham/

Date: . JANUARY 18, 2021