No. 21-6977

IN THE

SUPREME COURT OF THE UNITED STATES

Lavont Flanders, Jr. — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lavont Flanders, Jr.
(Your Name)

United States Penitentiary Tucson, P.O. Box 24550
(Address)

Tucson, Arizona, 85734
(City, State, Zip Code)

n/a
(Phone Number)

QUESTIONS PRESENTED

(1) The Eleventh Circuit Court of Appeals has entered a decision in conflict to the United States Supreme Court and other Circuit Courts which prohibit SUA SPONTE DISMISSAL of a court action without Notice and Opportunity to Respond.

(2) Should the United States Supreme Court have precedent instructing all courts to resolve all constitutional claims in a habeas petition, regardless whether habeas relief is granted or denied, including claims that the Petitioner groups into an overall ground for relief regardless of harmless error.

(3) If a pro-se litigant's mail is destroyed, or becomes open while being processed at the United States Postal Service making the filing untimely, is this sufficient to warrant equitable tolling because of extraordinary circumstances beyond the pro-se litigant's control and unavoidable even with diligence.

(4) When Congress passed 18 U.S.C. §1591, sex trafficking of children, was it the statute's congressional intent to punish persons who engage only in adult prostitution?

Mr. Flanders moves to notify this Court of his constitutional challenge to 18 U.S.C. §1591.

LIST OF PARTIES

[x] 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:

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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

[ ] For cases from **federal courts:**

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

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[x] is unpublished.

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

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[ ] is unpublished.

[ ] For cases from **state courts:**

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

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was May 6, 2021.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 19, 2021, and a copy of the order denying rehearing appears at Appendix I.

[ ] 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:**

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

March 25, 1999	HR Bill 1356 / 106th Congress, First Session
September 14, 1999	HR 1356 Subcommittee
November 22, 1999	HR 3244 Committee Meeting
April 12, 2000	Senate Bill S. 2414 / 106th Congress, Second Session
April 12, 2000	Senate Congressional Record
May 9, 2000	HR Congressional Record
July 27, 2000	Senate Congressional Transcript
October 11, 2000	Senate Congressional Transcript
October 28, 2000	Public Law 106-386 passed
5th Amendment	
6th Amendment	

STATEMENT OF THE CASE

Mr. Flanders was arrested by Miramar police on May 17, 2006 for sexual battery upon a mentally incapacitated victim pursuant to F.S. 794.011(4)(d). In August of 2011 all sexual battery charges were dismissed after evidence surfaced showing that all of the alleged victims were filming constitutionally protected adult films for a company named Miami Vibes Enterprise, Inc.

All of the female actresses were all over the age of 18 years old, and they all signed contracts/release agreements to perform in the adult movie. Please see company contracts/release agreements at Appendix S. All of the adult female actresses also consented to film the production on video as well. Please see the consent portion of the videos which all are in the Government's possession.

After the dismissal of the state's sexual battery charges, the Federal Government indicted the failed state prosecution, and used 18. U.S.C. §1591 Sex Trafficking of children statute, in order to federally prosecute Mr. Flanders and his co-defendant Mr. Emerson Callum, the owner of Miami Vibe Enterprise, Inc.

Mr. Flanders and Mr. Callum were found guilty by jury trial on December 7, 2011. The Court of Appeals for the 11th Circuit affirmed Flanders' conviction on May 27, 2014. Flanders filed his habeas petition (28 U.S.C. 2255) in January of 2016, to where he challenged 18. U.S.C. §1591, sex trafficking of children, as being a prostitution statute that only applies to persons who prositute children or minors under the age of 18 years old. Please see Appendix C at arguments 7 and 8 on page 18.

Flanders further argued that 18. U.S.C. §1591, sex trafficking of children, did not apply to his alleged conduct because there were no allegations of prostitution, or child prostitution. The alleged victims were all adult female actresses/models over the age of 18 years old who signed contracts/release agreements to film a constitutionally protected adult film.

Flanders contends that if an allegation arises concerning adult female actresses being drugged and raped while on the set of an adult movie, 18 U.S.C. §1591, sex trafficking of children, does not apply to the alleged conduct. It should be noted that none of the adult female actresses were taken across state lines during the productions. All the productions were filmed in Miami-Dade county, and Broward county. The federal Government was clearly without jurisdiction to indict the state's allegation of F.S. 794.011(4)(d), sexual battery upon a mentally incapacitated victim, as sex trafficking of children under 18. U.S.C. §1591. They clearly abused the congressional intent of the federal statute.

When Congress passed 18. U.S.C. §1591 into law, the statute's congressional intent was to punish child sex traffickers, or anyone who forced children or minors into prostitution by force, fraud, or coercion. Mr. Flanders' habeas corpus was denied by the district court on December 4, 2017, due to mail delays at USP Tucson. Mr. Flanders did not receive the district court's order of denial until January 5, 2018. Mr. Flanders filed for a CoA of the denial of his 2255, which was also denied.

On December 3, 2018, Mr. Flanders filed his Rule 60(b) Motion via U.S. Mail in Tucson, Arizona. In July of 2019, Mr. Flanders was notified by the United States Postal Service that his mail to the district court became jammed in the postal machinery. Please see Appendices I. The Phoenix General Mail Facility then mailed the remaining pieces of Flanders' Rule 60(b) motion to the Federal Bureau of Prisons headquarters located in Phoenix, Arizona. The Federal Bureau of Prisons headquarters in Phoenix, Arizona, then mailed the loose content to USP Tucson to be delivered Mr. Flanders. Upon receipt, Mr. Fanders immediately submitted his Rule 60(b) Motion to which he dated the motion for July of 2019. Mr. Flanders' Rule 60(b) Motion falls under the Prison Mailbox rule because he cited the rule on December 3, 2018 when he delivered his mail to prison authorities to be mailed. It

is not his fault that his mail to the district court became open while being processed and sent back to him damaged and in pieces. This was an extraordinary event out of his control that lead to his Rule 60(b)(3) being filed untimely.

In that Rule 60(b) Motuion (DE-cv-79), however inartfully pled, Flanders raised a Clisby violation. The district court had failed to make a ruling on the ground that alleges Mr. Flanders not waiving counsel's presence at his initial appearance, and during which at the same time the allegations/counts in his indictment were amended by the Government and the District Court from allegations/counts against minors to acts against adults. The district court failed to make a ruling on these constitutional claims that were properly presented in Petitioner's habeas petition. Please see Appendix C, page 17.

On September 30, 2019, the Government filed their response in opposition to Flanders' 60(b) Motion (DE-cv-87). In their response the Government DID NOT address Flanders' Clisby claim, and DID NOT RAISE A STATUTE OF LIMITATIONS DEFENSE, i.e. timeliness regarding Flanders' filing date of the 60(b) Motion. Please see Appendix G.

On October 18, 2019, Flanders filed his Amended Reply in Response the the Government's Opposition (DE-cv-93). In that reply, Flanders clearly restated his Clisby claim and altered the District Court of the Government's failure to address his Clisby claim in their response to his 60(b) Motion. (See Id. at pp. 1-2) ("The Habeas Court failed to consider the issue raised in his 2255 Habeas Motion."); (The Goverment failed to address his legal issue in Movant's Rule 60(b) Motion).

On May 6, 2020, the District Court dismissed Flanders' 60(b) Motion (DE-cv-128). On May 19, 2020, Flanders filed his Notice of Appeal, and on December 29, 2020, Flanders filed his initial brief.

On March 24, 2021, Government filed a Motion for Summary Affirmance. In that motion the Government failed to inform the Court of Appeals for the 11th Circuit of two (2) vital pieces of information. First, that the District Court SUA SPONTE

raised the timeliness defense and did not give Flanders notice of opportunity to respond prior to dismissal. And second, that Flanders' 60(b) contained an alleged Clisby violation, which is a certified defect in the habeas integrity and could never be considered a successive 2255.

On April 14, 2021, Flanders filed his response in Opposition to Summary Affirmance, which was retitled Second Amended Response in Opposition to the Government's Summary Affirmance on the Appeal's Court docket. In that response Flanders alerted the Court of Appeals for the 11th Circuit to the fact that the District Court SUA SPONTE raised the timeliness defense and dismissed the Rule 60(b) Motion without Notice or Opportunity to respond. Please see Appendix D at pp. 7-8.

On May 6, 2021, the Court of Appeals for the 11th Circuit, when granting the Government's Motion for Summary Affirmance, found: There was no substantial question that the District Court failed to address and therefore properly dismissed Flanders' petition as untimely and as an unauthorized successive petition, and that the Government's position is correct as a mater of law. Please see Appendix E.

Flanders failed a Motion for Rehearing and Rehearing en banc. The petition was denied on August 19, 2021. Please see Appendix F. A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; this calles for an exercise of this Court's supervisory power.

The Eleventh Circuit Court of Appeals has also decided an important federal question in a way that conflicts with relevant decisions of this Court in Day v. McDonough, 547 U.S. 198, 210 (2006). This is an exceptional case because it contains an important question of federal law pertaining to the Congressional intent of federal statute 18 U.S.C. §1591, sex trafficking of children. Mr. Flanders has provided a list of over 30 plus defendants from each circuit in this Nation who

have been affected by this federal statute being applied to persons who prostituted adults.

Mr. Flanders' case is from the federal courts and his exceptional case falls directly in line with Blair v. Oesterlein, Mach.Co. 275 U.S. 220, 225, 72 L.Ed. 249, 252, 48 S. Ct. 87 (1927); "Only in exceptional cases, and then only in those from the federal courts, will the Supreme Court of the United States consider questions on appeal which were not presented or passed upon below." See also Hormel v. Helvering, 85 L.Ed. 1037, 312 U.S. 552-560 (1941) (but there may always be exceptional cases or particular circumstances which will prompt a reviewing of appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed or passed upon by the court ... below.").

This case has exceptional circumstances or particular circumstances that Mr. Flanders prays that will prompt this Court to consider questions of law which were neither pressed or passed upon by the court below. When all is said and done "rules of practice and procedure are devised to promote the ends of justice, not defeat them." Hormel v. Helmering, Id.

Because the Petitioner raises an issue of constitutional magnitude which, if meritorious, could substantially affect these and future defendants, we believe we should address their arguments despite the fact that they were not made below. Accord United States v. Justice, 877 F.2d 664 (8th Cir. 1989) (reaching and discussing identical issue notwithstanding defendant's failure seasonably to assert constitutional challenge). Cert. denied, 493 U.S. 958, 110 U.S. 375, 107 L.Ed. 2d 360 (1989).

The Petitioner's issue of constitutional magnitude should be addressed by this Court.

REASONS FOR GRANTING THE PETITION

(1) The Eleventh Circuit Court of Appelas has entered a decision in conflict to the United States Supreme Court, and other Circuit Courts which prohibit, SUA SPONTE DISMISSAL of a court action without Notice and Opportunity to Respond.

The Eleventh Circuit Court of Appeals has entered a decision of the SUA SPONTE DISMISSAL of a court action without Notice and Opportunity to Respond, and decidced an affirmative defense of timeliness that is in conflict with numerous other Courts of Appeals on the same important matter. This departure from the accepted and usual course of judicial proceedings call for an exercise of this Court's supervisory power.

This well established and long-standing law is best described in the Jefferson Fourteenth Associates, ET AL., Wometco De Puerto Rico, Inc. v. Royale Belge Incendie Reassurance Co. and United Fire Co. 695 F.2d 524, (11th Cir. 1983) which held: "The rule that emerges from these cases is that courts exercise their inherent power to dismiss a suit that lacks merit only when the party who brought the case has been given notice and opportunity to respond." (Citations ommitted)(Id.). See also: Day v. McDonough, 547, U.S. 198, 210 (2006) (same) (collecting cases).

The Eleventh Circuit decision is contrary to decisions of Nassiri v. Mackie, 967 F.3d 544 (6th Cir. 2020); Wentzell v. Neven, 674 F.3d 1124 (9th Cir. 2012); Taylor v. United States, 792 F.3d 865 (8th Cir. 2015); In re Vassell, 751 F.3d 267 (4th Cir. 2014); Day v. McDonough, 547 U.S. 198, 126 S.Ct. 1675, 164 L.Ed. 2d 210 (2006); Jefferson Fourteenth Associates, ET AL., Wometco DE Puerto Rico, Inc. v. Royale Belge Incendie Reassurance Co. and United Fire Insurance C. 695 F.2d 524 (11th Cir. 1983); Paez v. Sec'y Fla. Dept. of Corr., 947 F.3d 649 (11th Cir. 2020), and United States v. Montero, 794 Fed. Appx. 928 (11th Cir. 2020).

The Eleventh Circuit's decision sets up a needless conflict with all other Circuits, including this Court that has ruled on the issue of the courts responsibility to accord the parties fair notice and opportunity to present their positions when dismissing a court action SUA SPONTE, when taking a position contrary to the authoritative opinions of the Fourth Circuit, The Sixth Circuit, the Eighth Circuit, the Nineth Circuit, and the United States Supreme Court. The Eleventh Circuit even departed from their own precedent, such a departure by a Court of Appeals call for an exercise of this Court's supervisory power.

Should this Court fail to exercise its supervisory power in this case, this Court will allow the 11th Circuit to undermine this Court's precedent in Day v. McDonough, 547 U.S. 198, 126 S.Ct. 1675, 164 L.Ed. 2d 210 (2006). This departure by the Eleventh Circuit Court of Appeals from the accpeted and usual course of judicial proceedings will affect others similarly situated should this Court fail to use its supervisory power over a lower court.

The decision by the Eleventh Circuit is clearly erroneous because the court clearly overlooked the material fact that (a) the District Court indisputably raised and decided SUA SPONTE an affirmative defense of timeliness, which was not argued by the Government, nor defeated by the Petitioner; and (b) consequently Mr. Flanders' appeal was not appropriate for Summary Affirmance.

Thus, Mr. Flanders was not given notice and opportunity to respond and present his position as the law and due process require. Had Mr. Flanders been given notice and an opportunity to respond to the timeliness, he would have successfully argued that due to extraordinary circumstances at the Postal Service that processed his timely filed Rule 60(b) motion, extraordinary circumstances had occurred when his legal mail became jammed in the machinery and partially destroyed, thereby forcing

the General Mail Facility in Phoenix, Arizona to return his mail to him, thereby causing it to be late. These were extraordinary circumstances that were both beyond Mr. Flanders' control and unavoidable even with diligence.

"Equitable tolling is appropriate when a movant untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." Woods v. United States, 700 F. App'x 982, 983-84 (11th Cir. 2017) (quoting Motta ex. rel. A.M. v. United States, 717 F.3d 840, 846 (11th Cir. 2013).

Mr. Flanders could show both, extraordinary circumstances and due diligence in order to be entitled to equitable tolling had the District Court given him notice and opportunity to respond before it dismissed his court action. "The diligence required for eqiutable tolling purposes is reasonable diligence, nor maximum feasible diligence." San Martin v. McNeil, 633 F.3d 1257, 1267 (11th Cir. 2011) (quoting Holland v. Florida, 560 U.S. 631, 130 S.Ct. 2549, 2560, 177 L.Ed 2d 130 (2010)). As for the "extraordinary circumstances" prong, there must be a causal connection between the alleged extraordinary circumstances and the late filing of the petition. San Martin v. McNeil, 633 F.3d 1257, 1267 (11th Cir. 2011) (citing Lawrence v. Florida, 421 F.3d 1221, 1226-27 (11th Cir. 2005)). Had Mr. Flanders been given Notice and Opportunity to respond and present his position as the law and due process require, he would have established both prongs to warrant equitable tolling. Please see Appendix I, which is on the record of the Habeas Court and the Court of Appeals for the 11th Circuit.

It should also be noted for this Court that Mr. Flanders did not receive the District Court's order on the denial of his habeas petition until January 5, 2019. Please see document 136 on the Habeas Court docket, or Appendix J. It should be noted to this Court that the Eleventh Circuit's departure from the accepted and usual judicial proceedings violate this Court's holdings in Hutto v. Davis, 454 U.S. 370, 374, 102 S.Ct. L.Ed. 2d 556 (1982) (observing that a lower federal court must follow precedent). This departure warrants a call for

an exercise of this Court's supervisory power. The Eleventh Circuit Court of Appeals clearly did not follow a precedent of the United States Supreme Court in Day v. McDonough, 547 U.S. 198, 126 S.Ct. 1675, 164, L.Ed. 2d 210 (2006). "A precedent of the United States Supreme Court must be followed by lower courts no matter how misguided the judges of those courts may think it to be." Hutto v. Davis, 454 U.S. 370, 374, 102 S.Ct. 703, 70 L.Ed 2d 556 (1982).

(2) Should the United States Supreme Court have precedent instructing all courts to resolve all constitutional claims in a Habeas Petition, regardless whether habeas relief is granted or denied, including claims that the petitioner groups into an overall ground for relief regardless of harmless error, then all lower courts have to follow that precedent set by the United States Supreme Court.

There is no Supreme Court precedent instructing all courts to resolve all constitutional claims raised in a habeas petition, because only the 11th Circuit, the Fourth Circuit, the Seventh Circuit, and the Tenth Circuit has guidance on this issue. The rest of the Nation's Courts are without guidance on the national importance.

Also, guidance is needed on this issue for all reviewing courts. When reviewing courts do not follow their own precedent on this issue of national importance, there is no court to hold them accountable. Knowing there is no precedent from the United States Supreme Court, when Courts of Appeals are reviewing habeas cases, if they do not want to follow their own precedent on ensuring that the lower courts resolve all constitutional claims in a habeas petition. The Appeals Court will just say that the Petitioner is attempting to an unauthorized successive petition because they know no other court can hold them accountable other than the United States Supreme Court.

The United States Court of Appeals has departed from their own precedent

without an En Banc Court. Because their is no decision from this Court on this important issue, the Eleventh Circuit has decided an important federal question in a way that conflicts with other United States Courts of Appeals in the 4th Circuit in Wolfe v. Johnson, 565 F.3d 140 (4th Cir. 2009); the 7th Circuit in Phifer v. Warden, U.S. Penitentiary 53 F.3d 859 (7th Cir. 1995); Spitznas v. Boone, 464 F.3d 1213 (10th Cir. 2006); and Clisby v. Jones, 910 F.2d 925 (11th Cir. 1992) (En Banc).

The Eleventh Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings among other Circuit Court of Appeals, as to call for an exercise of this Court's supervisory power.

Petitioners nationwide are calling on this Court to instruct all courts to resolve all constitutional claims in habeas petitions regardless whether habeas relief is granted or denied, including claims that the Petitioner groups into an overall ground for relief regardless of harmless error.

The courts of this nation all need guidance on this issue. This issue has not been, but should be settled by this Court once and for all. There is no precedent from this Court that binds courts to follow the law when they go astray. Petitioners nationwide are suffering because this Court has not taken the opportunity to establish precedent regarding this issue of national importance. An issue such as this must be settled by this Court.

This issue is not just important to Mr. Flanders, this issue is important to others similarly situated as well. There are petitioners nationwide that group claims into an overall ground for relief. Whenever a district court fails to address and resolve all constitutional claims, the reviewing court must vacate, and remand.

Mr. Flanders filed a 2255 in which the Court failed to address and resolve

his constitutional claims regarding "Petitioner not waiving counsel's presence at his initial appearance, to which allegations in the indictment against the Petitioner was amended by the Government and the District Court from allegations against minors, to allegations against adults in a sexual context." Please see document 103 from the Trial Court Docket.

"An amendment of the indictment occurs when the charging terms of the indictment are altered, either literally or in effect, by the prosecutor or court after the grand jury has last passed upon them." United States v. Salinas, 654 F.2d 319, 324 (5th Cir. Unit A August 1981) (quoting Gaither, 413 F.2d at 1071).

Because the Petitioner's claims were grouped into an overall ground for relief, the court failed to address and resolve all of Petitioners constitutional claims. Please see Appendices A, B, C, D, and E to where each court failed to address the constitutional claims in Ground One (a) (1) of the Petitioner's claims regarding "not waiving counsel's presence at his initial appearance, to which the allegations in the indictment against him were amended by the Government and the District Court from sexual allegations against minors, to sexual allegations against adults." Please see Appendix C at page 17, and Document 103, pages 1 through 8. There is no ruling on Petitioner not waiving counsel's presence and whether the allegations were amended by the Government and the District Court from sexual allegations against minors, to sexual allegations against adults.

The Eleventh Circuit Court of Appeals decision is contrary to the following En Banc precedent decision in Clisby v. Jones, 910 F.2d 925 (11th Cir. 1992) (En Banc) that suggests that the United States Court of Appeals for the Eleventh Circuit must remand whenever a district court fails to address and resolve all constitutional claims - including claims that the Petitioner groups into an

overall ground for relief - regardless of harmless error. Please see Bishop v. Sec'y Dept of Corr., 791 Feds. Appx. 803 (11th Cir. 2019).

Clisby v. Jones has not been overruled by an En Banc Court, or undermined by the decisions of the Eleventh Circuit of Appeals. It should be noted that the Government, and the District Court, and the Eleventh Circuit Court of Appeals refuse to even acknowledge the Petitioner's Clisby violation. The Elevent Circuit Court of Appeals is erroneous because it overlooked and entirely failed to consider long-standing and well-established law in the Eleventh Circuit. The decisions of the Eleventh Circuit sets up a needless conflict with all other circuits that have ruled on the issue of the district court's responsibility to resolve all allegations of a constitutional violation raised in a habeas petition prior to final disposition, when taking a position contrary to the authoritative opinions of the Fourth, the Seventh and the Tenth circuits. It should be noted for this Court that Mr. Flanders clarified the following facts in his Second Amended Response to the Government's Summary Affirmance, and in his Petition for Rehearing and Rehearing en banc.

1. The District Court improperly and in a clear abuse of discretion dismissed Flanders' petition as untimely SUA SPONTE; without an opportunity to respond.
2. Flanders demonstrated that his petition contained a Clisby violation, which is a certified "true 60(b)" and could never be a successive petition; and,
3. Flanders clearly demonstrated via long-standing and well-established federal law that the Government's position was clearly and completely incorrect as a matter of law.

A United States Court of Appeals has entered a decision so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power. The lower court failed to address the Petitioner's claims in his habeas petition whether the Petitioner waived counsel's presence at his initial appearance on August 17, 2011, before the United States Magistrate. First and foremost it was impossible for the Petitioner to waive counsel's presence because no defense counsel

for the Petitioner had made an appearance on behalf of the Petitioner. Please see Appendix M, which is the court docket for the District Court.

As this Court can plainly see from the docket entries on the docket sheet there was no Notice of Attorney Appearance on behalf of the Petitioner until August 24, 2011 by attorney Kenny F. Kuhl. Please see Appendix M at docket entries 1 through 15. The District Court even acknowledged the fact that Petitioner had no counsel for his federal case when he said the following on page 6 of the official court transcript, which is attached as Appendix K.

> THE COURT: The Government has the right under the statute to request a continuance of that hearing, and you also both need some time to make the arrangements for the attorneys that you have told me about. If on Monday, that hearing will be on Monday, which is the 22nd of this month, August 22. If you find that the attorneys whose names you gave me today cannot represent you for whatever reason, you can ask the Court to appoint attorneys for you at that time. Do you understand that, Mr. Flanders?
>
> Please see lines 4 through 13 on page 6 of Appendix K.

Also, the District Court acknowledged on page 3 of Appendix K in lines 18 through 20 that the Petitioner did not have counsel present.

> THE COURT: You each have the right to have attorneys present with you in court. Do we have attorneys? No. We don't have attorneys.

The certified court transcript of the initial appearance proves without a shadow of a doubt that the Petitioner never waived counsel's presence. It is also important for this Court to note that Attorney Joshua Fisher was never retained to represent the Petitioner in his federal case. Mr. Fisher was the Petitioner's counsel in the state charges that were still pending during the same time the Petitioner was indicted under seal on federal charges. Please see Appendix K, page 2, lines 1 through 6.

The claims in the Petitioner's Amended 2255 that were unaddressed were:

> "Petitioner being without counsel and not waiving counsel's presence at his initial appearance before the United States Magistrate."

The Petitioner's second unaddressed claim in his habeas petition was that the allegations in the indictment against him were amended by the Government and the District Court from charges against minors to charges against adults. Please see Appendix C at page 17 of 21.

The District Court failed to address both claims in the Report and Recommendation, which is attached as Appendix A, and the District Court also failed to address both claims in its Order Adopting Report and Recommendation, which is attached as Appendix B.

The Petitioner's Constitutional claims of "not waiving counsel's presence at his initial appearance before the United States Magistrate", and his claim of "the allegations in his indictment against him were amended by the Government and the District Court from charges against minors to charges against adults" were not even acknowledged by the District Court in her Report and Recommendation the where she lists the Petitioner's claims on page 3 through 5 of Appendix A.

The District Court in its order also fails to make any ruling pertaining to the Petitioner's claims of "not waiving counsel's presence at his initial appearance before the United States Magistrate", and the claim "that the allegations in his indictment against him were amended from charges against minors to charges against adults." Please see the District Court's Order Adopting Report and Recommendation attached as Appendix B.

The lower court avoided addressing these claims in the Petitioner's habeas petition for the following reasons:

First, on page 2 of Appendix K, lines 14 through 23, it can be plainly seen where the indictment was amended by the Government and the District Court from charges of sexual exploitation of a minor, and sex trafficking of children by force,

frauds, or coercion to charges against adults. There is no federal charge named "Sexual Exploitation", there is only "Sexual Exploitation of a Minor." The following exchange took place recorded on the certified court transcripts from the initial appearance on August 17, 2011, from the Government and the District Court:

> THE COURT: Mr. Flanders, you are charged, both of you are charged in an indictment which names you both as defendants, and it is the only defendants in this case. The charges are summarized as sexual exploitation of a minor and sex trafficking of children by force, fraud, or coercion.
>
> MR. ALTMAN: Your Honoor, as a correction, there is no allegation that there were any minors involved.
>
> THE COURT: All right. Then it will be sexual exploitation, sex trafficking by force, fraud, or coercion.

The Government and the District Court amended the charges in the indictment from sexual exploitation of a minor by force, fraud, or coercion to sexual exploitation, sex trafficking by force, fraud, or coercion.

"An amendment of the indictment occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them." United States v. Salinas, 654 F.2d 319, 324 (5th Cir. Unit A August 1981) (quoting Gaither, 413 F.2d at 1071).

Because the Petitioner was now at his initial appearance on an indictment, the grand jury had already passed upon the charges in the indictment. The Government's prosecutor, AUSA Roy Kalman Altman, and the District Court amended the charging terms of the indictment. The proof of this fact is in Appendix N, which is the Petitioners official Criminal History Response Request from the United States Department of Justice, Federal Bureau of Investigation Criminal Justice Information Services Division in Clarksburg, West Virginia 26306. Please see Appendix N.

The official FBI Arrest History in Appendix N clearly states that the

Petitioner was indicted and arrested on charges of SEXUAL EXPLOITATION OF MINOR-PROSTITUTION ON AUGUST 17, 2011. The official documentation also clearly states that the charge of SEXUAL EXPLOITATION OF MINOR-PROSTITUTION are in relation to charges of"CONSPIRACY TO RECRUIT, ENTICE, HARBOR, TRANSPORT, PROVIDE, OBTAIN, AND MAINTAIN A PERSON TO BENEFIT FROM PARTICIPATION IN A VENTURE WHICH HAS ENGAGED IN AN ACT IN VIOLATION, KNOWING THAT FRAUD WOULD BE USED TO CAUSE THAT PERSON TO ENGAGE IN A COMMERCIAL SEX ACT."

This official arrest documentation confirms to what the District Court read when it unsealed the Petitioner's indictment in open court on August 17, 2011, and the official arrest documentation also reveals that AUSA Roy Kalman Altman and the District Court altered the charging terms of the indictment either literally or in effect while Petitioner was completely without counsel. This is a direct violation of United States Supreme Court precedence under the framework set out in United States v. Cronic. 466 U.S. 648 (1984) and further expounded in United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017) (en banc).

Had the lower court addressed the Petitioner's claims in his Amended 2255 Petition, the end result would have been the vacating of the Petitioner's convictions. By failing to address the Petitioner's claims in his habeas petition, the lower court erroneously found that the Petitioner's 'Motion is a veiled attempt to re-litigate his unsuccessful 'Motion to Vacate' and is therefore an unauthorized, successive petition."

As Petitioner has already stated in this petition, his claims could never be newly discovered evidence, or a second successive habeas petition because the lower court never addressed his claims. Because there is no Supreme Court precedence requiring all courts to address all claims in a habeas petition, regardless whether habeas relief is granted or denied, this will continue to happen nationwide in the habeas courts.

The lower courts of this great nation need guidance from this Court that instructs them all that, "when a district court, or an appeals court reviewing a habeas petition fails to address all claims in the habeas petition, the judgment will be vacated without prejudice and remanded for consideration of the unaddressed claims." Please see pages 7 through 16 of Appendix Q.

As it currently stands now, without any guidance from the Court, because some circuits have no guidance on this issue of material importance, the lower courts are allowed to pick and chose what habeas petitions they will address all the claims in. For example, the lower court in the Eleventh Circuit does not want any precedent that Initial Appearances can be a critical stage if a defendant appears before the court without waiving counsel's presence, and his indictment is amended by the Government and the District Court, like the case before this Court now. Or, if at an initial appearance the defendant goes through a bond hearing while he is completely denied counsel, also like the case at bar. Please see Appendix K, lines 8 through 20 on page 5.

THE COURT: I will ask now the Government's bond recommendation.

MR. ALTMAN: Your Honor, we are asking that both defendants be detained pending their criminal trial because we believe they are both a risk of flight and a danger to the community.

THE COURT: Can the Government request a continuance to allow defendants to obtain counsel?

THE DEFENDANT FLANDERS: Why can't I be out on bond?

THE COURT: Because the Government is requesting pre-trial detention. Is it on the basis of risk of flight or danger to the community, or both?

MR. ALTMAN: Both, your Honor.

THE COURT: There are two cases or tow grounds that the Government can use to request that a defendant be held in pre-trial detention, and they are requesting or the Government is requesting on both grounds, a

> risk of flight and a danger to the community. That's the answer to your question, but do you understand that the hearing will be on Monday?

The exchanges took place on the official court transcript of the Initial Appearance on August 17, 2011 all while the Petitioner was without counsel. Please see pages 5 through 7 of Appendix K starting on line 8 of page 5, and ending on page 7, line 12.

These constitutional tragedies will continue without guidance form this Court. The Eleventh Circuit Court of Appeals clearly did not follow its own precedent in Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992) (en banc). Because there is no precedent from this Court pertaining to addressing all claims in a habeas petition, there is no higher court to hold the Eleventh Circuit, as well as other courts accountable. Therefore this erroneous behavior will continue unless this Court uses its supervisory power over the lower courts.

In closing, the Eleventh Circuit just applied Clisby v. Jones in two identical cases. On July 15, 2021 the Eleventh Circuit used Clisby v. Jones in Stackhouse v. United States, 2021 U.S. App. LEXIS 20970 (11th Cir. 2021) and on July 21, 2021 in Brantley v. Fla. AG, 2021 U.S. App. LEXIS 21542 (11th Cir. 2021). Clisby v. Jones was used to vacate and remand back to the district court for consideration of the unaddressed claims. Please see appendices O, and P for this fact. The issue of instructing the lower courts to resolve all claims in a habeas petition, regardless of federal law that has not been, but should be, settled by this Court. Therefore, the Petitioner has shown that compelling reasons exist for the exercise of this Court's discretionary jurisdiction.

(3) If a pro se litigant's mail is destroyed or becomes open while being

processed at the United States Postal Service, making the filing untimely, is sufficient to warrant equitable tolling because of extraordinary circumstances beyond the pro se litigant's control and unavoidable even with diligence.

The above question of national importance because of the number of pro se litigants in this nation. All of the pro se litigants depend on the United States Postal Service to deliver their filings to the court in a timely fashion. However, when things happen, to the pro se litigants' mail while being processed by the United States Postal Service that causes the pro se litigants' mail to be untimely, is this sufficient to warrant equitable tolling because of extraordinary circumstances beyond the pro se litigant's control and unavoidable even with diligence.

This is a question of national importance that has not been, but should be settled, by this Court. The importance of this case is not only for Mr. Flanders, but to the pro se litigants nationwide, similarly situated.

On December 3, 2018, Mr. Flanders filed his Rule 60(b) (2) and (3) via the Prison Mail Box Rule. The mail was given to prison authorities for mailing with adequate prepaid postage. Mr. Flanders is housed at USP Tucson in Arizona. In July of 2019 the United States Postal Service General Mail Facility (GMF) in Phoenix, Arizona, returned Mr. Flanders' Rule 60(b) Motion partially destroyed. The partially destroyed Rule 60(b) Motion was returned to the Federal Bureau of Prisons Headquarters in Phoenix, Arizona. The United States Postal Service advised that Mr. Flanders' mail became jammed in the machinery, and the remaining pieces of his mail was found loose at the General Mail Facility. Please see Appendix I.

The Federal Bureau of Prisons Headquarters in Phoenix, Arizona, then identified what prison Mr. Flanders was being housed at, and forwarded the mail from the United States Postal Service to USP Tucson. Upon receiving the returned mail, Mr. Flanders

immediately typed up the missing pages, and mailed it to the District Court. He signed the petition for July of 2019. The Rule 60(b) Motion was docketed in the Habeas Court on August 12, 2019 under (CIV-DE-69). On September 16, 2019, the District Court ordered Mr. Flanders to file one succinct motion due to multiple amendments to his Rule 60(b) motion. On September 16, 2019, Mr. Flanders filed an Amended Rule 60(b) per the District Court's order. (CIV-DE-79). The Government was given until September 30, 2019 to file its Response in Opposition (See CIV-DE-78).

On September 30, 2019, the Government filed its Response in Opposition to the Petitioner's Rule 60(b) motion. (See CIV-DE-87). The Government never argued the timeliness of Mr. Flanders' Rule 60(b) motion. On May 6, 2020, the District Court dismissed Mr. Flanders' Rule 60(b) Motion SUA SPONTE as being untimely, and as being an unauthorized successive habeas corpus. The District Court failed to give Mr. Flanders Notice and Opportunity to respond to state his position. On May 19, 2020, Mr. Flanders filed an appeal to the Eleventh Circuit Court of Appeals.

Due to the fact that Mr. Flanders' Rule 60(b) motion became jammed in the machinery at the United States Postal Service General Mail Facility (GMF) while processed. This is sufficient to warrant equitable tolling. Mr. Flanders' filing of his Rule 60(b) Motion was untimely because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence. Mr. Flanders' mail becoming jammed in the machinery at the General Mail Facility was beyond his control, and it was unavoidable, even with diligence. Equitable tolling is appropriate when a movant untimely files because of extraordinary circumstances that are both beyond hs control and unavoidable, even with diligence. Woods v. United States, 700 F. App'x 982, 983-84 (11th Cir. 2017) (quoting Motta ex. rel. A.M. v. United States, 717 F.3d 840, 846 (11th Cir. 2013).

The Eleventh Circuit has stated that it "is an 'extraordinary remedy' that should be used sparingly." Echemendia v. United States, 710 F. App'x 823, 827 (11th

Cir. 2017) (Arce v. Garcia, 434 F.3d 1254, 1261 (11th Cir. 2006). "The Petitioner must show both extraordinary circumstances and due diligence in order to be entitled to equitable tolling." Diaz v. Sec'y foer Dept. or Corr., 362 F.3d 698, 701 (11th Cir. 2004). "The required diligence for equitable tolling purposes is 'reasonable diligence', not 'maximum feasible diligence.'" San Martin v. McNeil, 633 F.3d 1257 (11th Cir. 2011) (quoting Holland v. Florida, 560 U.S. 631, 130 S.Ct. 2549, 2560, 177 L.Ed. 2d 130 (2010)). As for the "extraordinary circumstances" prong, there must be a causal connection between the alleged extraordinary circumstances and the late filing of the petition. San Martin v. McNeil, 633 F.3d 1257, 1267 (11th Cir. 2011) (citing Lawrence v. Florida, 421 F.3d 1221, 1226-27 (11th Cir. 2005)). The causal connection between Mr. Flanders' late filing of his Rule 60(b) motion and the extraordinary circumstances is that the extraordinary circumstances of Mr. Flanders' legal mail being jammed in the postal machinery is what lead to his Rule 60(b) Motion being untimely filed in the District Court. These events warrant equitable tolling, and this question of national importance should be settled by this Court. The importance of the case is not only for Mr. Flanders, but also to others similarly situated.

(4) A United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court. The Eleventh Circuit has decided that 18 U.S.C. 1591 applies to Child prostitution and Adult prostitution.

The legislative history of 18 U.S.C. 1591 suggests that the Congressional intent of the statute is for Child prostitution only. Please see Appendix L. The application of 18 U.S.C. 1591 is a question of national importance because this statute is being applied to adult prostitution cases nationwide. This Court needs to settle this ongoing issue once and for all. This Court needs to give the lower

courts proper guidance on the statute's reach, and Congressional intent. The importance of this Court resolving this question is not only for Mr. Flanders, but for the many others similarly situated.

The legislative history 8f 18 U.S.C. 1591 has been broken down to suggest that the statute's Congressional intent is for victims under the age of 18 years old. Please see the Legislative History of 18 U.S.C. 1591.

Pursuant to 28 U.S.C. Rule 2403(a), the Solicitor General of the United States has been put on notice of the fact that the Constitutionality of an Act of Congress has been drawn into question. Therefore, the statute's reading is now being challenged based on the Congressional intent. This misconstrued law has affected thousands of people nationwide.

The Petitioner has provided a short list of people in circuits throughout this nation who have been affected by this misconstrued law. This short list of people does not even scratch the surface of the total amount of people who have been affected by this misconstrued law. Please see Appendix R.

Each of these people from circuits nationwide have been affected by this misconstrued law. In each case, the alleged victims were 18 years old, or older. The importance of this case is not only for the Petitioner, but to others similarly situated. The convictions in all these cases listed are erroneous because the Congressional intent of 18 U.S.C. 1591 is for the purpose of causing a person under the age of 18 (by force, fraud, or coercion) to engage in a commercial sex act. In each case in Appendix P, the alleged victims were all 18 years old, or older, therefore Petitioner cannot be charged, convicted, or punished under 18 U.S.C. 1591. Assessing Congressional intent involves (1) looking at the language of the statute; (2) the legislative history; (3) the statutory context; and (4) the type of conduct prescribed. In assessing the Congressional intent of the statute, the Petitioner submits the following:

USCS § 1591 – CONGRESSIONAL INTENT – (ch) – 2nd update June 26, 2021

Legislative History of USCS § 1591

March 25, 1999

USCS § 1591 is part of a bill called "Trafficking Victims Protection Act of 2000". This law was introduced as a bill called H.R. 1356 to the 106th Congress, first session, on March 25, 1999. Throughout the discussion contained within this document is consistent discussion that the law is to prevent "international" sex trafficking and specifically "involuntary". The bill was "short titled" on this day as the "Freedom from Sexual Trafficking Act of 1999"

March 25, 1999

Introduced in the House (03/25/1999) Freedom From Sexual Trafficking Act of 1999 –

> "declares that the purpose of this Act is to eliminate international sex trafficking".... and then further it reads "(Sec. 9) Amends Federal criminal law to subject to both civil (including forfeiture) and criminal penalties anyone who, whether inside or outside the United States, for the purpose of causing a person under age 18 (by fraud, force, or coercion) to engage in a commercial sexual act"

August 4, 1999

A "Markup" was submitted to the 106th Congress, first session, to the "Committee on International Relations" (Serial No. 106-62) along with the "Subcommittee on International Operations and Human Rights". Again, this document consistently discusses the law is geared to "international" sex trafficking.

November 22, 1999

The Name of the bill H.R. 3244 was changed to "Trafficking Victims Protection Act of 1999" via Rept. 106-487. This document, on the first page, has a Table of Contents with Sections 1 to 13 that matches verbatim the table of contents in the subsequent documents, even as the bill becomes Senate bill S.2414.

April 12, 2000

Senate bill S.2414 is introduced by Senator Wellstone as the "Trafficking Victims Protection Act of 2000" within the 106th Congress, 2nd session. This contains the same 13 sections as in the prior H.R. 3244. This is the continuation of the same bill discussed above. The format, table of contents and verbiage are all the same.

Within this document, within Section 12 (page 46), the statute that later becomes 1591 is named 1589A. It reads:

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> "(b) Punishment – the punishment for an offense under subsection (a) is (1) if the offense was effected by fraud, force, or coercion, or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under the title or imprisonment for any term of years or for life, or both" or (2) if the offense was not effected by force, fraud or coercion, and the person transported 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 the title or imprisonment for not more than 20 years, or both"

On this same day within the congressional transcript (S2630 · Congressional Record for the Senate), Senator Wellstone introduces the bill to the floor of the Senate and within his opening statement says:

> "Senator Feinstein, who is on the floor, has been a strong supporter of trying to do something about this, and to make sure that if you are going to traffic a child under the age of 14 for forced prostitution, you are going to serve a life sentence in prison."

Senator Wellstone is referring to section (b)(1) within the proposed bill, which is the only place within the bill that discusses a sentence of life. Notably, the actual Senator that sponsored the bill (Wellstone) introduces the bill and clearly specifies and clarifies that this term of life relates to "if you are going to traffic a child under the age of 14 for forced prostitution"

The verbiage of the proposed bill has the word "OR" when the intent was clearly for children under the age of 14. This word "OR" stays within the text of this bill as it continues on to becoming a law later that year. This word OR is what confuses judges and prosecutors into believing that they can apply the law to adults who were affected by "force, fraud or coercion". However, Senator Wellstone makes it clear to the Senate the actual crime that he considers in the bill to be a life sentence relates only to children under 14.

While 1591 (1589A) in the bill is clearly directed towards children, the law created a myriad of statutes, most of which applies to the trafficking of adult victims. There are completely separate statutes created that penalize "force, fraud or coercion" in adults. Why would congress pass a law with two different ways to penalize force, fraud or coercion in adults, one with a small penalty and another with a penalty of life in prison?

Senator Wellstone, clearly shows that the new law has a section specifically geared towards children in prostitution, while at the same time addressing in other new statutes the issues of adult prostitution. However, the largest penalties were geared towards this child prostitution statute, for obvious reasons and therefore required the harshest sentence risk of life in prison.

May 9, 2000

The bill is discussed in the House of Representatives beginning at transcript page H2675. On page H2681, section (b)(1) has received a few updates, but the textual presentation mostly remains the same, including the confusing "or" statement. Even after Senator Wellstone makes it clear on April 12, 2000 and later again on July 27, 2000, the misguided text stumbles its way to the House of Representatives.

July 27, 2000

Senator Wellstone, the actual sponsor of the bill, again speaks on the Senate congressional record in transcript S7789 again confirming his prior assertion, stating:

> "Finally, prosecution and taking this seriously treating it as a crime so for example, if you are trafficking a young girl under the age of 14 and forcing her into prostitution, you face a life sentence in prison."

Senator Brownback, the laws other sponsor, speaks this same day on the Senate floor stating:

> "I had a personal experience with this earlier this year. In January, I traveled to Nepal and met with a number of girls who had been trafficked and then returned. They had been tricked to leave their villages. Many of them were told at the ages of 11, 12, or 13: Come with us. We are going to get you a job as a housekeeper, or making rugs, or some other thing in Bombay, India. That will be much better than what you are doing now. They then take them across the border. They take their papers from them. They force them into brothels in Bombay or Calcutta or someplace else and force them into this trade. Some of these girls make their way back at the age of 16 or 17 years of age. Two-thirds of them now carry AIDS and/or tuberculosis. Most of them come home to die."
>
> "The favorite age for girls in some countries is around 13 years of age. I have a 14 year old daughter and it almost makes me cry to think of somebody being taken out of the home at that age and submitted and subjected and forced into this type of situation. Thirteen is the favorite age."

October 11, 2000

The Congressional Record from the Senate beginning at 10164, states on page S10175:

> "The second part is legislation that will also be a hallmark. It is the Sexual Trafficking Victims Protection Act. Girls as young as 10 years old are kidnapped from their villages and taken to brothels or sweatshops where they are imprisoned, forced to work as prostitutes, beaten, threatened, and even drugged into submissiveness."

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There is a consistent direction in this statute that the most egregious aspect of trafficking is the forced prostitution of children.

It also states on page S10167: "Sex traffickers favor girls aging in the range of 10 to 13". This is the reason that the strictest penalty of life in prison was being lodged against forcing children under the age of 14 into prostitution.

Page S10180 further states: "What we are saying is, if you are involved in this trafficking, you are going to face stiff sentences. If you are involved in the trafficking of a girl under the age of 14, you can face a life sentence."

Page 10169 reads: "Yes, if you are trafficking a young girl and forcing her into prostitution, you can face a life sentence"

October 18, 2000

Public Law 106-386 – October 28, 2000 is passed, titled "Victims of Trafficking and Violence Protection Act of 2000" Extensive statutes are created and amended to address the myriad of issues that Congress discussed, which addresses adult women, but 1591 stands alone as the new standard for punishment of child prostitution and held the highest penalties of any of the provisions.

2008

USCS 1591 was updated in 2008 in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. 110 P.L. 457, 122 Stat. 5044. This was the first update since its passage in 2000 and is found in Section 5, a section titled "(5) **Sex Trafficking of Children**" and not only does it edit sections of that statute that relates to children under 18 years of age, but it also edits the disputed "force, fraud or coercion" section. Why would Congress title this as "Sex Trafficking of Children" AND then edit the disputed section that is supposedly only for adult prostitutes and not title it as "Sex Trafficking of Children and Adults" or even "Sex Trafficking".

Even as late as 2008, Congress was under the clear understanding that the 1591 statute was written to restrict the "sex trafficking of children".

2011

United States v. Daniel, 653 F.3d 399 (6th Cir. 2011) at Page 405, in referring to charges that were on appeal, the Court referred to 18 U.S.C. 1591(a) as, quote, "sex trafficking in children".

2011

United States v. Jungers, 834 F. Supp. 2d 930, 2011 Westlaw 6046495, District of South Dakota, (Docket Entry November 5, 2011, referring to Congress's enhancing its statutory

protection of minors for sexually slavery by properly seeking out the greater punishment those who engaged in sex trafficking of children by force, fraud or coercion."

Jan 4, 2012

United States v. Bonestroo, 2012 U.S. Dist. LEXIS 981, 2012 Westlaw 13704, District of South Dakota, January 4, 2012, the Court, in referring to this statute says that, "to satisfy the plain reading of the statute, the government need only show that Bonestroo knowingly enticed, recruited, or obtained a child, knowing that he or she would engage in a commercial sex act".

Jan 20, 2012

United States v. Chappell, 665 F.3d, 1012 (8th Cir. January 20, 2012), likewise, {2013 U.S. Dist. LEXIS 44} referred to this language of "reckless disregard of the fact that the (Docket Entry No. Defendant in that case · "that the victim in that case had not attained the age of 18."

July 27, 2010

United States v. Wilson, 2010 U.S. Dist. LEXIS 75149, 2010 Westlaw 2991561, Southern District of Florida July 27, 2010, refers to in the elements of the offense. Thus, the government must still prove beyond a reasonable doubt all the elements of 18 U.S.C. Section 1591 (a) is the charges the defendant was causing a minor to engage in a commercial sex act. In this respect, even under the challenge provisions of 1591, the government must prove beyond a reasonable doubt all of the following elements: The defendant's actions were in or affecting interstate commerce or foreign commerce; Two, the defendant knowingly recruited, enticed, harbored, transported, provided, obtained or maintained a person and caused that person to engage in a commercial sex act; Three, that the person, in fact, was under the age of 18 at the time; and Four, that the defendant knew that the person had not reached the age of majority, or that the defendant recklessly disregarded the person's age and had a reasonable opportunity to observe the person. Thus, should the United States choose to establish a violation of section 1591 (a) by showing recklessness, in addition to proving the first three elements of 1591(a), it must prove beyond a reasonable doubt both that the defendant recklessly disregarded the person's age and that the defendant had a reasonable opportunity to observe the persons. Citing 1591 (a) and (c) and one of the decisions in that district.

2016

Abduallahi Afyare successfully won a district court decision in 2013 in the Middle District of Tennessee confirming that this statute 1591 applies only to under age prostitution. *United States v. Afyare*, 2013 U.S. Dist. LEXIS 86587 (June 12, 2013) The decision was overturned by the 6th Circuit in *United States v. Afyare,* 632 Fed. Appx. 272; 2016 U.S. App. LEXIS 4173 (March 2, 2016).

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The evaluation done by the 6th Circuit was very cursory, like the rest of the other similar disputed cases where the statute was used with adult prostitution. Similar to Afyare, the courts simply focused on the textual reading of the statute. The statutes use of the word "or" is what got this whole mess started and has been allowing prosecutors to mis-apply this statute for use with adult prostitution, simple to get larger sentences. In the Afyare reversal and other similar cases, they have had some light discussion of the congressional record, saying that the 2000 bill had discussion of both adult and children, but if you review the actual 2000 bill, you will see that the 2000 law discusses many subjects including date rape, school and campus activity, actions against other governments, domestic violence against women, stalking, teen suicide prevention, battered immigrants and much more. The 2000 law created and amended some 35+ different statutes.

2018

United States v. Keys, 747 Fed Appx. 198 (2018) discusses Congressional Intent and determines that 1591 does apply to adults. While this is the determination of the judge, his reasoning is very cursory and determines that since the discussion from Congress as it relates to the 86 page Public Law passed in 2000 discusses both children and adults, that the 1591 statute must also relate to children and adults.

If the Judge have done a deeper dive into the congressional record, he would have realized that Congress did address adult prostitution by force, fraud or coercion in other areas of the law, but chose 1591 to focus on child prostitution.

May 28, 2020

Department of Justice: citizens guide to U.S. Federal law on child sex trafficking, by Steven J. Grocki, Chief, Child Exploitation and Obscenity Section, Contact #; 202-514-5780. This reads:

"Section 1591 applies equally to American children (U.S. citizens or residents) who are prostituted within the United States, as well as foreign nationals (persons not a U.S. citizen or resident) who are brought into the United States and are then caused to engage in prostitution. The law also criminalizes any person who conspires or attempts to commit this crime. If the victim was under the age of 14 or if force, fraud, or coercion was used, the penalty is not less than 15 years in prison up to life. If the victim was aged 14-17, the penalty shall not be less than 10 years in prison up to life. Anyone who obstructs or attempts to obstruct the enforcement of this statute faces as many as 20 years imprisonment."

The United States government charged Mr. Grocki to notify citizens of the laws that apply, as a person of average intelligence should be able to read a statute and understand its meaning. Mr. Grocki either correctly understands that the statute applies only to children or he too misconstrued its meaning, as some prosecutors are applying the misaligned and textually malformed statute to adult prostitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: September 29, 2021