

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

**JOSHUA GUILTY-NUNEZ – PETITIONER
vs.**

UNITED STATES OF AMERICA – RESPONDENTS,

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Whether Petitioner, who was convicted of 18 U.S.C. § 1594(c), is subject to a Base Offense Level of 34 or 14?

LIST OF PARTIES

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

LIST OF PRIOR PROCEEDINGS

1. *United States v. Joshua Guity-Nunez*, 1:17-CR-00002-5 (Middle District of Pennsylvania); judgment entered on July 10, 2020.
2. *United States v. Joshua Guity-Nunez*, No. 20-2483, 2021 WL 6061763 (3d Cir. Dec. 20, 2021); opinion affirming district court opinion.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below from the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The not precedential opinion of the United States Court of Appeals for the Third Circuit appears in Appendix A to this petition and is reported at *United States v. Joshua Guity-Nunez*, No. 20-2483, 2021 WL 6061763 (3d Cir. Dec. 20, 2021).

The judgment as to Petitioner, as well as the statement of reasons, and the sentencing proceeding transcript entered by the United States District Court for the Middle District of Pennsylvania appears in Appendix B to this petition.

JURISDICTION

The date on which the United States Court of Appeals for the Third Circuit issued the opinion in this case was December 20, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1591(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).

18 U.S.C. § 1591(b)(1)

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

18 U.S.C. § 1594(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.

STATEMENT OF THE CASE

A. Procedural Background

On January 4, 2017, Guity-Nunez, along with four co-defendants, were charged in a six (6) count Indictment, including Count One (1), Conspiracy to Commit Sex Trafficking by Force, Fraud and Coercion, in violation of 18 U.S.C. § 1591(a) and 18 U.S.C. § 1594(c); Count Two (2), Sex Trafficking by Force, Fraud and Coercion, in violation § 1591(a) and 18 U.S.C. § 1591(b)(1); Count Three (3), Sex Trafficking of a Minor in violation of § 1591(a) and § 1591(b)(2); Count Four (4), Criminal Conspiracy – Possession with Intent to Distribute Heroin and Marijuana, in violation of 21 U.S.C § 846; Count Five (5), Possession with Intent to Distribute Heroin, in violation 21 U.S.C § 841(a)(1) and 21 U.S.C. § 841(a)(2); Count Six (6), Possession with Intent to Distribute Marijuana, in violation of 28 through 35. Guity-Nunez was specifically charged with Counts One (1), Two (2), Four (4), Five (5), and Six (6).

On August 27, 2018, Appellant pled guilty to Count One (1) of the Indictment, pursuant to a written plea agreement whereby he agreed to plead guilty to a violation of § 1594(c), Criminal Conspiracy – Sex Trafficking by Force, Fraud and Coercion, in violation of § 1591(a). On July 10, 2020, the trial court (Rambo, S.) sentenced Guity-Nunez to 180 months imprisonment.

Guity-Nunez appealed his conviction and sentence, and the United States Court of Appeals for the Third Circuit filed a not precedential opinion affirming the District Court opinion. *Guity-Nunez*, 2021 WL 6061763.

B. Factual Background

The facts of this case consist of the agreement among the co-defendants to traffick women and drugs in the Middle District of Pennsylvania. In August 2018, Guity-Nunez pled guilty to Criminal Conspiracy – Sex Trafficking by Force, Fraud, and Coercion in connection with his role as a driver for these women to perform illegal sex with other members of the conspiracy.

The trial court sentenced Guity-Nunez according to a base offense level of 34, over his objection that he should be sentenced according to a base offense level of 14.

Guity-Nunez contends in this petition that the district court erred in applying a base offense level of 34, which only applies to defendants who are convicted of § 1591(b)(1). Because Guity-Nunez pled guilty to § 1594(c), in violation of § 1591(a), his base offense level should have been a 14 instead of a 34.

C. District Court Judgment (Appendix B)

The District Court concluded that Guity-Nunez was subject to a base offense level of 34 and entered a judgment sentencing Guity-Nunez to 180 months imprisonment, after granting a three (3) level downward departure for acceptance of responsibility, as well as a downward departure for Guity-Nunez's minor role in the conspiracy. The District Court sentenced Guity-Nunez according to U.S.S.G. § 2G1.1, which prescribes a base offense level of 34 if the offense of conviction is § 1591(b)(1) and 14 if otherwise.

In denying the application of a base offense level of 34 instead of 14, the District Court relied on *United States v. Sims*, in which the United States Court of Appeals for the Third Circuit held that Defendant Sim's base offense level was 34. *United States v. Sims*, 957 F.3d 362 (3d Cir. 2020). The District Court declined to rely on *United States v. Wei Lin*, in which the United States Court of Appeals for the Ninth Circuit held that Defendant Wei Lin's base offense level was 14. *United States v. Wei Lin*, 841 F.3d 823 (9th Cir. 2016).

The District Court reasoned that Guity-Nunez's plea agreement was similar to the plea agreement in *Sims* and different from the plea agreement in *Wei Lin* in that the plea agreement in *Wei Lin* did not use the exact language contained within § 1591(b)(1)—specifically, sex trafficking through the “use of force, fraud, and coercion”—while the plea agreements in *Sims* and Guity-Nunez's case did use such language.

D. The Third Circuit Opinion (Appendix A)

Guity-Nunez's appeal challenged, in relevant part, the District Court's holding that a base offense level of 34 applied in his case, as his offense of conviction was § 1594(c), in violation of § 1591(a), which is subject to a base offense level of 14.

The Third Circuit determined that Guity-Nunez was subject to a base offense level of 34, the guideline for the substantive offense of § 1591(b)(1), because Guity-Nunez's plea agreement and plea colloquy both described the object of the conspiracy in violation of § 1594(c) as “sex trafficking through use of force, fraud, and coercion.” The Third Circuit relied on dicta in *Sims* that stated that, because §

1591(a) and § 1591(b)(1) are “inextricably linked,” “convictions under § 1594(c) for conspiracy to violate § 1591(a) by means of force, fraud, or coercion, “always subject a defendant to a base offense level of 34.” (Appendix A at p. 5, quoting *Sims*, 957 F.3d at 365 n.2). This was the same conclusion reached by the District Court, so the Third Circuit therefore affirmed the District Court. (Appendix A at p. 2).

REASONS FOR GRANTING THE PETITION

Guity-Nunez asks this Court to grant his petition for writ of *certiorari* because there is currently a circuit split on the issue of what base offense level applies to a conviction of conspiracy to commit sex trafficking by force, fraud, or coercion in violation of § 1594(c). Guity-Nunez was denied meaningful appellate review of the important legal issues raised in his appeal because the United States Court of Appeals for the Third Circuit was bound by its own precedent, which is contrary to the conclusion Guity-Nunez asked the court to reach. He asks this Court to grant review in order to rectify this error.

More specifically, the first circuit to decide the issue of what base offense level applies to a conviction of conspiracy to commit sex trafficking by force, fraud, or coercion in violation of § 1594(c) was the United States Court of Appeals for the Ninth Circuit, which held that the base offense level for such a conspiracy, with an underlying substantive offense of § 1591(a), is 14. *Wei Lin*, 841 F.3d 823.

Thereafter, the United States District Court in South Carolina, within the United States District Court of Appeals for the Fourth Circuit, held that the appropriate base offense level for a defendant convicted of § 1594(c) is 14. *United States v. Jackson*, No. 2:16-cr-00054-DCN, 2018 WL 1316933 (D. S. C. March 14, 2018).

In contrast, the United States Court of Appeals for the Third Circuit held that, because the substantive offenses underlying Defendant Sim's conspiracy conviction were § 1591(a) and § 1591(b)(1), a base offense level of 34 applied. *Sims*,

957 F.3d 362. The court went on to note—albeit, dicta—that, even if the defendant had pleaded guilty only to conspiring to violate § 1591(a), he would still be subject to a base offense level of 34 as § 1591(a) and (b)(1) are “inextricably linked” as § 1591(b)(1) is the punishment for violations of § 1591(a)(1).

Similarly, the United States Court of Appeals for the Eighth Circuit held that a base offense level of 34 applies to a defendant convicted of § 1594(c) in violation of § 1591(b)(1). *United States v. Carter*, 960 F.3d 1007 (8th Cir. 2020).

Guity-Nunez asks this Court to address this split between the circuit courts, as the conflicting interpretations of the legal issue, as well as the applications of the rule, have led to inconsistent results. Here, the lower courts incorrectly held that Guity-Nunez was subject to a base offense level of 34.

I.

**GUITY-NUNEZ WAS SUBJECTED TO A BASE OFFENSE LEVEL OF 34 AS
OPPOSED TO 14 AS A RESULT OF THE INCORRECT APPLICATION OF
THE UNITED STATES SENTENCING GUIDELINES WITH RESPECT TO
GUITY-NUNEZ'S CONVICTION OF 18 U.S.C. § 1594(c)**

The lower courts incorrectly applied a base offense level of 34 for Guity-Nunez's conviction of conspiracy to commit sex trafficking by force, fraud, or coercion, in violation of § 1594(c). Both the District Court and the Third Circuit relied on Third Circuit precedent, *United States v. Sims*, in applying a base offense level of 34. In *United States v. Sims*, the Third Circuit held that the appropriate base offense level in determining the defendant's sentence was the base offense level for the underlying substantive offense, and because the defendant was convicted of § 1594(c), in violation of § 1591(a) and § 1591(b)(1), a base offense level of 34 applied. *Sims*, 957 F.3d 362. However, here, Guity-Nunez was convicted of § 1594(c), in violation of § 1591(a) only, so the base offense level for his underlying substantive offense was 14. This conclusion is further supported by the fact that Guity-Nunez was not subject to a 15-year mandatory minimum sentence, as he was not convicted of § 1591(b)(1), which carries such a mandatory minimum sentence. For the reasons explained in this Argument, the lower courts erred in applying a base offense level of 34 for Guity-Nunez's conviction of conspiracy to commit sex trafficking by force, fraud, or coercion, as the appropriate base offense level for his conviction is 14.

A. The Lower Courts Incorrectly Applied a Base Offense Level of 34 to Guity-Nunez's Conviction of Conspiracy to Violate § 1591(a) By Means of Force, Fraud, or Coercion.

The lower court held that a base offense level of 34, not 14, applied to Guity-Nunez's conviction of § 1594(c). (See generally Appendix B). Specifically, the District Court found that a base offense level of 34 applied because both Guity-Nunez's plea agreement and plea colloquy described the object of the conspiracy as sex trafficking through use of "force, fraud, and coercion." (Appendix B at pp. 27-28). The District Court explained:

With regard to the 1591(b)(1), the Court notes that in *Sims*, one of the issues that was raised was that the plea agreement in *Wei Lin* did not use the exact language. And in this plea agreement, we do have the exact language set forth in 1591(b)(1), and that is that it was conspiracy of sex trafficking through use of force, fraud, and coercion. And that is strictly set forth in the plea agreement and the plea to which he pled and the wording of the plea.

(Appendix B at pp. 27-28).

Similarly, the Third Circuit, found that the District Court properly applied a base offense level of 34 to Guity-Nunez's conviction of § 1594(c). (Appendix A at p. 5). Citing *Sims*, the Circuit Court held that, " 'convictions under § 1594(c) for conspiracy to violate § 1591(a) by means of force, fraud, or coercion'—like Guity-Nunez's conviction here—'*always* subject a defendant to a base offense level of 34.' " (Appendix A at p. 5) (Emphasis in original). As a result, the Third Circuit affirmed.

1. The Third Circuit Misinterpreted U.S.S.G. § 2G1.1 in Applying a Base Offense Level of 34 to Guity-Nunez's Conviction of § 1594(c) in Violation of § 1591(a).

The base offense level for a conspiracy crime is the same as the base offense

level for the substantive offense. U.S.S.G. § 2X1.1. In looking to the applicable sentencing guideline for commercial sex act offenses—specifically offenses involving a victim other than a minor—U.S.S.G. § 2G1.1 provides that the base offense level is 34 “if the offense of conviction is 18 U.S.C. § 1591(b)(1),” and 14 “otherwise.” § 2G1.1(a)(1), (2).

In interpreting these rules, the Third Circuit asserted that two (2) base offense levels are potentially applicable to a conspiracy to commit sex trafficking in violation of § 1591(a):

When the trafficking that is the object of the conspiracy involves minor victims or “force, threats of force, fraud, or coercion,” 18 U.S.C. § 1591(b)(1), the conspiracy, like the substantive offense, carries a base offense level of 34; otherwise, consistent with the other types of sex trafficking covered by 18 U.S.C. § 1591(b)(2), it carries an offense level of 14.

(Appendix A at p. 5). The Third Circuit cited to both § 2G1.1 and *Sims* in stating this rule—however, it is important to note that § 2G1.1 does not state that a base offense level of 14 applies “consistent with the other types of sex trafficking covered by 18 U.S.C. § 1591(b)(2).” To the contrary, all it states is that a base offense level of 34 applies if the offense of conviction is § 1591(b)(1) and a base offense level of 14 applies “otherwise.” § 2G1.1.

In fact, the types of sex trafficking covered by § 1591(b)(2) only include offenses involving victims who are minors between the ages of 14-18, which are covered by an entirely different guideline. U.S.S.G. § 2G1.3 applies to commercial sex acts and other prohibited sexual conduct with minors specifically. According to that guideline, a base offense level of 30 applies if a defendant was convicted under

§ 1591(b)(2). U.S.S.G. § 2G1.3(a)(2).

Finally, the Third Circuit relied on *Sims* in concluding that convictions under § 1594(c) for conspiracy to violate 1591(a) by means of force, threats of force, fraud, or coercion, “always subject a defendant to a base offense level of 34.” (Appendix A at p. 5). However, this interpretation is contrary to the language of the applicable sentencing guideline.

More specifically, § 2G1.1(b)(1) provides that, if “subsection (a)(2) applies”—which is the subsection of the guideline that provides for a base offense level of 14 if the offense of conviction is anything other than § 1591(b)(1)—and “the offense involved fraud or coercion,” a four-level increase applies. This specific offense characteristic makes clear that a defendant can be subject to a base offense level of 14, under § 2G1.1(a)(2), as well as have committed an offense that involve fraud or coercion.

Therefore, the Third Circuit in both *Guity-Nunez*’s case, as well as *United v. Sims*, misinterpreted § 2G1.1. In *Guity-Nunez*’s case, the Third Circuit misinterpreted § 2G1.1 as providing a base offense level of 14 for offenses involving the types of sex trafficking included in § 1591(b)(2). In both *Sims* and *Guity-Nunez*’s case (relying on *Sims*), the Third Circuit misinterpreted § 2G1.1 as providing a base offense level of 34 to every conviction under § 1594(c) for conspiracy to violate § 1591(a) by “force, threats of force, fraud, or coercion.”

2. The Third Circuit’s Misinterpretation of U.S.S.G. § 2G1.1 Led to its Incorrect Application of § 2G1.1.

As previously mentioned, the base offense level for a conspiracy crime is the

same as the base offense level for the substantive offense. § 2X1.1. Offenses involving the promotion of a commercial sex act or prohibited sexual conduct with an individual other than a minor are covered by § 2G1.1. U.S.S.G. § 2G1.1 provides that the base offense level is 34 “if the offense of conviction is 18 U.S.C. § 1591(b)(1),” and 14 “otherwise.” § 2G1.1(a)(1), (2).

Here, Guity-Nunez was convicted of § 1594(c), conspiracy to commit sex trafficking, in violation of § 1591(a), as listed in both his indictment (See generally Appendix D) and plea agreement (See generally Appendix C). Because this offense was charged as involving victim(s) other than minors, § 2G1.1 applies.

The Third Circuit concluded that Guity-Nunez’s argument that the District Court should have applied a base offense level of 14 because he was convicted of § 1594(c) in violation of § 1591(a), as opposed to § 1594(c) in violation of § 1591(b)(1), was “squarely foreclosed” by its decision in *Sims*. (Appendix A at p. 5). More specifically, the Third Circuit stated that *Sims* explained that, even if a defendant convicted under § 1594(c) pleads guilty “only to conspiring to violate § 1591(a),” the base offense level would still be 34 because “[s]ubsections 1591(a) and (b)(1) are inextricably linked.” (Appendix A at p. 5). The Third Circuit relied on *Sims* in concluding that “ ‘convictions under § 1594(c) for conspiracy to violate § 1591(a) by force, threats of force, fraud, or coercion’—like Guity-Nunez’s conviction here— ‘always subject a defendant to a base offense level of 34.’ ” (Appendix A at p. 5).

However, while *United States v. Sims* is binding precedent within the Third Circuit, the conclusion reached by the Third Circuit in Guity-Nunez’s case—that

convictions under § 1594(c) for conspiracy to violate § 1591(a) by force, threats of force, fraud, or coercion always subject a defendant to a base offense level of 34—is not based on the *holding* reached by Third Circuit in *Sims*, but on *dicta*. The Third Circuit in *Sims* does not *hold* that convictions under § 1594(c) for conspiracy to violate § 1591(a) by force, threats of force, fraud, or coercion always subject a defendant to a base offense level of 34, but instead makes such a sweeping assertion in a footnote. The Third Circuit notes that even if *Sims* had pled guilty to conspiring to violate only § 1591(a), § 2G1.1(a)(1) would still apply because “§ 1591(a) and (b)(1) are inextricably linked because (b)(1) is the punishment for violations of (a)(1).” *Sims*, 957 F.3d at 365 n.2.

Even if this was part of the Third Circuit’s holding, it contradicts the language of § 1594(c). More specifically, § 1594(c) contains a punishment specific to defendants who conspire to commit sex trafficking by force, fraud, or coercion, which is “to be fined . . . imprisoned for any term of years or for life, or both.” Notably, this punishment is specific to a conspiracy to violate § 1591, as the preceding statute section states that whoever conspires to violate other enumerated statute sections related to trafficking, peonage, etc., “shall be punished in the same manner as a completed violation of such section.” 18 U.S.C. § 1594(b).

Further, as previously explained, the conclusion that convictions under § 1594(c) for conspiracy to violate § 1591(a) by force, threats of force, fraud, or coercion *always* subject a defendant to a base offense level of 34 is foreclosed by § 2G1.1, which clearly provides a circumstance in which a defendant can be subject to

a base offense level of 14, even when their conduct involves fraud or coercion. *See* § 2G1.1(b)(1) (providing for a four-level increase if a base offense level of 14 applies and the defendant's conduct involves fraud or coercion).

For the aforementioned reasons, there is a significant distinction to be made between a conviction of conspiracy to violate § 1591(a) and a conviction of conspiracy to violate § 1591(b)(1). This Court should find that because Guity-Nunez's offense of conviction is § 1591(a), as opposed to § 1591(b)(1), he should have been subject to a base offense level of 14 instead of 34.

B. The Third Circuit Ignored the 15-Year Mandatory Minimum Sentencing Provision of 18 U.S.C. § 1591.

18 U.S.C. § 1591(b) provides the punishments for an offense under § 1591(a). More specifically, § 1591(b)(1) provides for a 15-year mandatory minimum sentence "if the offense was effected by means of force, threats of force, fraud, or coercion . . . or by any combination of means," or if the alleged victim "had not yet attained the age of 14 years at the time of such offense." § 1591(b)(1).

In holding that Guity-Nunez was subject to the base offense level associated with § 1591(b)(1), the Third Circuit ignored the fact that Guity-Nunez was not subject to the 15-year mandatory minimum sentence provided for in § 1591(b)(1). As evidenced by Guity-Nunez's plea agreement, he is not subject to that mandatory minimum. (*See generally* Appendix C). Even more noteworthy, following sentencing, the district court acknowledged that "no count of conviction carries a mandatory minimum sentence." (Appendix B at p. 8). This is noteworthy because, as previously explained, § 1591(b)(1) carries a mandatory minimum of 15 years, while

§ 1591(a) and § 1594(c) do not.

In *Wei Lin*, the Ninth Circuit held that, “[t]o determine if § 1591(b)(1) is the offense of conviction, courts should simply ask if the defendant was convicted of an offense subject to the punishment provided in [§ 1591(b)(1)]—that is, was the defendant subject to the statute’s [15-year] mandatory minimum sentence[?]” *Wei Lin*, 841 F.3d at 826. However, in *Sims*, the Third Circuit held that the defendant’s reliance on this holding in *Wei Lin* did not alter its opinion, as the defendant in *Sims* was indeed convicted of § 1591(b)(1) and subject to the 15-year mandatory minimum sentence. *Sims*, 957 F.3d at 363-64. Moreover, the Third Circuit went on to state that, even if the defendant in *Sims* was not convicted of § 1591(b)(1) and therefore not subject to the 15-year mandatory minimum, following the opinion in *Wei Lin* would lead to “absurd results.” *Id.* at 364.

The Third Circuit went on to provide an example to demonstrate this “absurdity,” which compared convictions of substantive sex trafficking offenses as well as sex trafficking conspiracies to substantive labor trafficking offenses and labor trafficking conspiracies. More specifically, the Third Circuit explained that it makes sense that a defendant convicted of a substantive sex trafficking offense involving force, fraud, or coercion in the Ninth Circuit would receive a base offense level of 34, while a defendant convicted of a substantive labor trafficking offense would receive a base offense level of 22, as “sex trafficking is an especially pernicious form of labor trafficking.” *Id.* On the other hand, “a defendant convicted of a sex trafficking conspiracy in the Ninth Circuit will receive a base offense level

of just 14 while a defendant convicted of a labor trafficking conspiracy will still receive a base offense level of 22.” *Id.*

However, again, the Third Circuit in *Sims* ignores the distinction between a conviction of conspiracy to violate § 1591(a) and a conviction of conspiracy to violate § 1591(b)(1). A sex trafficking conviction that uses the language “force, fraud, or coercion,” does not automatically equate to a conviction of § 1591(b)(1). As previously mentioned, the plain language of § 2G1.1 forecloses this conclusion, as the Guideline provides for a situation in which a defendant is convicted of an offense of conviction is *other than* § 1591(b)(1), which involves “fraud or coercion,” and subjects the defendant to a base offense level of 14. The reason why the Third Circuit did not apply *Wei Lin* in *Sims* was solely because *Wei Lin* was convicted of conspiracy to violate § 1591(a) only, while *Sims* was convicted of § 1591(a) and § 1591(b)(1). However, despite this significant factual distinction, the Third Circuit went to criticize the opinion in *Wei Lin* and its application in the Ninth Circuit.

If the plain language of § 2G1.1—that a base offense level of 34 applies to conviction of § 1591(b)(1) (and its related conviction of conspiracy to violate § 1591(b)(1)) and a level of 14 applies “otherwise” (including to convictions other than § 1591(b)(1) that involve fraud or coercion—is not clear enough to its reader, the application of a 15-year mandatory minimum sentence to a conviction of § 1591(b)(1) further evidences the distinction between a conviction of conspiracy to violate § 1591(a) and a conviction of conspiracy to violate § 1591(b)(1).

In this case, just as in *Wei Lin*, and unlike *Sims*, Guity-Nunez was convicted

of a conspiracy to commit sex trafficking in violation of § 1591(a). Guity-Nunez was *not* convicted of § 1591(b)(1), nor was he subject to the 15-year mandatory minimum sentence required by § 1591(b)(1). Therefore, while Sims' reliance on *Wei Lin* may have been misplaced, as Sims was indeed convicted of § 1591(b)(1), Guity-Nunez's reliance on *Wei Lin* is not misplaced.

If a defendant, like Guity-Nunez, did not plead guilty to § 1591(b)(1) or a conspiracy to violate § 1591(b)(1), and, therefore, is not subject to the 15-year mandatory minimum sentence in § 1591(b)(1), the defendant should not be subject to the base offense level that applies solely to violations of § 1591(b)(1).

CONCLUSION

For the foregoing reasons, this petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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