No. 21-7569

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MIGUEL ARNOLD - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Miguel Arnold #75651-067
(Your Name)

F.C.I. Hazelton, P.O. Box 5000
(Address)

Bruceton Mills, West Virginia 26525
(City, State, Zip Code)

QUESTION(S) PRESENTED

1.] What is the allowable unit of prosecution for violations of 18 U.S.C. § 1591(a)?

2.] Did the Third Circuit Court of Appeals err by not remanding to the lower court with an order for the District Court to dismiss petitioner's indictment due to the Jury not being instructed to specifically find, if any, what victim the jury believed met the burden?

3.] Because of the complexity of petitioner's case/charge(s), should the lower courts had tasked the jury to find/been given instructions to find petitioner guilty of each individual victim the jury believed met the burden?

4.] Due to the allowable unit of prosecution not being established, nor firmly understood by any of the lower courts in regards to 18 U.S.C. § 1591(a), and being that this Honorable Court had/has not yet defined or established such, should the "Rule of Lenity" be/have been applied to petitioner as this Honorable Court has explained/established in similar case(s)/situation(s)?

LIST OF PARTIES

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

RELATED CASES

- State v. Miguel Arnold, State of New Jersey. Docket No.: 16-08-00124-S. Currently awaiting trial.
- Commonwealth v. Miguel Arnold, Commonwealth of Pennsylvania. Docket No.: CR-7099-2016.
- United States v. Miguel Scott Arnold, No. 20-2887, U.S. Court of Appeals for the Third Circuit. Judgment entered July 29, 2021.
- United States v. Miguel Scott Arnold, No. 20-2887, U.S. Court of Appeals for the Third Circuit. (Motion for Rehearing and Rehearing En Banc) Judgment entered November 3, 2021.

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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

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

The opinion of the United States Court of Appeals at Appendix A to the petition and is

[x] reported at 2021 U.S. App. LEXIS 22495 (3d Cir. 2021).

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was July 29, 2021.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 3, 2021, and a copy of the order denying rehearing appears at Appendix C.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

From the outset, Miguel Arnold, hereinafter referred to as petitioner, reminds this Honorable Court that he is proceeding pro se and prays this Honorable Court apply liberal construction to the instant filing as afforded all pro se litigants/imates. (Haines v. Kerner, 404 U.S. 519 (1972)).

Petitioner was charged on January 4, 2017 with the following charges: Count One: Criminal Conspiracy-Sex Trafficking By Force, Fraud, And Coercion (18 U.S.C. § 1594(c); Count Two: Sex Trafficking By Force, Fraud, And Coercion (18 U.S.C. § 1591(a), (b)(1); Count Four: Criminal Conspiracy-Possession with intent to Distribute Heroin and Marijuana (21 U.S.C. § 846); Count Five: Possession with iNtent to Distribute Heroin (21 U.S.C. § 841(a)(1); and Count Six: Possession with Intent to Distribute Marijuana (21 U.S.C. § 841(a)(1).

Following a jury trial that lasted from June 17, 2019 until June 21, 20019. On June 21, 2019, the jury returned a verdict of guilty against petitioner on counts 1, 2, 4 and 5 of the indictment. The jury acquitted petitioner of count 6.

On July 5, 2019, petitioner filed a Motion for Judgment of Acquittal and for a new trial pursuant to Federal Rules of Criminal Procedure 29 and 33 and filed a brief in support on July 19, 2019. The Government responded on August 2, 2019. Petitioner filed his reply on August 16, 2019. On September 17, 2019, petitioner requested leave to file an additional responsive brief in support of his motion for acquittal and new trial. This request and the motion were denied by the Trial Court on September 19, 2019.

On September 3, 2020, the Trial Court sentenced petitioner to three hundred (300) months for counts one and two, and ten months on each of counts four and five to served concurrently in the custody of the Bureau of Prisons. As stated herein above, petitioner's trial lasted five days. During the

government's case in chief, the jury heard from multiple witnesses who can be characterized as codefendants, prostitutes adn law enforcement officers. According to the Government, in their opening, they promised to demonstrate the existence of a single conspiracy with petitioner as the ringleader. Petitioner elicited evidence that a single conspiracy did not exist, rather each codefendant "pimp" had their own conspiracy fueled by their individual desire for financial success. The jury heard evidence of each codefendant's prostitutes, the differences in their operations, and the lack of a common source of money from which each codefendant could pull.

The government established petitioner's involvement in the instant case began in the fall of 2014 when he met Bynoe in New York City. Bynoe testified he learned of petitioner's prostitution of women, and that petitioner asked Bynoe if he knew any women interested in prostitution. Bynoe introduced him to a woman known as the "Spanish Female." Shortly after, petitioner began working with this woman in Pennsylvania. Petitioner contacted Bynoe later, asking if he knew of another woman who could work for him. Bynoe gave him a contact and petitiioner paid Bynoe $500. Someime after, Bynoe relocated to Pennsylvania where he lived in his ex-girlfriend's car and at petitioner's house. Bynoe subsequently set up his own prostitution enterprise.

The jury learned how the codefendants would operate their own businesses. By and large, the "dates" would fall into two categories: in-calls and out-calls. For an in-call, the customer would arrive at a hotel room where he would meet the prostitute. For out-calls, the prostitute would be driven to the client. Each codefendant would have their own hotel rooms for their respective prostitutes. The jury learned the codefendants would employ drivers for transportation when an out-call was requested. While drivers worked for multiple pimps, each codefendant would pay for the driver out of

their own pocket and would not share their driver with another codefendant without compensation. Codefendants would also offer a '2 for 1' date where one codefendant's prostitute would join another codefendant's prostitute and work a date together. At the end, each codefendant was paid their share of the profits.

In addition, each codefendant employed operating structures. Prospective prostitutes were given the choice to be paid '50/50 or to go 'all in.' If a woman would choose to go 50/50, she would be required to pay the pimp half of the amount she would earn while on a 'date', while being responsible for some costs. If she chose to be 'all in,' the prostitute needed to give the pimp all the money she would earn; however, she would not need to pay for anything herself. Each pimp paid from their own independent sources of income. Additionally, the jury learned how petitioner would pay his prostitutes wiht heroin, a tactic Bynoe never used. Lastly, the jury learned of security features implemented by Bynoe, particularly what he referred to as a 'screening process', to hopefully catch undercover police officers. Petitioner did not implement such security in his enterprise, which Bynoe classified as "sloppy."

Lastly, each codefendant employed different women while furthering their own enterprise. The jury learned each woman was expected to operate for their pimp and their pimp alone, unless she was sold to another codefendant. This rule went as far as telling the women they could not look at another pimp. Additionally, no evidence introduced at trial showed the prostitution of a minor by petitioner.

Towards the end of their respective operations, Bynoe moved back to New York City . Petitioner continued to operate out of Pennsylvania during Bynoe's time in New Jory City. After spending his month in New York City, Bynoe returned to the Middle District of Pennsylvania and continued to operate.

Around this time, Ms. James refused to work for Bynoe, which led to petitioner offering her employment in his enterprise. Bynoe agreed and offered to sell her to petitioner for five hundred dollars ($500.00), which Bynoe would have been paid but for his arrest. After Bynoe's arrest, Appellant continued his own enterprise.

On January 4, 2021, petitioner filed his Direct Appeal with the Third Circuit Court of Appeals. On appeal, petitioner raised three (3) issues for the Third Circuit to consider. Petitioner challenged the sufficiency os the evidence surrounding his conviction of Conspiracy to Commit Sex Trafficking, the plain error of the indictment's duplicity, and the Trial Court's constructive amendment of his indictment. Petitioner asked the Third Circuit to reverse his conviction, remand for a new trial, and vacate his sentence on counts one and two.

Petitioner, in his Direct Appeal, contended that based on the evidence submitted at trial, the Government failed to establish the existence of only one conspiracy between all codefendants. Contrary to the indicted conduct, evidence established there existed multiple conspiracies, one of which was petitioner's own business. Each pimp had their own different business models and own girls who they did not collectively share. These pimps' interactions were not in furtherance of a unified goal; rather, they were to further their own personal goals of financial success. Since there was no single, overarching conspiracy, much less one with petitioner the leader like alleged by the Government. Petitioner asked for a new trial on the merits of his case.

Additionally, petitioner argued in his Direct Appeal that he had suffered a material error in the indictment that affected his substantial rights under the Fifth and Sixth Amendments. In the charging document, the United States Alleged petitioner committed sex trafficking of "multiple victims" by force,

fraud, or coercion. Nowhere in the jury verdict sheet did it delineate which victims the jury agreed were sex trafficked. Petitioner respectively argued there was no way to show the jury ever came to a unanimous decision regarding his guilt. Because the risk of duplicity may "conceal specific charges, prevent the jury from deciding guilt or innocence with respect to the particular offense, exploit the risk of prejudicial evidentiary rulings, or endanger fair sentencing" and prejudice petitioner's substantil rights, according to petitioner, Count Two should have been dismissed. As authority, petitioner cited United States v. Rigas, 605 F. 3d 194, 210 (3d Cir. 2020).

Lastly, in his Direct Appeal, petitioner argued that the Trial Court had constructively amended the indictment when it allowed evidence of underage prostitutes in petitioner's trial. In the indictment, petitioner was charged with violating 18 U.S.c. § 1591(a), (b)(1). Nowhere in the indictment was petitioner put on notice that any evidence would be admitted at trial regarding another pimp's use of underage women. Appellant suffered from plain error that affected his substantial rights under the Fifth Amendment when the Government elicited multiple instances of another pimp's use of underage females at petitioner's trial. Given that the Grand Jury had the ability to indict petitioner on count three, Sex Trafficking of a Minor (18 U.S.C. § 1591(a), (b)(2)) and chose not to, petitioner suffered plain error that prejudiced his substantial right under the Fifth Amendment Grand Jury Clause.

Petitioner's case was submitted to a Panel of the Third Circuit Court of Appeals on July 7, 2021. On July 29, 2021, the Court of Appeals for the Third Circuit issued its decision denying petitioner's appeal and affirming the judgment of the District Court.

On October 8, 2021, petitioner filed a pro se Petition for a Rehearing and a Rehearing En Banc. In said motion, petitioner presented a question to the

Court of Appeals for the Third Circuit and asked "Whether and when factors such as closing arguments, verdict forms and indictment copies in deliberations can contribute to or prevent constructive amendments, and idd these factors play a role in petitioner's trial that may have led to a constructive amendment?" Petitioner also presented four issues for the Court's consideration: (1) The Court failed to address how Count Three victims were involved with the offenses that petitioner was charged and convicted of; (2) The Court misunderstood the charging difference of sex trafficking by force, fraud and coercion involving victims that are adults and minors; (3) The Court failed to explain how the evidence of age involving uncharged minors was relevant to the facts to take into consideration to show the victims of the offense susceptibility to force, fraud, or coercion; and (4) The Court overlooked the fact that the District Court, along with its co-conspirator liability instructions neither specified which victims of which crime was and was not the subject to the offenses charged in Count One and Two. Petitioner supported his Petition for Rehearing and Rehearing En Banc with relevant case law, Circuit precedent and Rules.

On November 3, 2021, the Third Circuit Court of Appeals denied Petitioner's motion/petition for rehearing and rehearing en banc.

REASONS FOR GRANTING THE PETITION

This Honorable Court should grant petitioner's petition for the compelling reason(s) petitioner herein and herenow raises. Namely, to decide what the "Unit of Prosecution" is for violations of Section 1591 (the "Allowable") unit of prosecution. Because there is no clear explanation, or caselaw establishing what the allowable unit of prosecution is for violations of Section 1591, the federal courts tasked with this issue have reached contrary and conflicting decisions in their "explanations" and rulings regarding the "allowable unit of prosecution" for violations of Section 1591. For example, in Madkins v. United States, 2014 U.S. Dist. LEXIS 125103 (M.D. Fl. September 8, 2014), Madkins was indicted for violating two separate counts of 18 U.S.C. § 1591, to one for each of his two victims. Madkins argued that his indictment was multiplicitous because he had been charged with two separate counts of violating § 1591 for each of his two victims. However, the court in Madkins ruled contrary to this argument, stating, in relevant part that "Indictment for a criminal act perpetrated against more than one victim is not multiplicitous where, as here, the government must provide - and did provide - evidence separately establishing violations of 18 U.S.C. § 1591 as to each victim. See United States v. Jones, 2007 U.S. Dist. LEXIS 51858, 2007 WL 2301420 at *9-10 (N.D. Ga. July 18, 2007)." In its ruling/opinion, the Madkins court went on to state that "Here, Madkins's conduct underlying Counts One and Two, such as prostituting A.L. and M.M. to different clients...involved acts directed toward two different victims at different time frames," Madkins, supra. The court's reasoning in the Madkins decision is reliant upon the decision in United States v. Jones, 2001 U.S. Dist. LEXIS 51858, 2007 WL 2301420 at *9-10 (N.D. Ga. July 18, 2007) which stated, in relevant part again, that "To determine whether an indictment is mulitplicitous, the Court first determines the 'allowable unit of prosecution,'

United States v. Smith, 231 f.3d 800, 815 (11th Cir. 2000). The Court starts by deciding if the proper unit of prosecution can be determined from the language of the statute...the unit of prosecution test looks at congressional intent and asks '[w]hat Congress has made the allowable unit of prosecution under a statute which does not explicitly give the answer,' Bell v. United States, 349 U.S. 81, 81, 75 S. Ct. 620, 99 L. Ed. 905 (1955). In Bell, the defendant pleaded guilty to two counts charging a violation of the Mann Act, which makes it unlawful to 'knowingly transport[] any individual in interstate...commerce...with the intent that such individual engage in prostitution....' 18 U.S.C. § 2421. Each count against Bell named a woman transported across state lines by the defendant. They were transported at the same time in the same vehicle. He was sentenced to consecutive terms of incarceration. The Supreme Court held that a defendant's simultaneous transportation of two women across state lines for prostitution subjected him to just one punishment for violating the Mann Act. First, the Court held that the constitutional basis for federal jurisdiction under the statute was the interstate transportation, and there was only a single interstate trip. Id. at 83. Second, it held that Congress's use of the word 'any' was ambiguous, and therefore the rule of lenity required that the statute be construed in favor of the defense. Id. at 84. The statute alleged to violated in counts 1 through 6, 18 U.S.C. § 1591, criminalizes the recruiting, enticing, harboring, transportation, providing, or obtaining by means of **a person**, through force, fraud or coercion, to engage in a commercial sex act, or venefitting, financially or by receiving anything of value, from participation in a venture which does so. 18 U.S.C. § 1591(a). What is the allowable unit of prosecution is a matter within the discretion of Congress, subject only to constitutional limitations. Bell, 349 U.S. at 82. Unlike Bell, there is nothing ambiguous about the term '**a person**'; it does not imply the plural. Therefore,

Congress's use of the term **'a person'** is a clear indication that it intended that the recruiting of each person through force, fraud or coercion to engage in a commercial sex act was to be a separate crime, separately punishable. Thus, it is clear that the first six counts of the superseding indictment, charging a violation of § 1591(a)(1), are not multiplicitous...the Court finds that the counts are not multiplicitous, because courts also determine the unit of prosecution by reference to the conduct alleged, applying the following rule: 'Whether a transaction results in the commission of one or more offenses is determined by whether separate and distinct acts made punishable by law have benn committed,' Williams v. United States, 385 F.2d 46, 47 (5th Cir. 1967)(theft of mail matter from mail bag is one offense); United States v. Guzman, 781 F.2d 428, 432 (5th Cir. 1986)(interpreting 18 U.S.C. § 1001, and holding that each false statement is subject to prosecution). The principle underlying this rule is that the 'unit of prosecution' for a crime is the actus reus, the physical conduct of the defendant. United States v. Prestenbach, 230 F.3d 780, 783 (5th Cir. 2000). The first six counts of the indictment allege different victims and different time frames...Accordingly, each count describes separate and distinct acts against separate and distinct victims. Whether the unit of prosecution is the individual coerced, etc., into performing the commercial sex act, or participation in a venture which engaged in commercial sex acts, the superseding indictment alleges distinct victims in distinct, albeit partially overlapping, time frames. That is sufficient to demonstrate separate criminal acts for multiplicity purposes...Jones's next contention is that Counts 1 through 6 are duplicitous, because the indictment alleges as to each of these counts that sex trafficking acts were committed through 'force, fraud and coercion' and that he 'recruit[ed], entice[d], harbor[ed], transport[ed], provide[d] and obtain[ed]' the victims to engage in commercial sex acts. Thus, he argues, he is being

charged with multiple crimes in one count. A count in an indictment is duplicitous if it charges in a single count two or more 'separate and distinct' offenses. United States v. Schlei, 122 F.3d 944, 977 (11th Cir. 1997)...Binding case law defeats Jones's argument. Where a penal statute, such as § 1591, prescribes several alternative ways in which the statute may be violated and each is subject to the same punishment, 'the indictment may charge any or all of the acts conjunctively, in a single count, as constituting the same offense, and the government may satisfy its burden by proving that the defendant, by committing any one of the acts alleged, violated the statute.' Burton, 871 F.2d at 1573...Accordingly, Counts 1 through 6 are not duplicitous."

Petitioner points out the fact that, in regards to Madkins and Jones, supra, cited herein above, he agrees with the Courts' reasonings in both rulings and opinions. In fact, this is/was his argument on appeal as well, that the allowable unit of prosecution required the government to charge him with multiple counts of violating § 1591(a), (b)(1) for each individual victim and it was not permitted/allowable to charge, convict nor sentence petitioner for multiple victims under one count of § 1591(a), (b)(1). Unfortunately petitioner did not raise this objection in the lower court and therefore, the Court of Appeals was only permitted to view petitioner's issue in this regards under the "Plain Error Doctrine." This Court is no doubt aware of the requirements under Plain Error and the Third Circuit quoted said requirements in its denial. The Third Circuit stated in its denial of petitioner's Direct Appeal regarding this issue that "He did not raise this issue before the District Court; we therefore review for plain error, which requires that: (1) there was an error, (2) it was plain, (3) it affected substantial rights, and (4) not correcting it would 'seriously affect[] the fairness, integrity or public repuation of judicial proceedings," United States v. Olano, 507 U.S. 725, 732 (1993)

(internal quotation marks and citations omitted). An error is plain if it is 'obvious' or 'clear under current law.' United States v. Vazquez, 271 F.3d 93, 100 (3d Cir. 2001)(en banc)(quoting Olano, 507 U.S. at 734)." The Third Circuit, in its denial of petitioner's Direct Appeal went on to opine, "Assuming without deciding that there was an error on this issue, it was not plain. In analyzing allegedly duplicitous indictments, we must determine the appropriate 'unit of prosecution,' United States v. Root, 585 F.3d 145, 150 (3d Cir. 2009), meaning, in this case, whether the charges must be separated out by victim or whether it is permissible to combine multiple victims in one count. Neither we nor the Supreme Court have addressed the allowable unit of prosecution under 18 U.S.C. § 1591(a), the statute at issue here. 'It is generally true that lack of precedent alone will not prevent us from finding plain error.' United States v. Jabateh, 974 F.3d 281, 299 (3d Cir. 2020)(internal quotation marks and citations omitted). However, 'for relief under the stringent Olano standard, novel questions...must be capable of measurement against some other absolutely clear legal norm.' Id. (internal quotation marks, citation, and brackets omitted). There was no 'absolutely clear legal norm' on this issue. We therefore reject Arnold's second argument."

Petitioner avers for this Honorable Court that this Opinion by the Third Circuit in denying/rejecting this argument in his Direct Appeal, is akin to the ruling in United States v. Lowe, 837 Fed. Appx. 462; 2020 U.S. App. LEXIS 38048 (9th Cir. 2020) and contrary to the holdings in the Madkins and Jones cases cited herein above. This dilemma also serves to deny petitioner the ability to have his issue heard under the "Plain Error Doctrine" which saves defendants from forfeiting issues that weren't raised in the lower courts as long as those errors that weren't objected to in the lower courts prove to be plain and meet the other requirements under the Plain Error Doctrine. Obviously

the Third Circuit's opinion in its denial of petitioner's Direct Appeal, as well as the Ninth Circuit's decision in the Lowe, supra, decision cited herein above did not agree with, or failed to consider the rulings in the Madkins and Jones courts as both those decisions clearly establish and define what the "Unit of Prosecution" is for violations of § 1591(a). Lowe, as well as the Third Circuit's denial of petitioner's Direct Appeal both stated that "Neither the Supreme Court nor the Ninth Circuit has defined the allowable unit of prosecution for violations of...Section 1591...In the absence of any caselaw defining the allowable unit of prosecution for these statutory provisions, any possible error could not have been plain," Lowe, supra. And the Third Circuit said the same when it denied petitioner's Direct Appeal as petitioner quoted herein above.

Based on the fact that there are clearly differences, confusion, misunderstandings and, simply put, no understanding of what the Allowable Unit Of Prosecution is for violations of § 1591(a), it is needed and necessary for this Honorable Court to intervene and explain same for the Lower Courts to have clear guidance in regards to violations of § 1591(a)'s allowable unit of prosecution. Otherwise, there will continue to be confusion, incorrect interpretations and unfairness/ inequality in the way § 1591(a) is charged, what prosecutors must prove and show to secure indictment under the statute, as well as conviction and ultimately how courts should sentence those charged with violations of § 1591(a). This question is an important matter and important question of federal law regarding a relatively young statute that is being applied more frequently in the criminal justice system. "As Supreme Court Rule 10 emphasizes, the court will entertain only 'important matters' or "important questions of federal law,' Sup. Ct. R. 10(a), (c); see, e.g., Aldinger v. Howard, 427 U.S. 1, 3, 49 L. Ed. 2d 276, 96 S. Ct. 2413, 2415, 49 L. Ed. 2d 276 (1976)(noting that certiorari was granted 'to resolve the conflict on this important question'); Jaffee v. Redmond, 518

U.S. 1, 7-8, 135 L. Ed. 2d 337, 116 S. Ct. 1923 (1996)(noting that certiorari was granted 'because of...the importance of the question')," U.S. Court of Appeals for the Eleventh Circuit, cited at 362 F.3d 739 and decided in 2004.

Petitioner, becauseeneither the Third Circuit,nnor the United States Supreme Court has established what the allowable unit of prosecution is/was for violations of § 1591(a), petitioner was forced to look to analogous cases and other Circuits for guidance. That being the case, petitioner had citeddfrom the Eighth Circuit's decision in United States v. Jungers, 702 F.3d 1066, 1071 (8th Cir. 2013) in where the Eighth Circuit held, "while § 1591 undoubtedly targets such organizations [sex trafficking rings], the language in § 1591 indicates Congress also targeted individual acts of trafficking."

Additionally, petitioner cited United States v. Pereyra-Gabino, 563 F.3d 322, 323 (8th Cir. 2009) which provides an analogous set of facts that help shape the analysis. Pereyra-Gabino was convicted of concealing or shielding illegal aliens from detection in violation of 8 U.S.C. § 1324(a)(1)(A)(iii). Pereyra-Gabino was indicted with concealing aliens when the applicable statute sets the unit of prosecution as "an alien." At trial, Pereyra-Gabino moved to dismiss the indictment as duplicitous due to the fact he was indicted as condealing multiple aliens, in addition to other arguments. Pereyra-Gabino, 563 F.3d at 324. The district ocourt denied his motion and proceeded to trial. During the jury instructions, the district court defined the elements of the crime as:

> First, that "[o]ne or more of the following individuals was an alien in the United States in violation of the law." Second, that Pereyra-Gabino "knew or was in reckless disregard of the fact that one or more of the individuals identified in numbered paragraph one above were in the United States in violation of the law." Third, that Pereyra-Gabino "Knowingly shielded from detection or concealed or attempted to shield from detection or conceal one or more of the individuals ide identified in numbered paragraph one above.

Id. at 328.

On appeal, Pereyra-Gabino reraised his duplicity argument, arguing that the inclusion of multiple aliens rendered the indictment duplicitous. The Eighth Circuit held that "these instructions did not require the jury to find that **each** individual Pereyra-Gabino 'knowingly shielded from detection... was in the United States in violation of law'...[and]...Pereyra-Gabino knew or was in reckless disregard of that fact." Id. The court furthered their analysis by stating,

> the instructions permitted the jury to mix and match "the individuals identified" to the elements of the crime charged. While in some circumstances a general unanimity instruction can cure a deficiency in the body of the instruction...neither the unanimity instruction nor the verdict form suffice here.

Id. Subsequently, the court reversed the conviction and remanded to the district court for further proceedings after finding the evidence was not overwhelming to support the conviction. Id. at 329.

As petitioner stated in his Direct Appeal, and presents the issue herein for this Honorable Court to decide, petitioner suffered the same error as Pereyra-Gabino. This issue, petitioner here and now avers, is intertwined with and relative to his issue/question presented regarding the allowable unit of prosecution for § 1591(a). During jury instructions, petitioner's trial judge referred to "victim," "victims," and "a person." With no guidance as to which specific victim met the government's burden, the District Court allowed the jury to mix and match which victim the jury believed met the burden. As established through the plain reading of the statute as well as Jones and Jungers, 18 U.S.C. § 1591(a)(1) defines the unit of prosecution as "a person." Throughout the record, there is no certain way to confirm that Juror #1 agreed with Juror #9 about which victim truly fell under petitioner's alleged force, fraud and coercion. No doubt, if the allowable unit of prosecution for § 1591(a) were explained, established and defined by this Honorable Court,

then these types of errors, confusion and conflicts among the courts would not occur. Further demonstrating the importance of this federal question(s) and need for this Honorable Court to clarify.

Petitioner also argued in his Direct Appeal that the Third Circuit has held previously that, in some cases, the general unanimity instruction is insufficient when the complexity of the charge and facts create the potential to confuse the jury. In United States v. Beros, 838 F.2d 455, 461 (3d Cir. 1987) the Third Circuit held, "when it appears...that there is a genuine possibility of jury confusion or that a conviction may occur as the result of different jurors concluding tha tth edefendant committed different acts, the general unanimity instruction does not suffice." In the Third Circuit, the "right to a unanimous verdict 'includes the right to have the jury instructed that in order to convict, it must reach unanimous agreement on each element of the offense,'" United States v. Smukler, 986 F.3d 229, 248 (3d Cir. 2021) (quoting United States v. Gonzalez, 905 F.3d 165, 183 [3d Cir. 2018][internal citations omitted]). Petitioner's case meets the requirements recited in the Beros, Smukler and Gonzalez decisions for the very reasons the Third Circuit reached those decisions. This fact is clear from the record in petitioner's specific case and set of facts.

The complexity of petitioner's case required, at a minimum, a specific instruction about which victim applied, which led to inevitable confusion about what the jury truly decided unanimously. Smukler, Beros, and Root all warned of the issue with duplicity, where jurors can arrive at the decision of guilty without being unanimous as to which victim they had in mind. Such a violation, especially considering the language of the statute and the lack of precedent, equal an error that is plain and obvious. The confusion petitioner complains of herein and that Smukler, Beros, and Root all warned against

and were decided to prevent, would not occur if the allowable unit of prosecution was established and, if the reasoning expressed in Jones, supra and Madkins were followed and a violation of § 1591(a) was charged for each individual victim in an indictment as the statute clearly requires when it specifies "a person."

Petitioner prayed the Third Circuit find the District Court's error plain, even though it was a case of first impression. And petitioner relied on Third Circuit precedent in his prayer by citing United States v. Tann, 577 F.3d 533, 537 (3d Cir. 2009)(finding the district court erred plainly when applying the incorrect unit of prosecution on a case of first impression. As petitioner stated herein above, the Third Circuit refused to follow its precedent in this regards and petitioner lost the benefit/protection of having a non objected to issue reviewed on Direct Appeal under the plain error doctrine. Further, given the ambiguity and lack of guidance to the jury regarding the victims, the District Court had erred in allowing this indictment to continue throughout the trial. As petitioner raised in his Direct Appeal to the Third Circuit, under Olano, petitioner needed to demonstrate that there was a clear and obvious error, and that the error affected a substantial right. In United States v. Steiner, the Third Circuit held,

> ...that the alleged harm to a defendant's substantive rights resulting from a duplicitous indictment can be raised at trial or on appeal, notwithstanding the defendant's failure to make a pretrial motion. "The rationale for this distinction is that, whereas Rule 12 applies only to defects in the institution of criminal proceedings..., a verdict rendered by a less-than-unanimous jury violates a defendant's Sixth Amendment rights by a harm that arises from the trial itself.

847 F.3d 103, 115 (3d Cir. 2017). Petitioner argued to the Third Circuit Court of Appeals that the indictment had violated his Sixth Amendment right to know of the charges against him by providing an impermissibly duplicitous indictment

that does not follow Congress's intent. Obviously petitioner was/is referring to his being charged with one violation of § 1591(a) with multiple victims. Additionally, petitioner had argued to the Third Circuit that the Supreme Court held that a Fifth Amendment Due Process violation would also qualify in lieu of a Sixth Amendment right to a unanimous verdict. See Schad v. Arizona, 501 U.S. 624, 634 n.5 (1991). Clearly, based on its decision, the Third Circuit Court of Appeals did not follow or agree with this Honorable Court's ruling and law regarding the issue presented, nor did it follow the law of this Honorable Court nor its own precedent.

Petitioner, in his Direct Appeal, appealed to the Third Circuit Court of Appeals to apply the Rule of Lenity as explained by this Honorable Court in its Opinion in Bell v. United States, 349 U.S. 81 (1955). Specifically, petitioner prayed, in his Direct Appeal, that even if the Third Circuit agreed that the indictment was valid, that the Circuit Court dismiss the indictment under the Rule of Lenity. As this Honorable Court is no doubt aware, in the Bell decision, the Supreme Court grappled with the issue on what the allowable unit of prosecution was for violation under 18 U.S.C. § 2421. In Bell, the defendant was charged with two counts of transporting any women or girl for the purpose of prostitution or eebauchery, which he pled guilty to. Bell was charged with transporting two women in violation of 18 U.S.C. § 2421 when he only made one trip with both women in the car. Id. at 82. The Supreme Court concluded Congress's intent under this statute as to the unit of prosecution was ambiguous, finding, "when Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity..." Id. at 83. The Supreme Court subsequently reversed Bell's conviction.

As petitioner stated in his Direct Appeal, and this Honorable Court is

aware and the Third Circuit has stated as well, Congress's intent is not clear in regards to what the allowable unit of prosecution is for violating § 1591(a). Since there is no guidance from Congress, nor this Honorable Court and considerin this indisputable fact as well as the constitutional magnitude of depriving petitoner and similarly situated defendants of their Fifth And Sixth Amendment rights if their convictions are upheld, petitioner prays and asks this Honorable Court to implement the Rule of Lenity as it did in Bell and established as a precedent in situations like petitioner's, and dismiss petitioner's indictment.

Based on the foregoing in its entirety, petitioner is seeking this Honorable Court's granting of Certiorari, establish and clarify what the allowable unit of prosecution is for violating § 1591(a). Also, petitioner prays this Honorable Court apply the Rule of Lenity to petitioner's specific set of facts and dismiss the indictment and petitioner's conviction under Counts 1 and 2. Finally, petitioner prays this Honorable Court order the Third Circuit Court of Appeals follow its own precedent and the law of this Honorable Court.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Miguel Arnold

Miguel Arnold

Date: March 11, 2022

APPENDIX A