

IN THE SUPREME COURT OF THE UNITED STATES

THOUCHARIN RUTTANAMONGKONGUL, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to enable a rational jury to find that petitioner knowingly participated in a conspiracy to commit sex trafficking by force, threats of force, fraud, or coercion, in violation of 18 U.S.C. 1594.

2. Whether the district court correctly applied the Sentencing Guidelines to determine that petitioner's base offense level was 34 under Sentencing Guidelines §§ 2X1.1(a) and 2G1.1.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Minn.):

United States v. Ruttanamongkongul, 17-cr-107 (Oct. 15, 2019)

United States v. Ruttanamongkongul, 17-cr-107 (Mar. 22, 2022)

United States Court of Appeals (8th Cir.):

United States v. Unpradit, 19-3313 (May 20, 2022)

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No. 22-5576

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 5-27) is reported at 35 F.4th 615.¹

JURISDICTION

The judgment of the court of appeals was entered on May 20, 2022. The petition for a writ of certiorari was filed on August 3, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

¹ Petitioner filed two appendices. The page numbers refer to the document that has 46 pages.

STATEMENT

Following a jury trial in the United States District Court for the District of Minnesota, petitioner was convicted on one count of conspiring to commit sex trafficking, in violation of 18 U.S.C. 1594(c); one count of conspiring to transport another person in interstate and foreign commerce to engage in prostitution, in violation of 18 U.S.C. 371 and 2421; one count of conspiring to engage in money laundering, in violation of 18 U.S.C. 1956(h); and one count of conspiring to use a communication facility to promote prostitution, in violation of 18 U.S.C. 371 and 1952. Judgment 1; Third Superseding Indictment 6-22. The district court sentenced petitioner to 142 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 7-27.

1. Petitioner was part of a conspiracy to traffic women from Thailand to the United States to "engage in sex work." Pet. App. 7. Traffickers in Thailand arranged visas and transportation to the United States for the victims. Ibid. The victims then owed a "bondage debt," typically between \$40,000-\$60,000, which they paid off by having sex with "up to ten men per day, often seven days a week" in exchange for money. Id. at 7-8. The victims performed commercial sex acts in "houses," which were controlled by "[h]ouse [b]osses," who "maintained the houses, advertised services, and scheduled clients." Id. at 8. The victims gave approximately one-third of the payments from clients to their house

boss and the other two-thirds to whomever held their bondage debt. Ibid. To prevent women from escaping, members of the conspiracy held victims' passports, and would also sometimes threaten to report them to immigration authorities or to harm their families. Ibid.; Presentence Report (PSR) ¶ 58.

Petitioner joined the conspiracy as a "facilitator," meaning she scheduled sex acts and posted advertisements. PSR ¶ 70. She later became a house boss in Chicago and Washington, D.C. Pet. App. 9; PSR ¶ 70. Several women in petitioner's houses were trafficked and held under a bondage debt to other members of the conspiracy, and petitioner "worked closely and was friends with" some of the debt holders. D. Ct. Doc. 1050, at 5 (Feb. 20, 2019).

2. A grand jury in the District of Minnesota returned an indictment charging petitioner with one count of conspiring to commit sex trafficking, in violation of 18 U.S.C. 1594(c); one count of conspiring to transport another person in interstate and foreign commerce to engage in prostitution, in violation of 18 U.S.C. 371 and 2421; one count of conspiring to engage in money laundering, in violation of 18 U.S.C. 1956(h); and one count of conspiring to use a communication facility to promote prostitution, in violation of 18 U.S.C. 371 and 1952. Third Superseding Indictment 6-22.

A jury found petitioner guilty. Trial Tr. 4199. Petitioner filed a motion for a judgment of acquittal, arguing that the evidence was insufficient to support the jury's finding that she

agreed to commit sex trafficking by force, threats of force, fraud, or coercion, in violation of 18 U.S.C. 1594(c). D. Ct. Doc. 1008 (Dec. 26, 2018). The district court denied the motion. D. Ct. Doc. 1050, at 7.

At sentencing, the district court determined, over petitioner's objection, that petitioner's base offense level for conspiring to commit sex trafficking in violation of 18 U.S.C. 1594(c) was 34. Sentencing Tr. 32-34. The court further determined that petitioner's adjusted base offense level was 41 and her resulting advisory guidelines range was 324 to 405 months. Id. at 34-35. The court imposed a below-Guidelines sentence of 142 months of imprisonment for the Section 1594(c) count, to be served concurrently with her sentences of 60, 60, and 142 months for her other conspiracy convictions, and to be followed by five years of supervised release. Id. at 61; Judgment 2.

3. The court of appeals affirmed. Pet. App. 7-27. The court rejected petitioner's challenge to the sufficiency of the evidence supporting her conviction for conspiring to commit sex trafficking, explaining that viewed "in the light most favorable to the verdict," the evidence showed that petitioner knowingly "agreed to participate in a scheme to use force, threats of force, fraud, or coercion to cause women to engage in commercial sex." Id. at 13; see id. at 13-14. The court observed, for example, that the government had presented testimony establishing that petitioner was a house boss; that women under bondage debt worked

at her "houses"; and that petitioner "had knowledge of [the] overseas trafficking." Id. at 14. The court also pointed to record evidence establishing that, among other things, petitioner had "posted advertisements on the website Backpage offering liaisons with women in her houses" and had "funneled cash through a man who paid the rent" for the apartments where the sex work took place "with cashier's checks in order to avoid connecting [herself] to the apartments or to large amounts of cash." Ibid.

The court of appeals separately determined that its precedent foreclosed petitioner's contention that the sentencing court had misapplied the Sentencing Guidelines in calculating the base offense level for her conviction for conspiring to engage in sex trafficking in violation of 18 U.S.C. 1594(c). Pet. App. 19 (citing United States v. Carter, 960 F.3d 1007 (8th Cir.), cert. denied, 141 S. Ct. 835 (2020)).

ARGUMENT

Petitioner renews her contention (Pet. 10-16) that insufficient evidence supported her conviction for conspiring to engage in sex trafficking in violation of 18 U.S.C. 1594(c). The court of appeals correctly rejected that factbound contention; its decision does not conflict with the decisions of this Court or the courts of appeals; and certiorari is therefore unwarranted. Petitioner also renews her contention (Pet. 17-27) that the district court misapplied the Sentencing Guidelines when it determined that the base offense level for her Section 1594(c)

conviction was 34. The court of appeals' decision is correct and does not implicate any circuit conflict that warrants this Court's intervention. This Court has repeatedly denied petitions raising a similar issue, and the same result is appropriate here.

1. Petitioner first contests (Pet. 10-16) the factual sufficiency of the evidence that supports her conviction under 18 U.S.C. 1594(c), which prohibits "conspir[ing] with another to violate" the statutory prohibitions on sex trafficking found in Section 1591. Ibid. That contention is incorrect, and it does not conflict with any other decisions or otherwise warrant this Court's review.

The court of appeals correctly affirmed the district court's determination that the evidence was sufficient to allow a reasonable juror to find that petitioner knowingly "agreed to participate in a scheme to use force, fraud, or coercion to cause women to engage in commercial sex," in violation of 18 U.S.C. 1594(c). Pet. App. 13; see D. Ct. Doc. 1050, at 2-7. The government presented testimony establishing that petitioner was a house boss; that women under bondage debt worked in petitioner's houses; that petitioner worked closely with at least one person who owned victims' bondage debt; and that petitioner had knowledge of the overseas trafficking. Pet. App. 14; D. Ct. Doc. 1050, at 5-7. Additional testimony established that a bondage debt holder sent petitioner e-mails with "escort-style photos of women who would be working at [petitioner's] house" and that petitioner had

posted online advertisements for "liaisons with women in her houses," as well as funneling cash through a third-party to "lease apartments for the sex work." Pet. App. 14; see D. Ct. Doc. 1050, at 5-7.

As the court of appeals recognized (Pet. App. 14), that evidence was sufficient to allow a "reasonable jury" to "conclude that [petitioner] knowingly agreed to engage in sex trafficking and did so with knowledge that women working in her houses were subject to coercive debt that compelled them to participate." Petitioner does not contend that the court of appeals' sufficiency of the evidence determination conflicts with the decision of any other court of appeals. Instead, her challenge (Pet. 10-16) boils down to a disagreement with the court of appeals' and the district court's determination that the government presented sufficient evidence to sustain her conviction. This Court, however, "do[es] not grant a certiorari to review evidence and discuss specific facts." United States v. Johnston, 268 U.S. 220, 227 (1925). And "under what [the Court] ha[s] called the 'two-court rule,' the policy has been applied with particular rigor when [the] district court and court of appeals are in agreement as to what conclusion the record requires." Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting); see Graver Tank & Mfg. Co. v. Linde Air Products Co., 336 U.S. 271, 275 (1949).

2. Petitioner separately contends (Pet. 17-27) that the district court erred in determining that the Sentencing Guidelines

assign a base offense level of 34 to her conviction for conspiring to commit sex trafficking by force, threats of force, fraud, or coercion, in violation of 18 U.S.C. 1594(c). The court below correctly rejected that argument, and this Court has repeatedly and recently declined to review similar claims, see Sims v. United States, 141 S. Ct. 404 (2020) (No. 20-5153); Williams v. United States, 141 S. Ct. 577 (2020) (No. 20-5576); Carter v. United States, 141 S. Ct. 835 (2020) (No. 20-5936). It should follow the same course here.

As an initial matter, this Court's review is not warranted because the question presented involves the interpretation of the advisory Sentencing Guidelines. Declining to grant the petition accords with this Court's longstanding recognition that questions about the meaning of the Sentencing Guidelines are better resolved by the Sentencing Commission. See Braxton v. United States, 500 U.S. 344, 348 (1991). Congress charged the Sentencing Commission with "periodically review[ing] the work of the courts" and making "whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest." Ibid. (citing 28 U.S.C. 994(o) and (u)). By conferring that authority on the Sentencing Commission, Congress indicated that it expects the Commission, not this Court, "to play [the] primary role in resolving conflicts" over the interpretation of the Guidelines. Buford v. United States, 532 U.S. 59, 66 (2001).

In any event, the court of appeals correctly rejected petitioner's contention that the Sentencing Guidelines provide for a base offense level of 14 for her Section 1594(c) conviction for conspiring to commit sex trafficking by force, fraud, or coercion. Pet. App. 19. As the court explained in its earlier decision in United States v. Carter, 960 F.3d 1007 (8th Cir. 2020), cert. denied 141 S. Ct. 835 (2020), the Sentencing Guidelines specify a base offense level of 34 for Section 1594(c) conspiracies where the underlying offense is sex trafficking in violation of 18 U.S.C. 1591(b)(1), 960 F.3d at 1013-1015, the provision governing sex trafficking "by means of force, fraud, or coercion," 18 U.S.C. 1591(b)(1). Carter observed that Sentencing Guidelines § 2X1.1(a) "sets the base offense level for a conspiracy conviction not covered by a specific Guideline as the 'base offense level from the guideline for the [underlying] substantive offense.'" 960 F.3d at 1014 (quoting Sentencing Guidelines § 2X1.1(a)). Accordingly, because no specific Guideline covers Section 1594(c) conspiracies, Sentencing Guidelines § 2X1.1(a) directs courts to set a base offense level in accordance with the guideline for the underlying Section 1591 offense, id. § 2G1.1. And Section 2G1.1, in turn, "prescribes a base offense level of 34 'if the offense of conviction is 18 U.S.C. § 1591(b)(1),' and 14 only 'if 'otherwise.'" Carter, 960 F.3d at 1014 (quoting Sentencing Guidelines § 2G1.1).

Because petitioner was convicted of engaging in a Section 1594(c) conspiracy to commit sex trafficking through force, fraud, or coercion in violation of 18 U.S.C. 1591(b)(1), see Third Superseding Indictment 7; Pet. App. 13-14, the district court correctly applied a base offense level of 34. Carter, 960 F.3d at 1014; see United States v. Sims, 957 F.3d 362, 363-366 (3d Cir.), cert. denied, 141 S. Ct. 404 (2020) (affirming base offense level of 34 in similar circumstances); see also United States v. Valdez, No. 19-12522, 2021 WL 3478402, *4-*6 (11th Cir. Aug. 9, 2021) (per curiam) (affirming a sentence for conspiracy under Section 1594(c) predicated on the base offense level for the underlying offense); id. at *5 (explaining that “when a guideline makes a base offense level dependent on a defendant’s having been ‘convicted under [a particular statute],’ that same base offense level applies ‘where the defendant was convicted of conspiracy ... in respect to that particular statute’”) (quoting Sentencing Guidelines § 1B1.3 Comment)).

Petitioner’s reliance (Pet. 21-25) on the Ninth Circuit’s decision in United States v. Wei Lin, 841 F.3d 823 (2016), is misplaced. In Wei Lin, unlike in this case, the defendant pleaded guilty to conspiracy in violation of Section 1594(c) in exchange for the dismissal of the counts charging him with violating Section 1591(b)(1), 841 F.3d at 823, and the plea agreement and judgment “d[id] not mention 18 U.S.C. § 1591(b)(1)” at all. Id. at 825. The district court had applied the Sentencing Guidelines’ base

offense level for Section 1591(b)(1) offenses based solely on the court's view that the defendant's conduct would have been covered by Section 1591(b)(1). Ibid. The court of appeals reversed based on its conclusion that the district court had misapplied the applicable Guidelines by looking to the defendant's conduct, rather than the defendant's "offense of conviction." Id. at 825 (citation omitted); see 823-826. The circumstances of Wei Lin are thus distinct from the circumstances here, as the decision in Carter recognized. See 960 F.3d at 1014 n.3.

Moreover, even assuming that the Sentencing Guidelines issue might warrant review in some case, this one would be a poor vehicle because the district court imposed a below-Guidelines sentence and indicated that it would have imposed the same sentence regardless of the Guidelines. See p. 4, supra; Sentencing Tr. 31 ("I think the [18 U.S.C.] 3553(a) factors are going to take me to the same sentence in this case irrespective of the -- of the guidelines"); id. at 70 ("no matter where the guidelines end up, I believe the [18 U.S.C.] 3553(a) factors are going to take me to a particular sentence"). Accordingly, petitioner's sentence would be unlikely to change even if this Court were to agree with her reading of the Guidelines.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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