

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

JOSEPH CHURCH

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

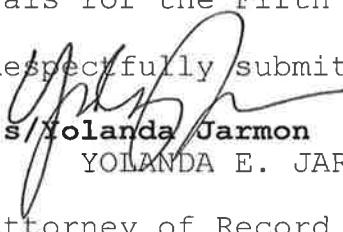
MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, **JOSEPH CHURCH**, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), asks leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit.

Date:

May 1, 2023.

Respectfully submitted,


/s/ Yolanda Jarmon
YOLANDA E. JARMON

Attorney of Record for Petitioner

2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax : (713) 635-8498

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

JOSEPH CHURCH

Petitioner,

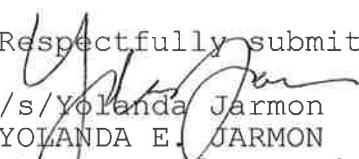
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,


/s/Yolanda Jarmon
YOLANDA E. JARMON

Attorney of Record for Petitioner
2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax: (713) 635-8498

QUESTIONS PRESENTED

I. Whether it is harmless error when a guilty plea is obtained in violation of due process of law when a judgment of conviction is entered without providing a defendant with adequate notice of the offenses to which he's pleading guilty to; thereby rendering his plea involuntary, and afterwards the district court denies a timely request to withdraw the illegal plea.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are named in the caption of the case before the Court.

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| Questions Presented | i |
| Parties to the Proceedings..... | ii |
| Table of Contents | iii |
| Table of Citations | iv |
| Prayer | 1 |
| Opinions Below | 1 |
| Jurisdiction | 1 |
| Federal Statute Involved | 2 |
| Statement of the Case | 2 |
| A. Course of Proceedings | 2 |
| B. The Plea | 4 |
| C. Request for Withdrawal of the Pleas | 15 |
| D. The Sentence | 16 |
| E. The Case on Appeal and Remand | 17 |
| Basis of Federal Jurisdiction in The United States District Court | 18 |
| Reasons for Granting the Writ | 19 |

This Court should grant certiorari in this case to decide the question: Whether it is harmless error when a guilty plea is obtained in violation of due process of law when a judgment of conviction is entered without providing a defendant with adequate notice of the offenses to which he's pleading guilty to; thereby rendering his plea involuntary, and afterwards the district court denies a timely request to withdraw the illegal plea - and because due process is of exceptional importance to the administration of justice in

federal criminal cases, this Court should decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

Conclusion 30

Appendix and Attachments

Exhibit A: *United States v. Joseph Church* 20-40760, 2023 U.S. App. LEXIS 2579, *8, 2023 WL 1432010 (5th Cir. 2023) (affirmed, and remanded to correct written judgment) (unpublished). (Exhibit A).

Exhibit B: Original Judgment and Sentence of the District Court, *United States v. Joseph Church*, Cr. No. 3:17:CR:25-1 (S.D. Tex. November 28, 2020) (Exhibit B).

TABLE OF CITATIONS

| | Page |
|---|------------|
| <u>CASES</u> | |
| <i>Henderson v. Morgan</i> 426 U.S. 637 (1976) | 20, 27 |
| <i>United States v. Badger</i> , 925 F.2d 101 (5th Cir. 1991) | 20, 27, 28 |
| <i>United States v. Carr</i> , 740 F.2d 339 (5th Cir. 1984) | passem |
| <i>United States v. Lampazianie</i> , 251 F.3d 519 (5th Cir. 2001) | 24 |

Statutes

| | |
|------------------------------|----------|
| 18 U.S.C. § 2 | 3-4 |
| 18 U.S.C. § 1591(a) | 3, 8 |
| 18 U.S.C. § 1591(a)(1) | 3, 8, 18 |
| 18 U.S.C. § 1591(a)(2) | 3, 18 |
| 18 U.S.C. § 1591(b) | 3, 8 |

| | |
|------------------------------|------------------|
| 18 U.S.C. § 1591(b)(1) | 1, 3, 17, 18, 26 |
| 18 U.S.C. § 1591(b)(2) | passem |
| 18 U.S.C. § 1591(c) | 3, 18 |
| 18 U.S.C. § 1594 (c) | 3, 7 |
| 18 U.S.C. § 1594 (d) | 4 |
| 18 U.S.C. § 3553 (a) | 10 |

Rules

| | |
|--|---|
| Federal Rule of Criminal Procedure 11(c)(1)(A) | 4 |
| Supreme Court Rule 13.1..... | 2 |
| Supreme Court Rule 13.3..... | 2 |

Sentencing Guidelines:

| | |
|-----------------------------|------------|
| U.S.S.G. § 2G1.3..... | 17, 26 |
| U.S.S.G. § 2G1.3(a)(1)..... | 17, 26 |
| U.S.S.G. § 2G1.3(a)(2)..... | 17, 26 |
| U.S.S.G. § 2G1.3(d)(1)..... | 16, 26, 28 |
| U.S.S.G. § 3D1.2 (a)..... | 17, 26, 28 |
| U.S.S.G. § 3D1.3 (a)..... | 19 |

PRAYER

The petitioner, **JOSEPH CHURCH** respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued on **February 1, 2023.**

OPINIONS BELOW

The original judgment reflecting Mr. Church's conviction and sentence before the district court can be found at **United States v. Joseph Church, Cr. No. 3:17:CR:25-1 (S.D. Tex. November 28, 2020) (Exhibit B)**. However, on February 1, 2023, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Gonzalez's conviction and sentence, but ordering that the judgment be corrected to reflect that Church plead guilty to Church argued that because he pled guilty to 18 U.S.C. § 1591(b)(2), not 18 U.S.C. § 1591(b)(1). **United States v. Joseph Church 20-40760, 2023 U.S. App. LEXIS 2579, *8, 2023 WL 1432010 (5th Cir. 2023) (affirmed, and remanded to correct the written (unpublished) (Exhibit A).**

In affirming the district court's decision not to withdraw the plea agreement, the Fifth Circuit found as harmless any district court error denying Church's motion to withdraw his plea, but remand so that the district court could correct errors in the judgment. *Id.*

No petition for rehearing was filed.

JURISDICTION

On February 1, 2023, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the district court's decision not to allow withdrawal of the guilty plea remanding the case to the district court in order to correct errors in the Judgment. This petition is filed within ninety days after entry of the judgment. See. Sup. Ct. R. 13.1 and 13.3. Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

FEDERAL STATUTES INVOLVED

AMENDMENT XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Course of Proceedings

STATEMENT OF THE CASE AND STATEMENT OF FACTS

On July 26, 2017, a seven-count Indictment was returned by a Grand Jury for the United States District Court, Southern District

of Texas, Houston Division, which named Joseph Church, Angela Marks, Eric Page, Norris Moon, Christopher Walton, Jamaal Crane, and Alisa Kimbler as the defendants.

Count One charged Joseph Church, Angela Marks, Eric Page, Norris Moon, Christopher Walton, and Jamaal Crane with conspiracy to commit sex trafficking of a minor from on or about January 25, 2017, through March 17, 2017, in violation of 18 U.S.C. §§ 1594(c), 1591(a)(1) and (2), (b)(1) and (b)(2), and (c). (ROA.22-23).

Count Two charged Joseph Church, Angela Marks, Eric Page, Norris Moon, Christopher Walton, and Jamaal Crane with sex trafficking of a minor, Jane Doe, from on or about February 24, 2017, through March 6, 2017, in violation of 18 U.S.C. § 1591(a), (b) and (c), and 18 U.S.C. § 2. (ROA.23-24).

Count Three charged Joseph Church, Angela Marks, Eric Page, Norris Moon, Christopher Walton, and Jamaal Crane with sex trafficking of a minor, Janet Doe, , from on or about February 24, 2017, through March 6, 2017, in violation of 18 U.S.C. § 1591(a), (b) and (c), and 18 U.S.C. § 2. (ROA.24).

Count Four charged Joseph Church, Angela Marks, and Jamaal Crane with sex trafficking of a minor, Judy Doe, from on or about January 25, 2017, through March 17, 2017, in violation of 18 U.S.C. §§ 1591(a), (b), (c), and 18 U.S.C. § 2. (ROA.25).

Count Five charged Joseph Church and Angela Marks with production of child pornography, from on or between February 6, 2017, through February 22, 2017, in violation of 18 U.S.C. § 2251(a) and (e), and 18 U.S.C. § 2. (ROA.25-26).¹

The Indictment contains a Notice of Criminal Forfeiture as to Joseph Church, Angela Marks, Eric Page, Norris Moon, Christopher Walton, and Jamaal Crane pursuant to 18 U.S.C. § 1594(d). (ROA.27-28).

B. The Plea Agreement:

On February 21, 2019, the jury was set to begin. However, the trial did not begin because that same day, Joseph Church appeared with counsel, before United States District Judge George C. Hanks, Jr., and pled guilty to Counts One, Two, Three, and Four of the Indictment, pursuant to a written Rule 11(c)(1)(A) plea Agreement. (ROA.687).

During Rearraignment, the Government's attorney stated that she wanted it to be clear on the record that the provisions in Counts Two, Three and Four that Church was pleading to was in fact the subsection that contemplates that the victims were under the age of 18, and not via force, fraud or coercion and the same applied to the conspiracy charged in Count One. The Government indicated that this was an important distinction to make because of

¹ Church was not named in Counts Six or Seven.

the impact the charge would have on the sentencing guidelines. (ROA.543-544).

Pursuant to the plea, Church agreed to waive his right to appeal the conviction and sentence imposed. Further, the defendant agreed to waive his right to "collaterally attack" or contest his conviction or sentence by means of any post-conviction proceeding. However, the defendant retained the right to raise a claim of ineffective assistance of counsel on direct appeal or on collateral review. (ROA.691). He also agreed not to challenge any restitution order or fine imposed. (ROA.699-700).

In exchange, the Government agreed to *inter alia* dismiss the remaining counts of the Indictment, should the defendant persist in his plea to Counts 1, 2, 3, and 4 of the Indictment through sentencing.

During Rearraignment, Church was placed under oath and admonished that any false statements given could result in a separate charge for perjury. Church indicated that he understood. (ROA.538).

The court also inquires as to whether Church had received a copy of the indictment and whether he had fully discussed the charges with defense counsel. Church indicated that he had discussed the charges with defense counsel. Church also confirmed that he had read and discussed the plea agreement with trial

counsel. Church affirmed that the plea agreement represented the entirety of his agreement with the Government. (ROA.539). Church also confirmed that he understood the terms of the plea agreement. (ROA.540).

The court inquired as to whether anyone had forced Church, or threatened him into entering the plea agreement. Church indicated that no one had done so. The district court also asked whether anyone had made him any promises aside from those in the plea agreement in order to persuade him to sign the agreement. Church indicated that no one had done so. Church also assured the court that he was pleading guilty of his own free will. (ROA.540).

The court explained that Church was pleading to a felony offense and that if the plea was accepted, he will be adjudged guilty of that offense and that such adjudication might deprive him of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury and the right to possess any kind of a firearm. When asked whether he understood, Church responded in the affirmative. (ROA.541).

The court asked whether Church understand that a conviction for the offense that he was considering pleading guilty to would likely result in substantial future restrictions on where he might live, work, and with whom he might associate with in the future. Church indicated that he understood. (ROA.541).

The nature of the charges to which he was pleading were stated by the Government at the court's request. The Government stated that in Count One, Church was charged with conspiracy to commit sex trafficking with minors under 18 USC 1594(c). (ROA.541-542). The elements of that offense were outlined as follows: (1) that the defendant and at least one other person made an agreement to commit the crime of sex trafficking as charged in the indictment; (2) that the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is with the intent to further the unlawful purpose; (3) that the defendant conspired with one or more other persons to knowingly recruit, entice, harbor, transport, provide, obtain, advertise, maintain, patronize or solicit by any means a person that the defendant knew was less than 18 years old, acted in reckless disregard of the victim's age or had a reasonable opportunity to view the child victim; (4) that the defendant knew or believed that the person would be caused to engage in a commercial sex act; and (5) that the recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing or soliciting was done in or affecting interstate commerce or within the special maritime and territorial jurisdiction of the United States. (ROA.542).

As to the range of punishment for Count One, the Government stated that this charge carried a maximum punishment of any term of

imprisonment up to life and a fine of up to \$250,000. It also carried a supervised release term of five years and up to life and a \$100 and \$5,000 special assessment per count. (ROA.542).

The Government stated that Counts Two, Three and Four charged him with sex trafficking of children under the provisions of 18 United States Code 1591(a) and (b). (ROA.542-543). The elements of that offense are the following: (1A) that the defendant knowingly recruited, enticed, harbored, transported, provided, obtained, maintained, advertised, patronized or solicited by any means a person or; (1B) that the defendant benefited financially or by receiving anything of value from participation in a venture which has engaged in an act described above; (2) that the defendant knew that the child had not attained the age of 18 years, acted in reckless disregard of the child victim's age or had a reasonable opportunity to view the child victim and knew that the person would be caused to engage in a commercial sex act; and that (3) the offense was in or affecting interstate commerce. (ROA.543).

The Government explained that these three counts carried the maximum term of imprisonment of not less than 10 years or up to life and a fine of up to \$250,000. The Government also explained that a supervised release term of at least five years up to a term of life in prison could be imposed. The Government also explained

that a \$100 and \$5,000 special assessment could be imposed. (ROA.543).

The Government's attorney also stated the following:

I just want to be very clear on the record, Your Honor, that the provisions in Counts Two, Three and Four that the defendant is pleading to is the subsection that contemplates that the individuals were under the age of 18 and not via force, fraud or coercion, because that has an impact on the sentencing guidelines. And I want that to be very clear even as to Count One, that it's a conspiracy to commit sex trafficking of minors, not by force, fraud or coercion. (ROA.543-544)

So, for purposes of the original indictment, it is charged as to both. He is only pleading to the provision -- I believe it is B2, but I'm going to double-check that because I don't want there to be an issue down the road with probation.

Give me one second. I know it's in the plea agreement, but I want to make sure that everyone is clear so that we don't have an issue going -- where is it?

It's B2, Your Honor, specifically B2, which says that if the person had been recruited, enticed, harbored, transported, provided, obtained, advertised, patronized or solicited, had attained the age of 14 years but not attained the age of 18 years at the time of the offense, then it is a fine under this title and imprisonment for not less than 10 years. All of the minors involved were over 14 and less than 18.

(ROA.544).

Church's trial counsel confirmed that he understood. When the court asked Church whether he understood the possible consequences

of his plea with respect to the charges, Church indicated that he understood. (ROA.544-545).

The court went on to discuss the advisory sentencing guidelines. Church confirmed that he and his defense counsel had discussed the guidelines. (ROA.545). The court admonished that it would not be able to determine the advisory guideline range for the case until after a presentence report had been completed. The court also explained that the Government would have the opportunity to challenge the reported facts and the application of those guidelines as recommended by the probation officer. The court also admonished that the sentence ultimately imposed could be different from any estimated by defense counsel. When asked whether he understood, Church confirmed that he understood. (ROA.545).

Next, the court told Church that after the initial advisory guideline range had been determined, the Court had the authority in some circumstances to depart upward or downward from that range. Furthermore, the court stated that it would also examine other statutory sentencing factors under 18 USC Section 3553(a) that might result in the imposition of a sentence that is either greater or lesser than the advisory guideline sentence. When asked whether he understood, Church responded, "Yes, sir." (ROA.545).

The district court went on to explain the trial rights that Church would be giving up if he were to follow through with the

plea. . When asked whether he understood, Church responded in the affirmative. (ROA.546).

The court also explained that if Church decided not to testify or put on any evidence, it could not be held against him. Church indicated that he understood. (ROA.546-547). The court then admonished Church if the court were to accept a plea of guilty, there would be no trial and he would be waiving or giving up his right to a trial as well as those other rights associated with a trial. Church indicated that he understood. (ROA.547).

The Government stated the factual basis for the plea agreement in the following manner:

The following facts, among others, would be offered to establish the defendant's guilt. The defendant led a sex trafficking organization involving codefendants Angela Marks, Eric Page, Jamaal Crane and Alisa Kimbler.

The defendant engaged in recruiting, training, marketing and personnel management. The defendant and others profited from the prostitution of adult and minor females in the Brazoria and Harris County, Texas areas. (ROA.549).

In February of 2017, the defendant recruited three minor females, Jane Doe, Janet Doe and Judy Doe, to work for his sex trafficking organization. To facilitate prostitution dates, the defendant and codefendant Angela Marks used the Internet, a facility affecting interstate commerce, to post advertisements that included sexually suggestive and provocative photos of Jane Doe, Janet Doe and Judy Doe on the classified advertising website backpage.com and other classified advertising websites. Backpage.com is a website known to host advertisements for commercial sex. (ROA.549-550.)

Prostitution dates occurred at various hotels in the Houston area. These hotels were establishments affecting interstate commerce.

Between on or about February 23rd and February 27th, 2017, the defendant directed Jane Doe, Janet Doe and Judy Doe to pose in sexually provocative positions and then took pictures using codefendant Marks's phone. After customers began responding to advertisements, Pinger was used to communicate with customers and to monitor the three minor victims during prostitution dates.

Pinger is a proprietary computer application for smartphones that allows people to create an account to send and receive calls and text messages for free.

Marks collected the proceeds from the prostitution dates and gave it to the defendant. At the defendant's direction, Marks provided condoms, food and drugs to the minor victims. (ROA.550). Jane and Janet Doe began working for the defendant's sex trafficking organization on about February 23rd, 2017. (ROA.550-551). They were brought to the defendant by Eric Page, a codefendant. The defendant and Marks groomed both minors and listed them on backpage.com advertisements, along with Judy Doe, in full anticipation that they would be caused to engage in a commercial sex act. (ROA.551).

Janet Doe engaged in multiple commercial sex acts while working for the defendant's sex trafficking organization from February 23rd to February 27th, 2017.

These acts occurred at the Hobby Inn and/or Stay Express Inn in Houston, Texas.

Marks instructed both minor victims on how to conduct prostitution dates and how much to charge.

During at least one prostitution date, Marks hid in the hotel bathroom with Jane Doe while Janet Doe engaged in commercial sex with a customer.

The defendant collected and/or profited from the proceeds gained from the commercial sex acts.

Judy Doe began working for the defendant's organization on or about February 20th, 2017. She was introduced to the defendant by William Franklin, a codefendant, after she was robbed by a customer.

Judy Doe engaged in dozens of commercial sex acts while working for the defendant's organization from February 20th, 2017 until approximately March 17th, 2017. (ROA.551).

These acts occurred at the Hobby Inn and Stay Express Inn in Houston, Texas, as well as various locations in Brazoria County, Texas, after the defendant and Marks took Judy Doe to live at their residence in Brazoria County. (ROA.552).

When Judy Doe first began working for the defendant's organization, she worked alongside Alisa Kimbler, a codefendant and adult prostitute. Marks took sexually provocative photos of Judy Doe and used them to create advertisements on Backpage. Marks set up prostitution dates for Judy Doe, communicated with customers and often hid in the bathroom during in-call prostitution dates. During out-calls, the defendant provided transportation for Judy Doe and monitored her activities using Pinger and normal text messaging.

An in-call is when the customer comes to the victim and an out-call is when the victim goes to the customer.

The defendant collected the proceeds and/or profited from prostitution dates.

At the defendant's direction, Marks also provided Judy Doe with food, clothing, condoms and drugs.

At all times during the course of the criminal activity, Jane, Janet and Judy Doe were under the age of 18 and engaged in or would be caused to engage in commercial sex. (ROA.552).

The defendant had knowledge that the victims were minors and had a reasonable opportunity to observe they were minors during the course of the criminal activity. (ROA.552-553).

The Internet, which was used to post the advertisements, is a means and facility of interstate and foreign commerce.

The defendant utilized several motels to house the minors and to provide a location for commercial sex acts to occur. These motels are a means and facility in interstate and foreign commerce.

All criminal activity occurred within the jurisdictional limits of the Southern District of Texas. (ROA.553).

When asked whether he agreed with the Government's rendition of the facts, Church indicated that he agreed. Church then entered guilty pleas to Counts One, Two, Three and Four of the Indictment. (ROA.553).

The court then entered the following findings on the record: (1) that Church was fully competent and capable of entering into an informed plea, (2) aware of the nature of the charges and the consequences of that plea and that (3) the plea of guilty was a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. (ROA.553-554). The Court then accepted the pleas and adjudged

church guilty of the offenses. (ROA.554). The plea agreement was then signed in open court. (ROA.554).

A Presentence Report was ordered, and Church was remanded to custody pending sentencing. (ROA.554, 557).

On May 13, 2019 the PSR was disseminated. (ROA.712). On August 1, 2019 the Government filed its objections. (ROA.710-711).

On October 4, 2019, Church filed his objections. (ROA.750-754). The PSR and the parties' objections are discussed in further detail below. (See Section "**The Sentence**")

C. The Request for Withdrawal of the Pleas

On December 17, 2019, Church appeared with counsel before the Honorable George C. Hanks for sentencing. (ROA.672-674). However, no sentencing occurred. (ROA.675). Church informed the court that he wished to withdraw his guilty plea. (ROA.674-675). Church told the court that he wanted to withdraw the pleas because he had since gained a better understanding of what he was in fact pleading guilty to. (ROA.675). The sentencing was postponed, and the court ordered additional briefing on the matter. (ROA.675-677).

The next day, on December 18, 2019, Church filed a motion to withdraw his guilty pleas contending that they were not voluntarily made. (ROA.310-311).

On January 17, 2020, Church filed a brief in support of his motion to withdraw his guilty pleas. (ROA.315-323). Church

argued that his motion should be granted pursuant to *inter alia* the factors set forth in *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir.1984). On January 31, 2020, the Government filed its motion in opposition to the withdrawal of the guilty pleas. (ROA.324-335).

On March 4, 2020, an evidentiary hearing was held on Church's motion to withdraw the guilty pleas. (ROA.559-576). At the conclusion of the proceeding, the court found that the Carr factors had not been met and the motion was denied. (ROA.573).

D. The Sentence

The 2018 Guidelines incorporating all guideline amendments, was used to determine the offense level were used in this case. (ROA.244). The Final PSI (PSI) set the Base Offense Level at a level 34 pursuant to 18 U.S.C. 1591 (a)(1) and 2, (b)(1) and (b)(2). In his motion to withdraw the guilty pleas, and his written objections to the PSI and at sentencing Church argued that the base offense level should have been set at a 30 pursuant 18 U.S.C. 1591 (b)(2), not (b) (1). (ROA.319-322). In its Response in Opposition to the motion to withdraw the guilty plea, the Government agreed that that the base offense level should have been set at a level 30. (ROA.327). In the Second Addendum to the PSI, the probation office disagreed contending that the appropriate base offense level was a level 34 pursuant to U.S.S.G. § 2G1.3(d)(1), §

3D1.2(a), U.S.S.G. § 3D1.3(a). (ROA.755-756). The district court erroneously agreed with the probation department.² (ROA.592).

Ultimately, the court sentenced Church to a 400-month term of imprisonment as to each Count to run concurrently followed by a term of life of supervised release. The fine was waived, and no restitution was ordered. (ROA.622, 629). However, a special assessment of \$400 dollars was imposed. (ROA.628).

E. The Case on Appeal and Remand

This case was appealed to the Fifth Circuit Court of the United States seated in New Orleans Louisiana. On Appeal, Church argued that the district court erred when it would not allow him to withdraw his plea agreement. After oral argument, the Fifth Circuit ordered this case to mediation. The Government agreed to correct the judgment to reflect that Church pleaded guilty to 18 U.S.C. 1591 (b) (2), not (b) (1); however Church argued to withdraw the plea agreement altogether.

On February 1, 2023, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Church's conviction and sentence but ordering that the judgment be corrected to reflect that Church plead guilty to Church argued that because

2 Section § 2G1.3 sets the base offense level in the following manner
(a) Base Offense Level:

- (1) 34, if the defendant was convicted under 18 U.S.C. § 1591(b)(1);
- (2) 30, if the defendant was convicted under 18 U.S.C. § 1591(b)(2).

he pled guilty to 18 U.S.C. § 1591(b)(2), not 18 U.S.C. § 1591(b)(1). *United States v. Joseph Church* 20-40760, 2023 U.S. App. LEXIS 2579, *8, 2023 WL 1432010 (5th Cir. 2023) (affirmed, and remanded to correct the written (unpublished)). (Exhibit A).

This Court should grant certiorari to determine whether it is harmless error when a guilty plea is obtained in violation of due process of law when a judgment of conviction is entered without providing a defendant with adequate notice of the offenses to which he's pleading guilty to; thereby rendering his plea involuntary, and afterwards the district court denies a timely request to withdraw the illegal plea - and because due process is of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

**BASIS OF FEDERAL JURISDICTION IN THE
UNITED STATES DISTRICT COURT**

This case was brought as a federal criminal prosecution for conspiracy to commit sex trafficking of a minor from and sex trafficking of a minor in violation of 18 U.S.C. §§ 2, 1591(a)(1) and (2), (b)(1) and (b)(2), and (c). The district court therefore had jurisdiction pursuant to 18 U.S.C. § 3231. .

REASONS FOR GRANTING THE WRIT

I. This Court should grant certiorari in this case to decide the question: Whether it is harmless error when a guilty plea is obtained in violation of due process of law when a judgment of conviction is entered without providing a defendant with adequate notice of the offenses to which he's pleading guilty to; thereby rendering his plea involuntary, and afterwards the district court denies a timely request to withdraw the illegal plea - and because due process is of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

A. The District Court Abused Its Discretion When It Did Not Allow Church to Withdraw His Guilty Pleas because the guilty pleas were entered into in violation of the due process Clause of the Fourteenth Amendment.

In this case, Church contends that the district court abused its discretion when it denied his motion to withdraw his guilty pleas because his pleas were entered into in violation of the due process Clause of the Fourteenth Amendment. Before sentencing, the Church requested to withdraw his plea agreement because he lacked a full understanding of his plea and the consequences.

Church's guilty plea were not knowingly made under the standard set out by the Supreme Court in *Brady v. United States*, 397 U.S. 742, 748 (1970). In *Brady*, the Court held that in order to satisfy the dictates of due process a guilty plea must be a voluntary, knowing, intelligent act. *Id.* At a minimum, the defendant must have

a "sufficient awareness of the relevant circumstances and likely consequences" of his plea. *Id.* This Court has made it absolutely clear that the choice to plead guilty must be the defendant's: it is he who must be informed of the consequences of his plea and what it is that he waives when he pleads, *Henderson v. Morgan*, 426 U.S. 637, 650, 96 S. Ct. 2253, 2260 (1976) (concurring opinion) (quoting *Boykin v. Alabama*, 395 U.S. 238 (1969)).

Church based his constitutional claim on the following: (1) the guilty pleas should be withdrawn on the basis that he did not fully understand the charges that he was pleading guilty to at Rearraignment; (2) that the Government breached the plea agreement; (3) that the government had explained during the plea that the offense did not entail force, fraud, or coercion as described in 18 U.S.C. 1591(b)(2), yet the PSR assessed a level 34 under the sentencing guidelines as though Church had pleaded guilty under 18 U.S.C. 1591(b)(1), rather than the correct section, (b)(2); and he was never advised that he would be convicted under (b)(2) (ROA.565-569, 571-572).

On December 17, 2019, Church appeared with counsel before the Honorable George C. Hanks for sentencing. (ROA.672-674). However, no sentencing occurred. (ROA.675). Church informed the court that he wished to withdraw his guilty plea. (ROA.674-675). Church told the court that he wanted to withdraw the pleas because he had since

gained a better understanding of what he was in fact pleading guilty to. (ROA.675). The sentencing was postponed, and the court ordered additional briefing on the matter. (ROA.675-677).

The next day, on December 18, 2019, Church filed a motion to withdraw his guilty pleas contending that they were not voluntarily made. (ROA.310-311). Church's motion to withdraw outlined the basis for his withdrawal under seven factors set forth in *United States v. Carr* 740 F.2d 339, 343-44 (5th Cir.1984). Church also maintained that withdrawal was appropriate because the Government was in breach of the plea agreement. The Government maintained that Church had failed to establish a fair and just reason for withdrawing his guilty plea and the motion to withdraw his guilty pleas had no merit. (ROA.324-335).

On March 4, 2020, an evidentiary hearing was held on the motion to withdraw the guilty plea. (ROA.559). At the hearing, Church argued that the guilty pleas should be withdrawn on the basis that he did not fully understand the charges that he was pleading guilty to at Rearraignment. (ROA.568-569, 571-572). He also argued that he did not fully understand, pursuant to his plea agreement, what he would be facing. (ROA.565-569, 571-572).

Throughout the hearing, the district court continued to assert that there was no way Church could withdraw his guilty plea under

the Carr factors. (ROA.563, 568-571). At one point the district court stated the following:

Well I went back and listened again to the FTR that is the record in this case, and after -- based on my recollection and listening to FTR, Mr. Church, none of the Carr factors in this case are satisfied for purposes of allowing you to withdraw your plea.

(ROA.563).

The district court stated the following:

O.K. Well I went through with you on the record— All due respect, I went through and first we talked about the plea agreement and made sure you understood the plea agreement.

(ROA.567).

Church was persistent. He continued to adamantly advance his point that he did not understand everything that he was pleading to pursuant to his plea agreement. The following exchange occurred during the hearing:

DEFENDANT CHURCH: Yes, sir. That's what I'm saying I didn't understand. And I guess that's because I'm ignorant to what the law states or how it goes, but that's what I was unaware of in my mind, sir. I didn't understand fully what I was pleading guilty to at that time.

THE COURT: Okay. I understand but in response to my questions I went -- I mean the questions I'll ask you basically track the United States versus Carr elements for a knowing and voluntary plea. And once you answered yes to those questions and that you understood, we go forward. And once you acknowledge that you understood the charges and what you pled guilty to, once you said that and then accepted as true the facts that the Government would prove against you, there's no basis at this

point for withdrawing your plea. There isn't. I mean, not under *United States versus Carr...*

(ROA.568) .

Church continued to assert that he did not fully understand the plea agreement. The following exchange occurred at the evidentiary hearing:

DEFENDANT CHURCH: So, Yes, sir. But I had - by me saying that I -- I would like to have it on record that I do not agree. Even though that I cannot take it back, sir. I would like to have it on record that I was not aware, or I did not fully understand -- because if I fully understand I would not be sitting here, I would not waste the Court's time. (ROA.571-572) .

THE COURT: Sure.

THE COURT: Okay.

DEFENDANT CHURCH: I would go ahead and gone ahead with the sentencing but upon realizing and learning and reading and understanding what I'm actually facing, I do not agree, sir.

THE COURT: Okay.

DEFENDANT CHURCH: Thank you.

THE COURT: Not a problem, sir. Okay. So, the motion is denied, we need to set a sentencing date. Any time that's preferable for the parties?

(ROA.572) .

The district court denied the motion stating that the Carr factors had not been satisfied and that there was no breach of the plea agreement because the sentencing had not yet occurred.

(ROA.568-573) .

In this case, the applicable standard for determining whether or not a defendant may withdraw his guilty plea prior to sentencing is whether "for any reason the granting of the privilege seems fair and just." FED.R.CRIM.P. 11(d)(2)(B). A defendant bears the burden to show a "fair and just reason" for withdrawing the guilty plea. *Id; United States v. Carr*, 740 F.2d 339, 343 (5th Cir. 1984).

In reviewing the FED.R.CRIM.P. 11(d)(2)(B); *Id.* denial of a motion to withdraw a guilty plea, the Fifth Circuit considers the seven factors set forth in *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984): whether (1) the defendant asserted his innocence, (2) withdrawal would prejudice the government, (3) the defendant delayed in filing the withdrawal motion, (4) withdrawal would inconvenience the court, (5) adequate assistance of counsel was available, (6) the plea was knowing and voluntary, and (7) withdrawal would waste judicial resources and, as applicable, the reason why defenses advanced later were not proffered at the time of the original pleading, or the reasons why a defendant delayed in making his withdrawal motion. *United States v. Lampazianie*, 251 F.3d 519, 524 (5th Cir. 2001) (citing *Carr*, 740 F.2d at 343-44). Neither factor is independently dispositive. *Id.* Church has the burden of proof under the Carr factors. *Id.* Under Fifth Circuit precedent, when courts apply the factors enumerated above, they

should consider the totality of the circumstances. *Carr* at 344 (5th Cir. 1984)

In this case, Church has satisfied the *Carr* factors. Church filed a motion to withdraw his guilty pleas contending that they were not voluntarily made. (ROA.310-311). In the brief supporting the motion to withdraw the guilty plea, Church asserted that he was innocent of any sexual malfeasance toward the minors subject to the allegations satisfying the first *Carr* factor. He asserted that he was innocent of any force, fraud or coercion of the minors or other co-defendants. He asserted that he was innocent of being an organizer or leader of the vast criminal enterprise concerning the allegations of sex trafficking in this and the related cause (3:18-CR-26), wherein several of the co-defendants, including Page and Franklin, were leaders/ organizers before the defendant's arrival to Houston. (ROA.320). Ordinarily, this claim alone is far from being sufficient to overturn denial of a withdrawal motion. *Carr*, at 344 (5th Cir. 1984).

However, Church's assertion that he is innocent is buttressed by the fact that he really did not understand what he was in fact pleading guilty to. Furthermore, there is proof of this confusion in the record. In his motion to withdraw the guilty pleas, and his written objections to the PSI and at sentencing Church argued that the base offense level should have been set at a 30 pursuant 18

U.S.C. 1591 (b) (2), not (b) (1). (ROA.319-322). In its Response in Opposition to the motion to withdraw the guilty plea, the Government agreed that that the base offense level should have been set at a level 30. (ROA.327). In the Second Addendum to the PSI, the probation office disagreed contending that the appropriate base offense level was a level 34 pursuant to U.S.S.G. § 2G1.3(d)(1), § 3D1.2(a), U.S.S.G. § 3D1.3(a). (ROA.755-756).³ The district court erroneously agreed with the probation department. (ROA.592).

Church also met the second *Carr* factor. Church maintained that the government would not be prejudiced if the plea was withdrawn and the case were to go to trial. All of its witnesses, including the minors and testifying co-defendants, were available. No evidence had been lost. Both sides had already been prepared for trial as the plea was initially executed on the day of trial. (ROA.320).

The third *Carr* factor was satisfied as well. Church showed that, although there was a delay in his request to withdraw the guilty plea, it was due to no fault of his own. Instead, the delay occurred because his defense counsel had been inundated with several trials, or preparations for trials, including a state death

³ Section § 2G1.3 sets the base offense level in the following manner
(a) Base Offense Level:

- (1) 34, if the defendant was convicted under 18 U.S.C. § 1591(b)(1);
- (2) 30, if the defendant was convicted under 18 U.S.C. § 1591(b)(2).

penalty case which caused his sentencing to be rescheduled on at least four occasions. (ROA.320).

Church demonstrated that the withdrawal of the plea would not waste judicial resources and that if the Court were to allow him to withdraw his plea, a trial date could be scheduled within the next few months, at the Court's convenience. Therefore, Carr factors four and seven were satisfied. (ROA.320-321).

Additionally, the sixth Carr factor was met. Church filed a motion to withdraw his guilty pleas contending that they were not voluntarily made. (ROA.310-311). Church showed that his guilty pleas were not knowing and voluntary because he did not understand the charges to which he was pleading guilty. (ROA.321, 565-572). Even with overwhelming evidence of guilt, a plea cannot support a judgment of guilt unless it was voluntary. See *Henderson v. Morgan*, 426 U.S. 637, 644-45 (1976).

As discussed above, Church pointed out that the government had explained during the plea that the offense did not entail force, fraud, or coercion, yet the probation department assessed a level 34 and claimed that he had pleaded guilty under 18 U.S.C. 1591(b) (1), rather than the correct section, (b) (2). In his motion to withdraw the guilty pleas, his written objections to the PSI and at sentencing Church argued that the base offense level should have been set at a 30 pursuant 18 U.S.C. 1591 (b) (2), not (b) (1). In

its Response in Opposition to the motion to withdraw the guilty plea, the Government agreed that that the base offense level should have been set at a level 30. (ROA.327). In the Second Addendum to the PSI, the probation office disagreed contending that the appropriate base offense level was a level 34 pursuant to U.S.S.G. § 2G1.3(d)(1), § 3D1.2(a), U.S.S.G. § 3D1.3(a). (ROA.755-756). Church argued that he reasonably relied on those terms explained by the Government during the plea when pleading guilty. (ROA.321-322, 565-569, 571-572).

Finally, Church has demonstrated that a legal and factual basis existed such that the district court should have allowed him to withdraw his plea according to the *Carr* factors enumerated above. All of the *Carr* factors need not be addressed, nor be in the defendant's favor in order to "tip the scales to the extent necessary to find an abuse of discretion." *United States v. Badger*, 925 F.2d 101, 104 (5th Cir.1991). Therefore, Church should have been allowed to withdraw his plea and set the case for trial. Accordingly, Church's convictions should be reversed, his sentence vacated, and the case remanded.

This Court should grant certiorari in this case to decide the question: Whether a guilty plea is obtained in violation of due process of law when a judgment of conviction is entered without providing a defendant with adequate notice of the offenses to which

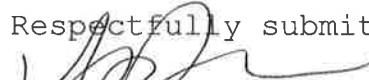
he's pleading guilty to; thereby rendering his plea involuntary, and afterwards the district court denies a timely request to withdraw the illegal plea - and because due process is of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

CONCLUSION

For the foregoing reasons, petitioner **JOSEPH CHURCH** respectfully prays that this Court grant certiorari, to review the judgment of the Fifth Circuit in this case.

Date: May 1, 2023.

Respectfully submitted,


Yolanda Jarmon
YOLANDA E. JARMON
Attorney of Record for Petitioner
2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax: (713) 635-8498

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

JULIO GONZALEZ,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

CERTIFICATE OF SERVICE

YOLANDA E. JARMON, is not a member of the Bar of this Court but was appointed under the Criminal Justice Act 18 U.S.C. § 3006 A(b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit, certifies that, pursuant to Rule 29.5, **On May 1, 2023**, she served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by enclosing a copy of these documents in an envelope, **Federal Express** and further certifies that all parties required to be served have been served and copies addressed to:

The Honorable Elizabeth Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

/s/Yolanda Jarmon
YOLANDA E. JARMON

Exhibit A

United States Court of Appeals
for the Fifth Circuit

No. 20-40760

United States Court of Appeals
Fifth Circuit

FILED

February 1, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSEPH CHURCH,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:17-CR-25

Before HIGGINSON, WILLETT, and HO, *Circuit Judges.*

PER CURIAM:*

Joseph Church pleaded guilty to one count of conspiracy to commit sex trafficking and three counts of sex trafficking of minors. On appeal, Church contends that the district court abused its discretion by refusing to permit him to withdraw his guilty plea. We affirm as harmless any district court error denying Church's motion to withdraw his plea, but we remand so that the district court can correct errors in the judgment.

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

No. 20-40760

I.

Church and several others were indicted for various sex trafficking offenses. Count one charged Church with conspiracy to commit sex trafficking of persons “knowing[ly] and in reckless disregard for the fact that means of force, fraud, and coercion would be used to cause these persons to engage in commercial sex acts and that the persons, whom defendants had a reasonable opportunity to observe, had not attained the age of 18 years.” *See* 18 U.S.C. §§ 1594(c), 1591(a)(1), (a)(2), (b)(1), (b)(2), and (c). Counts two, three, and four charged Church with sex trafficking of minors, and aiding and abetting, “knowing[ly] and in reckless disregard of the fact that (1) means of force, threats of force, fraud, and coercion . . . would be used to cause [the minor] to engage in a commercial sex act, and that (2) [the minor], whom defendants had a reasonable opportunity to observe, had not attained the age of 18 years.” *See id.* § 1591(a), (b), and (c).

In February 2019, after deciding to change his plea to guilty, Church appeared with counsel for rearraignment. At the rearraignment, the court instructed the government to explain the charges to which Church was pleading guilty, the potential consequences of those charges, and the facts that the government expected to prove at trial. In doing so, the government stressed that Church was not pleading guilty to the use of force, fraud, or coercion:

I just want to be very clear on the record, Your Honor, that the provisions in Counts Two, Three and Four that the defendant is pleading to is the subsection that contemplates that the individuals were under the age of 18 and not via force, fraud or coercion, because that has an impact on the sentencing guidelines. And I want to be very clear even as to Count One, that it's a conspiracy to commit sex trafficking of minors, not by force, fraud or coercion.

No. 20-40760

The government attempted to make clear that Church was pleading guilty under § 1591(b)(2) (10-year mandatory minimum for sex trafficking of minors), not under § 1591(b)(1) (15-year mandatory minimum for sex trafficking by means of force, fraud, or coercion).

The district court accepted Church's guilty plea. During the plea colloquy, the court confirmed that Church understood the terms of the plea agreement and the possible consequences of his guilty plea. Church also agreed to the facts that the government would prove against him at trial.

In May 2019, the presentence investigation report (PSR) was disclosed to the parties. In the PSR, the probation officer calculated a base offense level of 34, on the erroneous view that Church intended to plead guilty under § 1591(b)(1). *See* U.S.S.G. § 2G1.3(a)(1) (setting a base offense level of 34 for defendants convicted under § 1591(b)(1)). The probation officer then determined that the total offense level exceeded 43. Under the Sentencing Guidelines, offense levels above 43 are treated as level 43 and thus carry an advisory range of life imprisonment. U.S.S.G. Ch. 5, Pt. A, cmt. n.2.

In October 2019, Church filed objections to the PSR. Among other things, Church argued that the base offense level should have been 30, not 34, because he pleaded guilty under § 1591(b)(2), not § 1591(b)(1). The probation officer declined to revise the base level calculation.

In December 2019, Church appeared for sentencing. Before the district court could rule on Church's objections to the PSR, Church advised the court that he wished to withdraw his guilty plea. The court postponed sentencing so that the parties could prepare briefs on the motion to withdraw.

In his brief, Church argued, among other things, that "he is innocent of any sexual malfeasance toward the minors subject to the allegations" and that he did not use any force, fraud, or coercion. Church also claimed that

No. 20-40760

his plea was not knowing and voluntary because he believed that he was pleading guilty under § 1591(b)(2), not § 1591(b)(1). In its response brief, the government agreed with Church that the probation officer erred by using § 1591(b)(1) to calculate the base offense level. But the government also noted that a base level of 30 still yields a total offense level of 43 in this case. So the advisory range under the Guidelines would be life imprisonment regardless of which base level is used.

After a hearing, the district court denied Church's motion to withdraw his guilty plea. Several months later, at the sentencing hearing, the court also overruled Church's objection to the PSR's base offense level. The court then accepted the PSR's total offense level of 43. But the court did not impose the advisory life sentence—it departed downward and sentenced Church to 400 months.

The written judgment that followed similarly describes Church's conviction on count one as “[c]onspiracy to commit sex trafficking of minors by force, fraud, or coercion.” In other words, the judgment wrongly reflects that Church pleaded guilty under § 1591(b)(1).

II.

A.

Church's plea agreement includes an appeal waiver that reserves only the right to assert claims of ineffective assistance of counsel. The government argues that the waiver bars this appeal.

We disagree. Appeal waivers “cannot be enforced to bar a claim that the . . . plea agreement . . . was unknowing or involuntary.” *United States v. Carreon-Ibarra*, 673 F.3d 358, 362 n.3 (5th Cir. 2012) (quotations omitted). And that's precisely what Church argues on appeal—that his guilty plea was

No. 20-40760

unknowing and involuntary because he did not understand the nature of the charges to which he was pleading guilty.

Accordingly, the waiver does not bar this appeal. We therefore turn to the merits.

B.

“A district court’s denial of a motion to withdraw a guilty plea is reviewed for abuse of discretion.” *United States v. Lord*, 915 F.3d 1009, 1013 (5th Cir. 2019). The burden is on the defendant to establish a “fair and just reason” for withdrawing the plea. *Id.* at 1014 (quotations omitted). Seven factors guide the analysis: (1) whether the defendant asserted his innocence; (2) whether withdrawal would prejudice the government; (3) whether the defendant delayed in filing the motion to withdraw; (4) whether withdrawal would substantially inconvenience the court; (5) whether the defendant had the benefit of close assistance of counsel; (6) whether the guilty plea was knowing and voluntary; and (7) whether withdrawal would waste judicial resources. *Id.* (citing *United States v. Carr*, 740 F.2d 339, 343–44 (5th Cir. 1984)). The district court should consider the totality of the circumstances, but it need not “make explicit findings as to each” factor. *Id.*

Here, the district court did not abuse its discretion by denying Church’s motion to withdraw his guilty plea. Church unequivocally acknowledged as true the facts that the government would prove against him at trial; he was represented by counsel throughout the process; and he did not seek to withdraw his guilty plea until ten months after the rearraignment and seven months after the PSR was prepared. We have found that much shorter delays weigh against the defendant. *See, e.g., United States v. Thomas*, 13 F.3d 151, 153 (5th Cir. 1994) (six-week delay); *United States v. Harrison*, 777 F.3d 227, 237 (5th Cir. 2015) (five-week delay); *Carr*, 740 F.2d at 345 (three-week delay).

No. 20-40760

The record also reflects that Church entered a knowing and voluntary guilty plea under §§ 1591(a), (b)(2), and 1594(c) based on the age of the victims. To be sure, the PSR and the judgment describe that Church pleaded guilty to the use of force, fraud, or coercion, leading the district court to use § 1591(b)(1) to calculate the base offense level. The government concedes that this was an error.

But as the government stresses, Church would have faced a total offense level of 43 even if the PSR used the correct base level. Church does not claim otherwise. Nor does he claim that the error in the PSR tainted his ultimate sentence. After all, the district court departed downward from the Guidelines—which called for a life sentence—by sentencing Church to 400 months. Simply put, Church’s sentence does not reflect that he is being held responsible for a crime to which he did not plead guilty.

We thus conclude that any error as to the knowing and voluntary nature of Church’s plea as to count one was harmless. *See Fed. R. Crim. P. 11(h).*

We do note, however, that there are errors in the written judgment that require correction. *See 28 U.S.C. § 2106; United States v. Gomez Gomez*, 23 F.4th 575, 577–78 (5th Cir. 2022) (remanding under 28 U.S.C. § 2106 to correct a judgment that should have been entered under one subsection rather than another). The written judgment for count one cites § 1591(b)(1) and describes the offense of conviction as “[c]onspiracy to commit sex trafficking of minors *by force, fraud, or coercion.*” The district court should correct these two errors on remand. *See United States v. Ballardo-Ramos*, No. 21-40306, 2022 WL 358312, at *1 (5th Cir. Feb. 7, 2022) (remanding for correction under 28 U.S.C. § 2106 because “[t]he judgment lists his conviction as falling under 8 U.S.C. § 1326(b)(2), [but t]he judgment should . . . list 8 U.S.C. § 1326(b)(1) . . . as the offense of conviction”).

No. 20-40760

* * *

We affirm the district court's denial of the motion to withdraw the guilty plea. We remand for the district court to correct the errors in the written judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Holding Session in Galveston

ENTERED
November 18, 2020
David J. Bradley, Clerk

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

JOSEPH CHURCH

A/K/A JoJo

CASE NUMBER: 3:17CR00025-001

USM NUMBER: 29296-479

Neal Davis, III

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1, 2, 3 and 4 on February 21, 2019.

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|---|---|----------------------|--------------|
| 18 U.S.C. §§ 1594(c), and 1591(a)(1), (a)(2), (b)(1), (b)(2), and (c) | Conspiracy to commit sex trafficking of minors by force, fraud, or coercion | 03/17/2017 | 1 |
| 18 U.S.C. § 1591(a), (b)(2), and (c) | Sex trafficking of minors | 03/06/2017 | 2 |

See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) remaining is _____ dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 10, 2020
Date of Imposition of Judgment


Signature of Judge

GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

November 18, 2020
Date

Judgment — Page 2 of 8

DEFENDANT: **JOSEPH CHURCH**
CASE NUMBER: **3:17CR00025-001**

ADDITIONAL COUNTS OF CONVICTION

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Offense Ended</u> | <u>Count</u> |
|---|---------------------------------|-----------------------------|---------------------|
| 18 U.S.C. § 1591(a), (b)(2), and (c) | Sex trafficking of minors | 03/06/2017 | 3 |
| 18 U.S.C. § 1591(a), (b)(2), and (c) | Sex trafficking of minors | 03/17/2017 | 4 |

DEFENDANT: **JOSEPH CHURCH**
CASE NUMBER: **3:17CR00025-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 400 months.

This term consists of FOUR HUNDRED (400) MONTHS as to each of Counts 1, 2, 3, and 4, to run concurrently, for a total of FOUR HUNDRED (400) MONTHS.

See Additional Imprisonment Terms.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be placed at FCI Seagoville, FCI Three Rivers, or FCI Texarkana, as long as the security needs of the Bureau of Prisons are met.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:
 at _____ on _____
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **JOSEPH CHURCH**
CASE NUMBER: **3:17CR00025-001**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: life.
This term consists of LIFE as to each of Counts 1, 2, 3, and 4 to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.
14. If restitution is ordered, the defendant must make restitution as ordered by the Judge and in accordance with the applicable provisions of 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663A and/or 3664. The defendant must also pay the assessment imposed in accordance with 18 U.S.C. § 3013.
15. The defendant must notify the U.S. Probation Office of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

DEFENDANT: **JOSEPH CHURCH**
CASE NUMBER: **3:17CR00025-001**

SPECIAL CONDITIONS OF SUPERVISION

You must not possess and/or use computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media.

You must submit your computers (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media, to a search.

You must not have direct contact with any child you know or reasonably should know to be under the age of 18 without the permission of the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18 without the permission of the probation officer, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.

You must not view or possess any visual depiction (as defined in 18 U.S.C. § 2256), including any photograph, film, video, picture, or computer or computer- generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct (as defined in 18 U.S.C. § 2256).

You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.

You must participate in plethysmograph testing as part of the required participation in a sex offense-specific assessment and/or treatment.

To ensure compliance with the computer monitoring condition, you must allow the probation officer to conduct initial and periodic unannounced searches of any computers (as defined in 18 U.S.C. § 1030(e)(1)) subject to computer monitoring. These searches shall be conducted for the purposes of determining whether the computer contains any prohibited data prior to installation of the monitoring software; to determine whether the monitoring software is functioning effectively after its installation; and to determine whether there have been attempts to circumvent the monitoring software after its installation. You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition.

You must participate in a mental health treatment program and/or sex offender treatment program provided by a Registered Sex Offender Treatment Provider, which may include but not be limited to group and/or individual counseling sessions, Abel Screen, polygraph testing and/or psycho-physiological testing to assist in treatment and case monitoring administered by the sex offender contractor or their designee. Further, you must participate as instructed and will abide by all policies and procedures of the sex offender program, until such time as you are released from the program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You will incur costs associated with such sex offender treatment program and testing, based on ability to pay as determined by the United States Probation Officer. You shall waive your right of confidentiality in any records for mental health treatment imposed as a consequence of this judgment to allow the supervising United States Probation Officer to review your course of treatment and progress with the treatment provider. If requested by the mental health provider, the Court authorizes the United States Probation Officer to provide pertinent information from the presentence investigation report and any information available from mental health evaluations that are in the possession of the probation officer.

You must have no contact with the victim, or the victim's family, including letters, communication devices, audio or visual devices, visits, or any contact through a third party, without prior written consent of the United States Probation Officer.

You must participate in a mental-health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You must pay the cost of the program, if financially able.

You must take all mental-health medications that are prescribed by your treating physician. You must pay the costs of the medication, if financially able.

You must participate in an inpatient or outpatient substance-abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You must pay the costs of the program, if financially able.

You must participate in an inpatient or outpatient alcohol-abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You must pay the costs of the program if financially able.

You may not possess any controlled substances without a valid prescription. If you do have a valid prescription, you must follow the instructions on the prescription.

You must submit to substance-abuse testing to determine if you have used a prohibited substance, and you must pay the costs of the testing if financially able. You may not attempt to obstruct or tamper with the testing methods.

You may not use or possess alcohol.

You may not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances, including synthetic marijuana or bath salts, that impair a person's physical or mental functioning, whether or not intended for human consumption, except as with the prior approval of the probation officer.

DEFENDANT: **JOSEPH CHURCH**
CASE NUMBER: **3:17CR00025-001**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

| | <u>Assessment</u> | <u>Restitution</u> | <u>Fine</u> | <u>AVAA Assessment¹</u> | <u>JVTA Assessment²</u> |
|---------------|-------------------|--------------------|-------------|------------------------------------|------------------------------------|
| TOTALS | \$400.00 | \$ | \$ | \$ | \$ |

A \$100.00 special assessment is ordered as to each of Counts 1, 2, 3, and 4, for a total of \$400.00

- See Additional Terms for Criminal Monetary Penalties.
- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

| <u>Name of Payee</u> | <u>Total Loss³</u> | <u>Restitution Ordered</u> | <u>Priority or Percentage</u> |
|----------------------|-------------------------------|----------------------------|-------------------------------|
| | \$ | \$ | |

- See Additional Restitution Payees.
- TOTALS** \$ \$
- Restitution amount ordered pursuant to plea agreement \$_____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:
- Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

³ Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **JOSEPH CHURCH**
CASE NUMBER: **3:17CR00025-001**

SCHEDEULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$400.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ installments of \$_____ over a period of _____, to commence _____ after the date of this judgment; or

D Payment in equal _____ installments of \$_____ over a period of _____, to commence _____ after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court, P.O. Box 2300, Galveston, TX 77553-2300

Balance due in payments of the greater of \$25 per quarter or 50% of any wages earned while in prison in accordance with the Bureau of Prisons' Inmate Financial Responsibility Program. Any balance remaining after release from imprisonment shall be paid in monthly installments of \$300 to commence 60 days after the date of release to a term of supervision

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number

**Defendant and Co-Defendant Names
(including defendant number)**

| <u>Total Amount</u> | <u>Joint and Several</u> | <u>Corresponding Payee, if appropriate</u> |
|---------------------|--------------------------|--|
|---------------------|--------------------------|--|

See Additional Defendants and Co-Defendants Held Joint and Several.
 The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):

 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.