

No. 23-5445

ORIGINAL

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

WILLIAM BAZEMORE — PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Second Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Bazemore

(Your Name)

FCI - Hazelton

P.O. Box 5000, Reg. No. 86611-054

(Address)

Bruceton Mills, WV 26525

(City, State, Zip Code)

N/A

(Phone Number)

**QUESTION(S) PRESENTED**

**I**

WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION  
WHEN IT DENIED DEFENDANT'S MOTION TO WITHDRAW HIS  
GUILTY PLEA AND FAILED TO MAKE FACTUAL FINDINGS  
NECESSARY TO DETERMINE THE VOLUNTARIES OF HIS PLEA?

**II**

WHETHER SEX TRAFFICKING UNDER SECTION 1591 QUALIFIES  
AS NOT A CRIME OF VIOLENCE?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

U.S. vs. Bazemore, 2020 U.S. Dist. LEXIS 171778 (S.D.N.Y. 9/16/20)

U.S. vs. Bazemore, 2023 U.S. App. LEXIS 6863 (2nd Cir. 3/22/23)

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

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

☒ reported at 2023 U.S. App. LEXIS 6863; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

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

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 22, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 17, 2023, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1591. Sex trafficking of children or by force, fraud,  
or coercion

(a) Whoever knowingly--

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or, except where the act constituting the violation of paragraph (1) is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).



## STATEMENT OF THE CASE

The Appellant was arrested and charged with drug trafficking in violation of 18 U.S.C. § 841(b)(1)(A), while in possession of a gun in violation of 18 U.S.C. § 924(c)(1)(A), sex trafficking in violation of 18 U.S.C. § 1591 (a)-(b)(1), and other related offenses. Appellant's counsel advised him to enter a Plea agreement where he would plead guilty to 1 count of Sex Trafficking of Children in violation of 18 U.S.C. § 1591(a), (b)(1) and 2, on the expectation that counsel will later argue that sex trafficking is not a "crime of violence" under the sentencing guidelines, U.S.S.G. § 4B1.1. Thus, Appellant pled guilty to sex trafficking so his counsel could argue he was not a career offender, prior to an imposed sentence.

Appellant's written Plea Agreement waived any argument that sex trafficking was not a "crime of violence" at sentencing, direct appeal, or in a collateral attack under 28 U.S.C. § 2255. Mr. Bazemore was granted a change of counsel following his entered Plea agreement and later moved to withdraw his plea on the ground that it was predicated on erroneous legal advice. The District Court held an evidentiary hearing at which appellant and prior counsel testified about their discussions on Mr. Bazemore decision to accept the sex trafficking plea. Despite nothing in the record contradicting Appellant's testimony that he pled guilty to sex trafficking so he could have the opportunity to later argue the offense is not a "crime of violence", the District Court determined that Mr. Bazemore provided no basis to withdraw

his plea. On 6/9/2021, Appellant filed his own Pro Se Motion to Withdraw the Plea and the District Court rejected [and/or denied] the Pro Se Motion at his sentencing hearing on 6/30/2021.

At the Appellant's Sentencing Hearing, U.S. District Judge Torres adopted the PSR's designation of Mr. Bazemore as a career offender under U.S.S.G. § 4B1.1. The U.S. District Court sentenced the Appellant to 327 months of imprisonment. A direct appeal followed thereafter where the U.S. Court of Appeals later affirmed his judgment of conviction, in an order & decision entered 3/22/2023. See Appendix A; also see U.S. vs. Bazemore, 2023 U.S. App. LEXIS 6863. The Appellant filed his own Pro Se Petition for Rehearing or Rehearing en banc (dated 4/24/23), after Appellate counsel withdrew from the case. The Appellant's Pro Se Petition for Rehearing or Rehearing en banc was denied on 5/17/2023. See Appendix B. The Appellant files this Pro Se Petition for a Writ of Certiorari on the issues raised previously before the U.S. Court of Appeals. The Appellant mailed a letter for an extension of time to file his Pro Se Petition for a Writ of Certiorari between 7/31/2023 to 8/8/2023, during a facility lockdown. The Appellant nonetheless mailed this Petition before or by his 90 day filing deadline date.

## REASONS FOR GRANTING THE PETITION

### I

THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED  
DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA AND  
FAILED TO MAKE FACTUAL FINDINGS NECESSARY TO DETERMINE  
THE VOLUNTARIES OF HIS PLEA

The accused is guaranteed the right to the effective assistance of counsel when [and prior to] entering a Plea agreement upon the advice of counsel. See e.g. Hill vs. Lockhart, 474 U.S. 52 (1985). The decision in U.S. vs. Bazemore is contrary to the rational applied by the U.S. Court of Appeals as seen in cases such as U.S. vs. Arteca, 411 F.3d 315 (2nd Cir. 2005). The Court of Appeals for the Second Circuit has held that "factual misinformation, to the extent that it renders a decision to plead guilty less than voluntary or intelligent, may provide a basis for withdrawing a plea." See U.S. vs. Arteca, supra. Former counsel advised the defendant to enter a Plea agreement for a sex trafficking charge under the "promise or proposal" that counsel will later argue, before the U.S. District Court, that sex trafficking under 18 U.S.C. § 1591 is not a "crime of violence" for purposes that defendant is not a career offender under U.S.S.G. § 4B1.1.

The proposed argument by former counsel never took place at Sentencing and the Appellant even reargued the issue in his own

Pro Se Motion to withdraw, reflected on his Sentencing hearing record. A criminal defendant has the right to withdraw his plea any time before sentence is imposed if he "can show a fair and just reason for requesting the withdrawal." See Fed.R.Crim.P. Rule 11(d)(2)(B). The lower court record is ripe for review.

This Supreme Court can determine whether this defendant showed a "fair and just reason" to withdraw the plea after learning that his written plea agreement potentially barred counsel from making his "promised legal argument" at sentencing and on direct appeal. For this issue presented, the Pro Se Petition for a Writ of Certiorari should be granted. And grant such other and further relief this Supreme Court deems just and proper.

## II

### SEX TRAFFICKING UNDER SECTION 1591 QUALIFIES AS NOT A CRIME OF VIOLENCE

The issue presented is a question with conflicting answers between the sister Circuit Courts. The Fifth Circuit and Fourth Circuit have held that the statute of Sex Trafficking of Children, in violation of 18 U.S.C. § 1591, does not qualify as a crime of violence. See U.S. vs. Fuertes, 805 F.3d 485 (4th Cir. 2015); U.S. vs. Jackson, 7 F.4th 261 (5th Cir. 2021). Despite the Second Circuit Court of Appeal recognition of the rational in

Fuertes, supra, in its own precedent such as U.S. vs. Corely, 679 Fed. Appx. 1 (2nd Cir. 2017), the recent appellate decision of U.S. vs. Bazemore fails to answer this question of law applying Fuertes. In his Pro Se Petition for Rehearing or Rehearing en banc, Appellant raised the question applying 18 U.S.C. § 16(a) and the "categorical approach" as seen in Davis vs. U.S., 139 S.Ct. 2319 (2019), as sex trafficking can be committed using "fraudulent means." The statute for 18 U.S.C. § 1591(a) specifies that sex trafficking by force, fraud, or coercion may be committed nonviolently, i.e., through "fraudulent means", thus this question before this Supreme Court will provide guidance to numerous of cases across the nation.

The question presented affects whether a defendant can be sentenced as a career offender under U.S.S.G. § 4B1.1 for a charge of sex trafficking under 18 U.S.C. § 1591. The Appellant's Pro Se Petition for a Writ of Certiorari, for this question of law, should be granted, and ordered the appointment of counsel to brief this issue. And grant such other and further relief this Supreme Court deems just and proper.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William B. Gence

Date: August 14, 2023