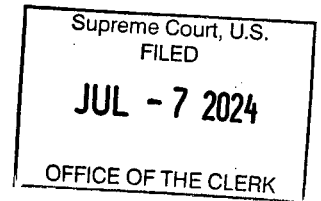


No. **24-5114** **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



BENJAMIN BIANCOFIORI — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Benjamin Biancofiori Pro Se
(Your Name)

United States Penitentiary PO Box 1000
(Address)

Lewisburg, PA 17837
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

This case presents an issue of national importance concerning the clarity of 18 U.S.C. 1591, "sex trafficking of children or by force, fraud, or coercion." Containing age provisions only under the age of 18, does it prohibit adult sex trafficking? That question has gone unanswered since the enactment in 2008. Recently, responding to the Petitioner's constitutional challenge to the 1591 statute, the Seventh Circuit stated "the fact a pattern of arguments similar to Biancofiori's continues in the district courts implies the need to resolve the matter with precedential effect." This petition represents an opportunity for the Supreme Court to resolve this significant matter as called for.

I. Was it Congress' intent for the force, fraud, or coercion elements in 18 U.S.C. 1591 to be applied to adult sex trafficking?

II. Does 18 U.S.C. 1591 prohibit the sex trafficking of adults age 18 or over with the clarity required by the 5th Amendment's Due Process Clause?

III. Whether the discovery of the Government's violation of an individual's 5th Amendment right to Compulsory Process by threats and intimidation of defense witnesses and alleged victim, constitutes newly discovered evidence under Rule 33(b)(1)?

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:

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B 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 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 February 28, 2024.

☒ 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: _____, 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 July 27, 2024 (date) on May 1, 2024 (date) in Application No. 23 A 972.

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

The relevant provisions of the Fifth and Sixth Amendments to the U.S. Constitution and 18 U.S.C. 1591 (a)(1) and (b)(1) are reproduced verbatim at Appendix C to this petition.

STATEMENT OF THE CASE

On May 11, 2016, a criminal complaint was signed in the Northern District of Illinois as to Petitioner Benjamin Biancofiori (hereafter Biancofiori) for 1 Count of sex trafficking under 18 U.S.C. 1591(a), (Doc. 1).¹ On June 9, 2016, a grand jury returned a 5 Count indictment charging Biancofiori with Five counts of sex trafficking under 18 U.S.C. 1591(a)(b)(1), (Doc. 12). On October 13, 2016, a 6 Count indictment was returned charging Biancofiori with Six counts of sex trafficking under 18 U.S.C. 1591(a)(b)(1), (Doc. 38). On April 20, 2017, a 15 Count second superseding indictment was returned charging Biancofiori with One count of sex trafficking conspiracy under 18 U.S.C. 1594(c), Nine counts of sex trafficking under 18 U.S.C. 1591(a)(b)(1), and Five counts of obstructing sex trafficking under 18 U.S.C. 1591(d), (Doc. 62).

This case arose when Ana Martinez, the alleged victim in the criminal complaint, identified as victim "G" in the second superseding indictment's Count Eight, sent a text message to TFO Jones stating "I have a new project for you," in reference to Biancofiori. (Doc. 282, ex. 4). She was in contact with Jones prior, due to being an alleged victim in another sex trafficking case where he was a case agent. In the days leading to her "new project" message, Martinez had been sending text messages to Jones, concerned with her recent felony arrest and requesting assistance with it. (Doc. 282, ex. 29A). Hours prior to her initial court appearance for the recent felony charges, Martinez stated to Jones that during an argument relating to a theft in Biancofiori's home, she was stopped by him, and that for the three days she was with Biancofiori, she had

¹ In this Petition, "Doc." refers to the district court docket in the Northern District of Illinois case 16 CR 306 followed by docket entry and page number where appropriate.

been forced to prostitute. In the following weeks, Martinez began to stress resistance towards moving forward with charges against Biancofiori. Text messages between her and Jones demonstrated pressure applied by Jones to lead Martinez through another sex trafficking case as an alleged victim. (Doc. 282, ex. 8B-E; 9A-D).

Agents began an investigation into sex trafficking of adult women who were known to be commercial sex workers and at some point had relationships with Biancofiori. Multiple interviews were conducted with some of those women, several while in custody for matters unrelated. Aside from Martinez, multiple alleged victims were cooperating with law enforcement with hopes of receiving consideration towards their pending felony state charges. (Doc. 1).

Jones, with Agent Eckert, conducted multiple interviews with Tarrin Rodway, identified as victim "F" in counts One, Seven, Eleven, and Twelve of the second superseding indictment. Some of the interviews took place while she was in custody for charges unrelated. On April 4, 2016, Jones and Eckert took Rodway to the U.S. Attorney's office in Chicago. Case agents, joined by AUSA Peluso and Csicsila interviewed her. During that interview, Rodway was promised financial assistance, Section 8 housing, and assistance obtaining the custody of her two young children in return for providing testimony that Biancofiori had been forcing her to prostitute. (Doc. 282, Rodway).

Rodway acknowledged her participation in prostitution, however, denied being forced. After refusing to allege that Biancofiori forced her to prostitute, Rodway was then threatened by Csicsila with jail time and the indefinite loss of custody of her children. (Doc. 282, Rodway). She was in-

structed to appear before a grand jury the following day. She did not appear, instead, Rodway hired an attorney and informed him of the threats from Csicsila.

Rodway's attorney contacted AUSA Peluso, informing her of Rodway's representation and requesting any further contact go through him. After several attempts were made by Jones to contact Rodway, she sent him a text message informing him of her attorney representation and requests that he stop contacting her. (Doc. 282, ex. 5A-B). Ignoring her request and despite being aware of her attorney representation, Jones sends a text message to Rodway on May 11, 2016, requesting to meet with her and stating that he was aware of her location. (Doc. 282, ex. 6). Expressing her fear, Rodway then powered her phone off. Again, without contacting Rodway's attorney, Jones makes contact with Rodway one week later and she is brought to the U.S. Attorney's office, and ultimately, before a grand jury.

Prior to Rodway's appearance before a grand jury, Peluso and Csicsila prepared a statement to be presented to the grand jury. Rodway did not agree with multiple parts of the statement, but was threatened into compliance by Csicsila. (Doc. 282, Rodway). The statement, which was read by Csicsila to the grand jury, resulted in sex trafficking charges against Biancotiori relating to Rodway. (Doc. 62). Prior to Biancotiori's trial, Rodway refused to proceed with false testimony, at which time she was threatened with sex trafficking conspiracy charges if she attempted to alert defense counsel of the circumstances surrounding her grand jury statement or testified at Biancotiori's trial. Csicsila threatened to "ruin" Rodway's life if she "didn't stay away from defense counsel." (Doc. 282, Rodway). She never contacted defense counsel and was not present at trial.

On August 29, 2017, Biancofiori filed a motion to dismiss counts One through Ten of the second superseding indictment, raising facial and as-applied unconstitutional challenges to 18 U.S.C. 1591 relating to sex trafficking of adults. (Doc. 110). On January 11, 2018, the motion was denied. (Doc. 132).

On January 30, 2018, trial began. (Doc. 165). Five of the nine alleged victims testified. Despite her absence, a large portion of the government's case was related to Rodway. Ashley Lawrence, identified as victim "E" in counts One and Six of the second superseding indictment, was Biancofiori's girlfriend, and originally a target of the investigation. She was ultimately granted immunity in exchange for her testimony. Lawrence testified to several key issues related to Rodway, including Biancofiori being violent in front of and towards Rodway; Rodway giving all of the money she made through commercial sex to Biancofiori; and Rodway being forced by Biancofiori to prostitute. (Doc. 201 at 300; 314-19; 326).

At trial, the government admitted into evidence twenty text messages between Biancofiori and Carmen Manno. (gov. ex. 710-12; 928-44). Manno was a friend of Biancofiori's and several of the alleged victims. Martinez was introduced to Biancofiori by Manno. Manno was not present at trial.

Also admitted at trial by the government, were thirty-one recorded phone calls between Courtney Chaddick and Biancofiori while he was in custody. (gov. ex. 414-16; 910-11; 1007; 1701-25). Chaddick was the mother of Biancofiori's daughter and close friend of several alleged victims. Chaddick did not testify at trial. The absence of both Manno and Chaddick was due to threats from AUSA Csicsila of sex trafficking conspiracy charges if they communicated with defense counsel or provided trial testimony for Biancofiori.

The threats are detailed in sworn affidavits from Mamo and Chaddick. (Doc. 282, Mamo; Chaddick).

On February 21, 2018, trial convened. (Doc. 186). The jury convicted Biancofiori on counts One through Fourteen, and acquitted on count Fifteen. A timely motion for a new trial was filed on March 30, 2018. (Doc. 193). The motion was denied. (Doc. 211). On June 6, 2019, Biancofiori filed a motion for a new trial based on newly discovered evidence. (Doc. 282). The Court was provided with sworn affidavits from Rodway, Chaddick, and Mamo, detailing threats and intimidation by case agents and prosecutors that deterred them from assisting defense counsel and providing trial testimony. The Court denied the motion and refused to hold a hearing. (Doc. 286).

On December 8, 2021, Biancofiori filed a motion to reconsider dismissing counts One through Ten based on 18 U.S.C. 1591 being unconstitutionally vague facially and as-applied to adult sex trafficking. Biancofiori presented the Court with Congressional transcripts that outlined the intentions of Congress that were particularized by the 106th Congress in H.R. 1356, supporting that 18 U.S.C. 1591 and its enhanced penalties were set for the sex trafficking of children. (Doc. 432). The motion was denied and Biancofiori was sentenced to 360 months on counts One through Ten, and 240 months on counts Eleven through Fourteen. (Doc. 435).

Biancofiori appealed his convictions and sentence. As to the motion for a new trial based on newly discovered evidence, the Seventh Circuit held:

"even if the affidavits themselves were new, Biancofiori knew about

the witnesses and their statements at the time of trial, therefore, the judge found the underlying evidence was not new."

As for the issues relating to 18 U.S.C. 1591 being unconstitutionally vague and only intended to prohibit sex trafficking of children, the Seventh Circuit stated:

"we could not find any appellate decision holding that 1591(a) is limited to the sex trafficking of minors. Nor could we find any opinion holding the opposite." In concluding, the Seventh Circuit stated: "the fact that a pattern of arguments similar to Biancotiori's continues in the district courts implies the need to resolve the matter with precedential effect."

The Seventh Circuit affirmed Biancotiori's convictions and sentence.

REASONS FOR GRANTING THE PETITION

A. The Supreme Court should intervene and correct the erroneous application of the force, fraud, or coercion elements in 18 U.S.C. 1591(a)(1)(b)(i) which improperly sidesteps Congress' intent.

This Court has long recognized that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." *Garcia v. United States*, 469 U.S. 70, 76, 83 L. Ed. 2d 472, 105 S. Ct. 479 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186, 24 L. Ed. 2d 345, 90 S. Ct. 314 (1969)).

Congress' intent was that the force, fraud, or coercion elements in 18 U.S.C. 1591(a)(1)(b)(i) apply to minors. The Federal Sentencing Guidelines Manual titles 1591 as "sex trafficking of children **By** force, fraud, or coercion." Courts throughout the country have been charging defendants with the same language verbatim. See *United States v. Petila*, (6th Cir. 2023); *United States v. Harrison* (8th Cir. 2018); *United States v. Fulton* (5th Cir. 2016). "Section 1591 generally concerns sex trafficking of children by force, fraud, or coercion." *Gilbert v. United States Olympic Comm* U.S. Dist. LEXIS 35921 (10th Cir. 2019). "The legitimate sweep of 1591 is that it allows conviction of individuals who have forced minors into prostitution and maintained them by various means." *United States v. Thompson*, 896 F. 3d. 155, 167 (2nd Cir. 2018).

Section 701 of the Adam Walsh Act created 2252 A, that prohibits engaging in child exploitation enterprises, defined as violating 1591, 1601 (if victim is a minor), chapter 109 A (involving a minor victim), chapter 110 or 117 (involving a minor). The violations that have alternative means

that include offenses related to adults specify "involving a minor." 1591 is stated alone, which infers it is strictly related to minors.

In 2000, Congress enacted the "Trafficking Victims Protection Act," codified as relevant at 18 U.S.C. 1591, to "prohibit the sex trafficking of children by force, fraud, or coercion." There are three Congressmen that are responsible for the bill being passed, Representative Christopher H. Smith, Senator Brownback, and Senator Wellstone. Within the Congressional records are statements made by these sponsors of the bill that clearly states that the penalties proscribed under 1591(b)(1) apply to child sex trafficking.

The excerpts from the following Congressional transcripts show that the force, fraud, or coercion elements in 1591 were intended for the sex trafficking of children, not adults.

(1) H.R. 1356 discussion, 106th Congress, first session, on March 25, 1999, Section 9, page 22:

"Amends Federal criminal law to subject to both civil (including forfeitures) and criminal penalties to anyone who, whether inside or outside the United States, for the purposes of causing a person under the age 18 (by force, fraud, or coercion) to engage in a commercial sex act."

(2) On September 14, 1999, the House of Representatives Subcommittee on International Operations and Human Rights met to discuss H.R. 1356 at 1:05 pm in room 2171, Rayburn, with Hon. Christopher H. Smith presiding. On page 17 of the transcript it reads:
"also with girls under the age of 14, it is assumed that those who co-

commit crimes against those women AND force them to be raped each and every day, they get life imprisonment or up to life imprisonment."

(3) On April 12, 2000, the H. R. 3244 matching Senate bill S. 214 is introduced by Senator Wellstone as the "Trafficking Victims Protection Act of 2000," within the 106th Congress, 2nd session. Congressional transcript page 52630 on this date has Senator Wellstone speaking and he says in his opening statement:

"If you are going to traffick a child under the age of 14 for forced prostitution, you are going to serve a life sentence in prison."

(4) On July 27, 2000, Senator Wellstone, the Senate sponsor of the bill, again speaks on the Senate Congressional record in reference to H. R. 3244, transcript page 57789, again confirming his prior assertion stating:

"Finally, prosecution is taking this seriously, treating it as a crime so for example, if you are trafficking a young girl under the age of 14 AND forcing her into prostitution you face a life sentence in prison."

(5) On October 11, 2000, just seven days before the passage of the new law the conversation is ripe with more confirmation that the statute is for child sex trafficking. The Senate transcripts on page 510167 leads:

"Sex traffickers favor girls aging in the range of 10-13. This is the reason that the strictest penalty of life in prison is being lodged against forcing children into prostitution."

Page 510169 leads:

"Yes, if you are trafficking a young girl AND forcing her into prostitution, you can face a life sentence."

(6) 18 U.S.C. 1591 was updated in 2008 in the William Wilberforce Trafficking Victims Reauthorization Act of 2008. 110 P.L. 457, 122 Stat. 5044. This was the first update since its passage in 2000 and is found in Section 5, a section titled "(5) Sex Trafficking of Children."

While the "or" in the statute textually slips by, the Congressmen and Senators all clearly believe and further confirm with their statements what their actual intentions for the statute were, and that is a child sex trafficking statute. In any of their statements, if they meant the most severe penalty to be addressed to adults, the Congressmen would have said so. They would not have to mention children in the statements, and would not have continued to specify the age of 14 and under.

Acknowledging the difference in adult and minor victims of sex trafficking, the Seventh Circuit stated:

"Adult victims of sex trafficking might be vulnerable, but child victims are helpless; the inherent imbalance in physical strength between a child and an adult that seeks to exploit her makes physical violence against a child a more effective means of control (from the offender's point of view) than it would be over an adult victim. Moreover, an adult victim is more capable of seeking help or escaping the physical control of her victimizer than is a child. A pimp therefore has a greater incentive to use psychological manipulation rather than violence to control an adult victim, while the surest method of securing a child's compliance is likely to be violent force. The risk of violence to a child victim of sex trafficking is accordingly greater than the corresponding risk of an adult." *United States v. Jackson*, U.S. Dist. LEXIS 187004

(7th Cir. 2015).

Other courts to consider the question have recognized the fact that giving attention to the greater vulnerability, sex trafficking of children inherently involves a substantial risk of physical violence. That would lead to the logical conclusion that Congress intended the force, fraud, or coercion elements in 1591 be applied to children.

In relation to the elements applying to adults, a Chief district court Judge held:

"The government's argument would also have the effect of excluding any evidence about Jane Doe 2 being forced to stay in the automobile because under the government's theory, the coercion perversion of the statute applies to victims over 18. If that is true, then that evidence would have to be excluded and could only prosecute for a child under the statute, and it would eliminate prosecution for children who were trafficked by means of force. I think the references to the use of force and coercion just reflects the different ways in which children are sex-trafficked. Some children are forced to do it, some are enticed to do it." United States v. Atgare, U.S. Dist. LEXIS 86587 (6th Cir. 2013).

It would be absurd to interpret Congress' intent for the force, fraud, or coercion elements to be equally applied to adults. The logical reading would be to apply force, fraud, or coercion to sex trafficking minors for the most severe punishment. To balance the sex trafficking of a child under 14, with that of an adult, would not be a logical view of Congress' intent when passing 1591. The absurdity, and conflicting court opinions, calls for a collective intervention by the Supreme Court.

B. The Supreme Court should intervene and hold 18 U.S.C. 1591(a)(1)(b)(i) unconstitutionally void-for-vagueness as applied to sex trafficking adults 18 or over due to its lack of clarity which deprives individuals of the protections provided by the Fifth Amendment's Due Process Clause.

The Fifth Amendment provides that "no person shall... be deprived of life, liberty, or property, without due process of law." U.S. Const. amend V. "Stemming from this guarantee is the concept that vague statutes are void." *United States v. Cook*, 577 U.S. 906 (2015). "The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1262, 200 L. Ed. 2d 549 (2018); *United States v. Davis*, 139 S. Ct. 2319, 2325, 204 L. Ed. 2d 757 (2019). "Our holding squarely contradicts the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp." *Johnson v. United States*, 576 U.S. 591, 602, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015). "What renders a statute vague is not the possibility that it will be difficult to determine whether the incriminating fact it establishes has been proven; but rather the indeterminacy of precisely what the fact is." *United States v. Williams*, 553 U.S. 285, 306, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008).

18 U.S.C. 1591 was enacted with an ambiguity that allows lower courts to disregard the intentions of Congress, leaving the courts to decide what the law really means. The ambiguity between Congress' intent in enacting 18 U.S.C. 1591 and the text of 1591(a)(1)(b)(i),

leaves the courts, rather than Congress, to decide what Congress intended when they enacted 1591 into law.

Several courts have commented on the vague language in 1591. In *United States v. Paul*, 985 F.3d 1099 (8th Cir. 2018), where the defendant was convicted of trafficking both a minor and an adult victim, the 8th Circuit concluded:

"Although there may be some ambiguity as to whether 1591 includes two separate crimes - the crime of sex trafficking of a minor and the crime of sex trafficking by use of force, fraud, or coercion is not relevant here because the jury found Paul guilty of both offenses." In *United States v. Freeman*, U.S. App. LEXIS 29279 (7th Cir. 2023), the 7th Circuit referred to the 1591 statute as "not a model of clarity."

In *United States v. Aftare*, U.S. Dist. LEXIS 96587 (6th Cir. 2013), the Honorable Chief Judge Haynes acquitted multiple defendants of 1591 charges involving adult victims. The Court stated:

"I have concluded... that 1591 applies only to children, people under the age of 18. The compilers gave the statute the title of, 'sex trafficking of children.' The only age provisions in the statute are under the age of 18. The 6th Circuit has referred to this statute as a sex trafficking of children statute. The government's purported distinction that the coercion part of 1591(a) applies to those 18 or older would only be permissible by engraving the words '18 years or older' on the statute. If Congress intended to apply that to over 18, they would have done so. The Court believes that it would be a grievous error to include a group, that is the over-18 group, on a statute that is clearly labeled sex trafficking of children." The ruling was later reversed.

Other Federal Statutes related to sex trafficking are stated with the clarity required by the Constitution. "Both evidence and sound policy dictate that the provisions in 2421(a) of the Mann Act are meant to reach sex trafficking of adults." *United States v. Maldonado-Burgos*, 814 F.3d 339 (1st Cir. 2016).

Section 2421 is the original Mann Act, as amended in minor respects. Section 2423(a), however, mirrors the Mann Act, but was intended to protect minors from sexual predators and imposes more severe penalties. Congress clarified that 2423(a) indeed covers the sex trafficking of children. This classification was part of a "larger and comprehensive response to the horrifying menace of sex trafficking crimes against children." (H.R. No. 105-557). 2421 holds a ten year maximum sentence, while 2423 holds a maximum life sentence. The statutes distinguish the difference in sex trafficking minors compared to adults.

While the section relating to the punishment in 1591(b)(1) is age specific, citing ages less than 14 and 14-17, nowhere in the statute is the age 18 or over mentioned. (18 U.S.C. 1591 is reproduced verbatim at Appendix C to this petition.) Prosecutors across the United States are continuing to seek draconian sentences for adult sex trafficking using a statute that is unconstitutionally vague, in violation of the Fifth Amendment's Due Process Clause. With 1591 holding the maximum sentence of life in prison, the most exacting vagueness standard must apply.

The Supreme Court should hold 18 U.S.C. 1591(a)(1)(b)(1) unconstitutionally void-for-vagueness as applied to the sex trafficking of adults ages 18 or over.

C. The Supreme Court should intervene and correct the Seventh Circuit's holding that sworn affidavits from defense witnesses and an alleged victim, detailing Substantial Government Interference with witnesses in violation of the 6th Amendment's Compulsory Process, as articulated in *Webb v. Texas*, were not considered newly discovered evidence under Rule 33(b)(1).

This Court has long recognized that interference with a witness's free and unhampered choice to testify violates the defendant's due process rights. *Webb v. Texas*, 409 U.S. 95, 98, 93 S. Ct. 351, 34 L. Ed. 2d 330 (1972); *Washington v. Texas*, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). A defendant's 6th Amendment right to Compulsory Process is violated when the defendant is deprived of testimony that would have been relevant, material, and vital to his defense. *United States v. Valenzuela Bernal*, 458 U.S. 858, 867, 102 S. Ct. 3440, 73 L. Ed. 2d 1193 (1982) (quoting *Washington*, 388 U.S. at 16).

In this case, sworn affidavits from two witnesses and an alleged victim² showed that the prosecution team, along with case agents, violated Biancofiori's 6th Amendment right to Compulsory Process of Witnesses in his favor, and his 5th Amendment right to Due Process of Law, through the intentional interference with his right to conduct a defense investigation, interview prospective witnesses, and secure material and favorable trial testimony. Prosecutors substantially interfered with Biancofiori's access to witnesses and alleged victims, while exercising an overly aggressive approach using intimidation, threats of prosecution, and other coercive tactics designed to impair and hinder the witness' decision to freely assist the defense and testify without

fear of retaliation. Biancofiori suffered prejudice as a consequence, while the absence of fundamental fairness infected his trial.

Tarin Rodway, an alleged victim identified as victim "F" in counts 1, 7, 11, and 12, "was threatened, coerced, and intimidated in order to obtain false grand jury testimony, and ultimately interceded with her providing vital testimony for the defense at trial. The key fighting issue at trial was whether the alleged victims engaged in commercial sex willingly, or due to force, fraud, or coercion. In her sworn affidavit, Rodway states unequivocally that she freely made her own decision to participate in commercial sex. (Doc. 289, Rodway affidavit). Her testimony undoubtedly would have resulted in an acquittal for Biancofiori on the counts related to Rodway.

Cartney Chaddick and Carmen Mano, both witnesses for the defense that were intimidated and threatened by prosecutors in this case in order to stifle material and favorable trial testimony. Parallel with Rodway, both Chaddick and Mano were threatened with charges of sex trafficking conspiracy if they communicated with defense counsel or provided trial testimony. (Doc. 282, Chaddick affidavit; Mano affidavit). Their affidavits detail the interference and misconduct by the government which violated Biancofiori's 5th and 6th Amendment Constitutional rights.

On June 6, 2019, Biancofiori filed a supplemental Rule 33 motion for a new trial, which included the three sworn affidavits constituting newly discovered evidence under Rule 33 (b)(1). (Doc. 282). The District Court ruled the motion as untimely because it did not present any newly discovered evidence that would allow him to proceed

under Rule 33(b)(1). (Doc. 286).

In response to Biancofiori's raising the issue on direct appeal, the government stated that they "had chosen not to call Redway at trial." Furthermore, the government then stated "defendant was aware of her statements." But the only statement that Biancofiori had been aware of at the time of trial was the false statement that was prepared by the prosecutors for Redway that was presented before a grand jury resulting in an indictment. Biancofiori's position was that there was no way of knowing that Redway, or any of the witnesses for that matter, were threatened by the government to produce false testimony or interfere with trial testimony, aside from the witnesses themselves stating those facts, which they did in their sworn affidavits; therefore, constituting newly discovered evidence.

The 7th Circuit has considered what kinds of claims can be brought and what showing needs to be made on a motion for a new trial under Federal Rules of Criminal Procedure 33. *United States v. O'Malley*, 833 F.3d 810 (7th Cir. 2016), held that "a motion for a new trial based on newly discovered evidence that demonstrates constitutional or statutory error may... be brought under Rule 33" but can be granted only if the interests of justice requires a new trial if additional evidence... "probably would have led to an acquittal." *Id.* at 813.

The critical issue in Biancofiori's Rule 33 motion, as well as on direct appeal, has been whether the sworn affidavits were newly discovered evidence. In the opinion affirming Biancofiori's convictions and sentence, the 7th Circuit determined:

"even if the affidavits themselves were new, Biancotori knew about the witnesses and their statements at the time of trial, therefore, the judge found the underlying evidence was not new."

But Rodway's statement in her affidavit, was new, as well as the fact that Biancotori's Constitutional rights had been violated when the government prevented the witnesses, and alleged victim, from providing testimony that would have proven vital to the defense, at trial. These facts were not discovered until after trial, when the affidavits were provided.

Biancotori's motion for a new trial was filed within the time limit for newly discovered evidence under Rule 33(b)(1). By ruling that the sworn affidavits showing Constitutional violations was not newly discovered evidence, the Seventh Circuit relieved the government of answering to this misconduct, which denied Biancotori a fundamentally fair trial.

The Supreme Court should intervene to clarify this critical legal standard and ensure the Seventh Circuit's adherence to the Federal Rules of Criminal Procedure.

² The sworn affidavits from Rodway, Chaddick, and Manno appears at Appendix D, E, and F to the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Benjamin Biancofiori

Date: June 30, 2024