No. _____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

DEONTE WOMACK, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent*.

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

JEREMY B. LOWREY
Arkansas Bar No. 2002153
Oklahoma Bar No. 15031
Post Office Box 188
West Memphis, Arkansas 72303
(870) 329-4957

ATTORNEY FOR PETITIONER
DEONTE WOMACK

QUESTIONS PRESENTED FOR REVIEW

1. **The Eighth Circuit Court of Appeals determined that where 18 U.S.C. § 1591(b)(1) was neither charged nor submitted to the jury in a prosecution under U.S.C. § 1591(a)(1), Petitioner was still subject to the 34 point offense level for a "under U.S.S.G. § 2G1.1(a)(1) which provides for an increase from a base level 14 where "the offense of conviction is 18 U.S.C. § 1591(b)(1). Petitioner submits for review the question of whether this is a correct reading of both the sentencing guideline and statute, and whether the Circuit's ruling creates a separate issue under *Alleyne v. United States* by imposing a penalty based on a finding not submitted to the jury.**

2. **The Eighth Circuit Court of Appeals quotes language that appears to come from government pretrial disclosures in its determination of sufficiency of the evidence. Petitioner submits that this is in error and contrary to both this Court's case law, the Federal Rules of Criminal Procedure, and Sixth Amendment due process and requests either certiorari or summary reversal on this issue.**

LIST OF PARTIES TO PROCEEDING

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

LIST OF DIRECTLY RELATED PROCEEDINGS

1. Court: United States District Court, Eastern Dist. Arkansas
   Case Number(s): 4:20-CR-00045-BSM-1
   Case Caption: *United States of America v. Deonte Womack*
   Date of Judgment: July 25, 2024

2. Court: United States Court of Appeals, 8th Circuit
   Case Number(s): 24-2581
   Case Caption: *United States of America v. Deonte Womack*
   Date of Judgment: August 4, 2025
   Substituted Judgment on Rehearing: October 1, 2025
   Rehearing - Substituted Judgment Denied: November 19, 2025

TABLE OF CONTENTS

INDEX TO APPENDIX

TABLE OF AUTHORITIES

United States Supreme Court Cases:

Federal Courts of Appeals Cases

Constitution and Statutes:

Rules

Other Documents

CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS IN THIS MATTER

United States v. Womack, 154 F.4th 584 (8th Cir. 2025)

[No Other Applicable Citations Available]

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

DEONTE WOMACK, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent*.

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

Deonte Womack respectfully petitions for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Eighth Circuit in Case Number 24-2581, *United States v. Deonte Womack*.

OPINIONS BELOW

This case involves the direct appeal of Petitioner's criminal conviction in the United States District Court for the Eastern District of Arkansas in case number 4:20-cr-00045-BSM-1. Appendix D; App. 22. The United States Court of Appeals for the Eight Circuit entered its initial opinion in this matter on August 4, 2025. Appendix C; App. 12. Both Petitioner and the government timely filed petitions for rehearing, and the Eighth Circuit issued a substituted

opinion on October 1, 2025. Appendix B; App. 2; *United States v. Womack*, 154 F.4th 584 (8th Cir. 2025). Petitioner timely filed a Petition for Rehearing and Rehearing En Banc from the substituted opinion. Rehearing and Rehearing En Banc were denied November 19, 2025. Appendix A; App. 1.

JURISDICTION

Jurisdiction in the District Court was conferred pursuant to 18 U.S.C. § 3231 and Fed. R. Crim. Proc. 18. Judgment was entered and became final on July 25, 2024. Appendix D; App. 22. The final judgment of the United States Court of Appeals for the Eighth Circuit on petitioner's appeal from his conviction and sentence was entered (by Order denying Petitioner's Petition for Rehearing and Rehearing En Banc) on November 19, 2025. Appendix A; App. 1. Pursuant to United States Supreme Court Rules 13(1) and 30, this petition is timely filed on February 17, 2026 - within 90 days after entry of the judgment denying petitioner's appeal. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

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

[subsections (a) and (b)]

(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).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, obtained, advertised, patronized, or solicited had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

* * *

United States Sentencing Guidelines (2023) § 2G1.1. PROMOTING A COMMERCIAL SEX ACT OR PROHIBITED SEXUAL CONDUCT WITH AN INDIVIDUAL OTHER THAN A MINOR

(a) Base Offense Level:

(1) 34, if the offense of conviction is 18 U.S.C. § 1591(b)(1); or

(2) 14, otherwise.

(b) Specific Offense Characteristic

(1) If (A) subsection (a)(2) applies; and (B)(i) the offense involved fraud or coercion; or (ii) the offense of conviction is 18 U.S.C. § 2421A(b)(2), increase by 4 levels.

(c) Cross Reference

(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) or 18 U.S.C. § 2242, apply §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(d) Special Instruction

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

STATEMENT OF THE CASE

A. Procedural History and Mr. Womack's Sentence

Deonte Womack was charged by superseding indictment with three counts of violations of "Title 18, United States Code § 1591(a)." (R.Doc.35) Counts One, Two, and Four. An additional Count 3 under 18 U.S.C. 1512(b)(1) was dismissed after the government's presentation of evidence, as was Count 4 under § 1591(a). Mr. Womack was ultimately convicted after jury trial of 2 Counts under what the judgment and sentence stated as "18 U.S.C. § 1591(a)." Appendix D; App. 22. At no time in the proceedings in the trial court, was any charge asserted under 18 U.S.C. § 1591(b), nor was any jury instruction given or special verdict obtained regarding the language of 18 U.S.C. § 1591(b)(1).

In sentencing proceedings, Mr. Womack objected to application of a base sentencing offense level of 34 to his case under U.S.S.G. §2G1.1(a)(1). Mr. Womack objected that,

1. "Mr. Womack's offense of conviction was 18 U.S.C. § 1591(a)(1), not 18 U.S.C. 1591(b)(1) as required by the Guideline."
2. That while "§2G1.1(a)(2) would be the more appropriate Guideline," in the absence of a finding that §2G1.1(a)(2) was applicable, "the Court may not be required to abide by the minimum set forth in this statute at all."

Defendant's Supplement to Sentencing Memorandum (R.Doc.100). In other words, Mr. Womack argued that there was no evidence of any jury finding or conviction that would make 18 U.S.C. § 1591(b)(1) applicable to his case, and that in the absence of such finding, he either should be sentenced based on the base 14 level under U.S.S.G. § 2G1.1(a)(2) or that "there was no sentence applicable without a 1591(b)(1) finding." *Id.*

On appeal of this issue, Mr. Womack argued that, "The guideline §2G1.1(a)(1) references its enhancement trigger as 'conviction' of '18 U.S.C. § 1591(b)(1).' This section is not a separate offense, but rather the mandatory minimum sentence provision of § 1591." Appellant Brief 30. Mr. Womack further argued that the provisions of U.S.S.G. § 2G1.1(b)(1) "should only be read to apply where unequivocal evidence of violence as the basis for conviction is established."

In arguing against Mr. Womack's assertion, the government submitted a different reading of 18 U.S.C. § 1591 – arguing that Mr. Womack was in fact "convicted under § 1591(b)(1)."[1] Appellee Brief 52; citing *United States v.*

[1] The government argued on appeal that "Womack does not dispute that he was subject to the 15-year mandatory minimum under § 1591(b)(1)." While the government is correct that Appellant did not discuss the mandatory minimum on appeal, this is because there was no direct imposition of a mandatory minimum by the District Court in sentencing. Indeed, Mr. Womack's Judgment and Sentence references **only** a conviction under 18 U.S.C. § 1591(a)(1). Rather, as the government noted in briefing, "[a]the district court concluded at the sentencing hearing, the correct base offense level is 34."

Unpradit, 35 F.4th 615, 629 (8th Cir. 2022), which cited *United States v. Carter*, 960 F.3d 1007 (8th Cir. 2020). The government's argument on appeal was that Mr. Womack should be sentenced based on a sentencing level of 34 under subsection 2G1.1(a)(1) because he had been "convicted" under subsection (b)(1).

The Eighth Circuit issued an opinion in Mr. Womack's case in *U.S. v. Womack*, 24-2581 on August 4, 2025. [*Womack I*], Appendix C; App. 12. Subsequently the Circuit granted rehearing on the 2G1.1 sentencing issue, and after briefing on rehearing withdrew its original opinion and issued a substituted opinion. *U.S. v. Womack*, 154 F.4th 584 (8th Cir. 2025)[*Womack II*]; Appendix B; App. 2.

Appellee Brief 45. Mr. Womack acknowledges that the trial court determined in discussion that, "Mr. Kearney is asking for a below the guideline sentence to 180 months, which is the mandatory minimum. I don't think, given the facts of the case, the testimony that was given at trial, or the verdicts that were given that it would be appropriate for me to go **below the guideline range**. . ." (Sent. TR 51), [emphasis added]; *see also* (Sent. TR 34).

Mr. Womack would take the position on any remand that because the court sentenced on a guidelines-based range well in excess of the mandatory minimum, and no mandatory minimum was established or referenced in judgment, that the issue of applicability of any mandatory minimum would be an open question in any subsequent remanded sentencing proceeding. In that regard, Mr. Womack would also note though, that the mandatory minimum also requires "conviction" under 18 U.S.C. § 1591(b)(1) to be applicable, which means the same question should apply on resentencing that is raised here.

In its substituted review of the argument advanced by Mr. Womack, the Eighth Circuit effectively adopted Appellant's original position – that "Section 1591(b)(1) does not contain an offense on its own. Rather, it provides for a fine and a mandatory minimum prison sentence as punishment for **certain** offenses contained in § 1591(a)." [emphasis added]. However the Court then effectively concluded that all §1591(a)(2) offenses implicate §1591(b)(1). The Court determined that, "when § 2G1.1(a) describes § 1591(b)(1) as the "offense of conviction," it refers to those § 1591(a) offenses that are punishable pursuant to § 1591(b)(1)." Appendix B; App. 2 at 9-10. The Circuit relied heavily on its prior opinion in *United States v. Carter*, 960 F.3d 1007, 1014 (8th Cir. 2020), and found, *inter alia*, that,

> We reject Womack's wooden interpretation of 'offense of conviction,' which would render §2G1.1(a) meaningless. Section 1591(b)(1) does not contain an offense on its own. Rather, it provides for a fine and a mandatory minimum prison sentence as punishment for certain offenses contained in § 1591(a). Therefore, when § 2G1.1 describes § 1591(b)(1) as the 'offense of conviction,' it refers to those § 1591(a) offenses that are punishable pursuant to § 1591(b)(1). *Cf. United States v. Carter*, 960 F.3d 1007, 1014 (8th Cir. 2020). . ."

Womack, 154 F.4th at 591; Appendix B; App. 2 at App. 10.

B. Facts relating to the 8th Circuit's Sufficiency Determination

In addition to sentencing issues, on review of Mr. Womack's appeal, the Eighth Circuit reviewed claims by Mr. Womack that the evidence at trial was insufficient to support a conviction under 18 U.S.C. § 1591(a)(2). More

specifically, Mr. Womack argued on appeal that, 1) there was no direct testimony that evidence of physical abuse presented at trial was related to prostitution, rather than the domestic relationship between Mr. Womack and the two alleged victims, and that 2) one of the two alleged victims testified that she chose to be a prostitute – that nobody forced her – and the other testified that any violence was domestic and that it had nothing to do with girls getting out of prostitution.

The Eighth Circuit, in evaluating this claim, relied heavily on the following finding – that victim A.B. *". . . told law enforcement that she continued working for Womack because she was afraid of what he would do if she stopped."* *Womack*, 154 F.4th at 591; Appendix B; App. 2 at App. 9.[2]

This finding by the Circuit is the only identified direct testimonial link between violence alleged against Mr. Womack and continued prostitution by the two alleged victims for which convictions were obtained. This link, however, doesn't exist in the trial record. There is no evidence of any evidence heard by the jury that A.B. was afraid of what Mr. Womack would do if she

[2] As a matter of clarification, this factual finding by the Court was not asserted by the government on appeal. A review of the government's brief on appeal shows that while the government presented evidence that the two women were at different times "afraid to call for help" (Appellee Brief 11) and that the evidence supported a conclusion they were "fearful to leave" (Appellee Brief 34) there is no argument or citation by the government to any testimonial record that supports the Circuit's conclusion on this specific statement.

stopped working for him. Rather, this statement is found verbatim in the government's pretrial "Notice of Intent" filed regarding 404(b) and other acts evidence. (R. Doc. 57 at 2).

Appellant raised the fact-finding issue directly in rehearing proceedings, arguing that the "Notice of Intent" was neither under oath, nor presented to the jury, and as such violated basic sixth amendment due process requirements for sufficiency determinations under *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

As a matter of note, the government argued on appeal that this issue was waived by Petitioner's counsel as to one of the two charges of conviction. Petitioner would further submit that the Eighth Circuit ruled on this issue on the merits, and Petitioner argued in the Circuit that the issue was directly ruled on by the trial court per Fed. R. Crim. P. 29. See Appendix E; App. 38 at App. 359 (Trial Court's ruling on Counts 1 and 2).

REASONS FOR GRANTING THE WRIT

I. The Eighth Circuit's resolution of sentencing issues regarding conviction under 18 U.S.C. § 1591(a) and (b) is based on clearly incorrect statutory interpretation, and the resulting outcome, particularly in light of both the plain language and history of the statute, violates this Court's jurisprudence in Blakely and its progeny regarding proof required for enhancement of base sentences. Additionally, the Eighth Circuit's determination is part of a conflict between certain circuits on the interpretation of U.S.S.G. § 2G1.1

INTRODUCTION

In its original August 4, 2025 opinion the Eighth Circuit determined that, "[t]he jury neither convicted Womack of violating (b)(1), nor made a specific finding that Womack's [sic] 'was effected by means of force, threats of force, fraud, or coercion.'" Appendix C; App. 12 at App. 20. After briefing on grant of rehearing at the request of the government, the 8th Circuit did not readdress this determination, and instead simply substituted a new guidelines determination without comment on its prior conclusion, relying on *United States v. Carter*, 960 F.3d 1007, 1014 (8th Cir. 2020). However, Petitioner submits that 1) *Carter* is obviously not applicable to the issue presented, and does not resolve the underlying statutory issue in any event, and 2) the Court's application of *Carter* creates a separate issue of non-conviction under 18 U.S.C. § 1591(b)(1).

To start, no offense under 18 U.S.C. §1591(b)(1) was charged here, instructed here, nor was a judgment entered under that section. And

no mandatory minimum was imposed or referenced under the Judgment and Sentence entered. The general rule under such circumstances is that for a conviction to obtain under a subsection of a federal criminal statute, that subsection must be charged in the indictment and submitted to the jury. *See e.g. Cole v. State of Arkansas*, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948)(where defendants were "tried and convicted only of a violation of a single offense charged in § 2 [of the Arkansas statute, "it is doubtful both that the information fairly informed them of that charge and that they sought to defend themselves against such a charge; it is certain that they were not tried for or found guilty of it. It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never trid as it would be to convict him upon a charge that was never made."); *see also Alleyne v. United States*, 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013)("any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury.").

In its substituted opinion, the Eighth Circuit in *Womack II* relied on *United States v. Carter*, 960 F.3d 1007, 1014 (8th Cir. 2020), in addressing this as a guidelines interpretation issue. The Circuit read *Carter* as holding that "a conspiracy conviction under 18 U.S.C. § 1594(c) was subject to a base offense level of 34 under 2G1.1(a)." *Womack*, 154 F.4th at 592; Appendix B; App. 2 at App. 10. The Court relied on this case law to find that "when § 2G1.1(a)

describes § 1591(b)(1) as the "offense of conviction," it refers to those § 1591(a) offenses that are punishable pursuant to § 1591(b)(1)."[3] *Id*. Respectfully, the Circuit's reliance on *Carter* is a complete misreading of its own prior case and does not inform the outcome here at all, leaving its decision here completely without mooring.

The *Carter* Court never reached the issue here – whether, independently of any other guidelines instruction or enabling statute, without §(b)(1) being affirmatively charged, and without any specific jury instruction or finding as to §(b)(1) - the 34 month enhancement applies to a case under § 1591(a). Rather *Carter* involved a separate offense – conspiracy under 18 U.S.C. § 1594(c). In *Carter*, and correctly so, the offense under 18 U.S.C. § 1591(b)(1) was specifically ***charged*** as a subject of the conspiracy. The *Carter* court noted that the indictment in that case listed, "the underlying substantive offense for

---

[3] The Circuit placed a footnoted burden on Womack on appeal for failure to explain what offenses might have been included under § 1591(a) and yet not inclusive within §1591(b), but Petitioner submits that this is effectively a judicial red herring. Mr. Womack argued the plain record on appeal – that he was convicted only 18 U.S.C. §1591(a)(1). He has not diverged from that argument.

Further even in its substituted opinion, the Circuit affirmatively ruled, consistent with Womack's initial argument, that section 1591(b)(1), "provides for a fine and a mandatory minimum prison sentence as punishment for **certain** offenses contained in § 1591(a)." [emphasis added]. Second, the Circuit had previously, and correctly, found in its initial opinion that "the two sections are not identical" and had done so without any need for reference or recourse to hypothetical evaluation of whether certain offenses could fall within one section without being included in the other. *Womack* I, Appendix C; App. 20. The issue was clearly raised sufficiently to result in that opinion.

all three of these defendants as 18 U.S.C. § 1591(a)(1), (a)(2), **& (b)(1)**." [emphasis added]. No such offense was listed in the indictment here, nor does the judgment reflect any conviction under section (b)(1).

The issue raised in *Carter* was whether - even though a conviction under §(b)(1) had been obtained – the provisions of U.S.S.G. § 2G1.1(a)(1) did not apply because no mandatory minimum was applicable under 1591(b)(1) because the offense was conspiracy and therefore sentenceable under 1594(c). The *Carter* Court applied a provision of the Guidelines – U.S.S.G. § § 2X1.1 – which provides, with the authority of 1594(c), that *""[u]nless otherwise specified, an express direction to apply a particular factor only if the defendant was convicted of a particular statute includes the determination of the offense level where the defendant was convicted of conspiracy ... in respect to that particular statute."* **What the *Carter* court expressly did not do is make any determination as to the applicability of U.S.S.G § 2G1.1(a)(2) where 2X1.1 does not apply, as it does <u>not</u> here.** *Carter* has no applicability here, because that case by its express terms held that, "Section 2G1.1 is not the applicable Guideline for convictions under § 1594(c). **We only get there through § 2X1.1**." *Carter* at 1014 [emphasis added]. Here, Section 2G1.1 is expressly the directly applicable Guideline.

So unlike *Carter*, Mr. Womack was sentenced under the direct language of U.S.S.G. § 2G1.1(a). Reliance on *Carter* is therefore completely inapposite

and the Circuit's opinion here is without any statutory or basis in prior Guidelines interpretation. In that regard, §2G1.1 is clear in its language that the sentencing level of 34 only applies where the "offense of conviction is 18 U.S.C. § 1591(b)(1)." Before going further, Petitioner would note the analysis in *Kisor v. Wilkie*, which makes it clear that, "a court must exhaust all the 'traditional tools' of construction," and determine that a regulation is "genuinely ambiguous." *Kisor v. Wilkie,* 139 S. Ct. 2400, 2415 (2019) (quoting *Chevron U.S.A. Inc. v. Nat. Res. Def. Council Inc.*, 467 U.S. 837, 843 n.9 (1984)); but see *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L.Ed.2d 832 (2024).

In the context of the guidelines themselves, comment 7 to U.S.S.G. § 1G1.3 makes it clear that, "a case in which the defendant was convicted of accessory after the fact to a violation of 18 U.S.C. § 1956 but would not be applied in a case in which the defendant is convicted of a conspiracy under 18 U.S.C. § 1956(h) and the sole object of that conspiracy was to commit an offense set forth in 18 U.S.C. § 1957." In other words, where the guidelines call for a "conviction" they mean that the word is used under its common meaning.

Which gives rise to the particular elephant in the room in this case. The actual problem – the apparent reason the Circuit reversed course from its clearly correct statutory analysis in its original opinion and reissued its opinion without comment on the underlying statutory issue on rehearing – is that the

Circuit's original distinction between "effect" and "would be used" in Womack I is absolutely correct, but creates an unpalatable outcome. The Circuit determined correctly in the first instance in this case that there was no "conviction" under 1591(b)(1). *Womack* I, Appendix C; App. 12 at 20. It did so because it recognized a clear distinction between (a)(1) and (b)(1), finding straightforwardly that,

> . . . the two subsections are not identical. Subsection (a) makes it a crime to "know[]," or act "in reckless disregard of the fact, that means of force, threats of force, fraud, [or] coercion . . . will be used to cause the person to engage in a commercial sex act." 18 U.S.C. § 1591(a). Subsection (b)(1) applies a mandatory minimum 15-year prison sentence for violators of § 1591(a) "if the offense was effected by means of force, threats of force, fraud, or coercion."

Id. The *Womack I* opinion further correctly found that, "The indictment specified only § 1591(a) as the charged offense and tracked that subsection's language of "know[ledge]" and "reckless disregard," language not shared by (b)(1)." *Id*.

This holding was consistent with prior 8th Circuit cases expressly recognizing the linguistic distinction in question. In *United States v. Taylor*, 44 F.4th 779 (8th Cir. 2022), the court noted specifically the breadth of the "knew or recklessly disregarded" elements, noting that, '[t]here is no requirement that a commercial sex act actually occurred, must less that fraud in fact caused the commercial sex act." *Taylor* at 791; citing *United States v. Maynes*, 880 F.3d 110 (4th Cir. 2018). Respectfully, given the clear distinction

between an (a)(1) conviction and a (b)(1), the trial court's, and the Circuit's determination becomes one that Mr. Womack was "probably guilty" of (b)(1). See *Sullivan v. Louisiana*, 508 U.S. 275, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993)("It is self-evident, we think, that the Fifth Amendment requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement of a jury verdict are interrelated. It would not satisfy the Sixth Amendment to have a jury determine that the defendant is ***probably* guilty**, and then leave it up to the judge to determine (as Winship requires) whether he is guilty beyond a reasonable doubt."); citing *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970).

Further, the original analysis of the Eighth Circuit in *Womack I* was directly consistent with this Court's general holdings on statutory interpretation. *See e.g. Lora v. United States*, 599 U.S. 453, 143 S. Ct. 1713, 1719, 216 L.Ed.2d 400 (2023) (holding that 18 U.S.C. § 924(c)'s "consecutive-sentence mandate" applied "only to terms of imprisonment imposed under . . . subsection[(c)]" because of the subsection's "plain terms" and noting that "Congress put subsection (j) in a *different* subsection of the statute,").

In *United States v. Pennington*, 78 F.4th 955 (6th Cir. 2023) the Court of Appeals for the Sixth Circuit addressed the issue of "offense of conviction" directly and held that:

> "guideline[s] (in the base offense level or in a specific offense characteristic) may *expressly* direct that a particular factor be applied only if the defendant was convicted of a particular statute." U.S.S.G. § 1B1.3 cmt. 7 (emphasis added). Other guidelines do not. *See id*. The latter instead provide a specific base-offense level using language such as, "if the offense *involved conduct* described in" a particular statute.

Pennington at 965. By way of example, the *Pennington* Court noted that,

> Guideline § 2G1.1(a)(1)'s express direction to use a base-offense level of "34, if the offense of conviction is 18 U.S.C. § 1591(b)(1)," plainly requires that a base-offense level of thirty-four should be applied only if a defendant has been convicted under 18 U.S.C. § 1591(b)(1). Guideline § 2G1.1 does not define "conviction." We "presume that an undefined word comes with its ordinary meaning, not an unusual one." United States v. Riccardi, 989 F.3d 476, 488 (6th Cir. 2021). To state the obvious, a conviction is defined as "[t]he act or process of judicially finding someone guilty of a crime[,] the state of having been proved guilty," and a "judgment (as by a jury verdict) that a person is guilty of a crime." Conviction, Black's Law Dictionary (11th ed. 2019). Very clearly, § 2G1.1(a)(1) identifies, as a condition to its applicability, a judicial finding that a person is guilty of violating 18 U.S.C. § 1591(b)(1).

Pennington at 966; citing *United States v. Nicolescu*, 17 F.4th 706, 730-31, 731 n.9 (6th Cir. 2021), *cert. denied*, — U.S. —, 142 S. Ct. 1458, 212 L.Ed.2d 546 (2022), and *cert. denied sub nom. Miclaus v. United States*, — U.S. —, 143 S. Ct. 523, 214 L.Ed.2d 60, 214 L.Ed.2d 300 (2022)(holding that, "the district court erred when it applied a guideline enhancement that required a conviction under 18 U.S.C. § 1030(a)(5)(A) when the defendants had "not [been] convicted of an offense under § 1030(a)(5)(A).").

The Eight Circuit here relied only on one other case to buttress its second opinion with reference in footnote to *U.S. v. Todd*, 627 F.3d 329 (9th Cir. 2010).

Womack, 154 F.4th at FN 3; Appendix B; App. 2 at App. 11. But *Todd* is simply wrong, both under the interpretation guidelines set out above, and in its reliance on the specific legislative history it cites. In *Todd*, the 9th Circuit relied on its interpretation of H.R.Rep. No. 108-264, pt. 1, at 20 (2003). The 2003 House Report states that the Act:

> . . . makes a technical correction to the sentencing provision of section 1591(b) by making the language of the provision correspond fully with the language in the substantive offense provision in section 1591(a).

A review of the prior version of the statute shows that this correction did not change prior "effected by" language in that section, which was present long prior to the passage of the Trafficking Victims Protection Reauthorization Act of 2003. The **2002 version** of the act in relevant part says:

> (b) The punishment for an offense under subsection (a) is—
>
> (1) if the offense was effected by force, fraud, or coercion or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under this title or imprisonment for any term of years or for life, or both; or
>
> (2) if the offense was not so effected, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title or imprisonment for not more than 20 years, or both.

18 U.S.C. § 1591 (repl. 2002). The 2003 Act clearly only brought the new statute into harmony with § 1591(a)(1) regarding the definition of the underlying offense and included "threats of force" and other corrections to make sure that an "effected" violation of subsection (a)(1) would be within its scope. It made no changes to the distinction between "knowledge or recklessness" under (a)(1) and "effect" under (b)(1).

The unpalatable outcome of *Womack I*, and Petitioner contends, its correct analysis, is that absent a jury finding in compliance with the unshared language in (b)(1), there is possibly no authority for a sentence under (a)(1) whatsoever. But this is an outcome that falls squarely on the government's shoulders. It is absolutely clear from *Carter* that the government knows how to, and regularly does, charge offenses under §(b)(1). For whatever reason, - and it seems likely that the reason is that conviction is easier under (a)(1), particularly if (b)(1) mandatory minimums and guidelines can be obtained in any event - the government chose only to charge and obtain a judgement under (a)(1) and the consequences should be on the government – not Mr. Womack.[4]

[4] Mr. Womack requested on appeal that his sentence be re-evaluated under the baseline 14 guidelines score. Although it is not clear that statutory jurisdictional authority exists outside a (b)(1) finding, he has requested that counsel submit that resentencing with a score of 14 is at least requested.

A. The Existing Circuit Confusion and Internal Eighth Circuit Inconsistency

The majority of the cases addressing the issue of the meaning of U.S.S.G. § 1G1.1 do so in relation to 18 U.S.C. § 1594(c). There are several reasons for this, the primary of which is that there is no problem of authority for sentencing if §1591(b)(1) is found inapplicable in § 1594(c) cases. In the absence of a "conviction" under § 1591(b)(1), persons convicted under § 1594(c) are sentenced under the authority of 18 U.S.C. § 1594(c). Additionally, in the 8th Circuit, at least, any cursory reading and instruction of the jury in conformity with model jury instructions should have prevented the issue that arises in this case from ever becoming an issue. The comments to the Eighth Circuit model jury instructions clearly recognize the need for a separate instruction for "conviction" under § 1591(b):

> Section 1591(b) increases the mandatory minimum sentence from 10 years to 15 years of imprisonment if the offense is effected by means of force, threats of force, fraud, or coercion (or any combination of such means), or involves causing a person under 14 years of age to engage in a commercial sex act.
>
> Any fact (other than a prior conviction) that increases either the maximum or minimum mandatory penalty for a crime must be charged in the indictment, submitted to the jury, and proven beyond a reasonable doubt. *Alleyne v. United States*, 570 U.S. 99, 109-10 (2013).

Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit (2023), Inst. 6-18-1591, comment 8. And although this case is probably close to unique in inception because of the lack of this instruction,

conviction, or of a charge under § 1591(b)(1), it is informed (and must be in order to explain the *Carter* error) by those cases.

The Eighth Circuit has previously recognized subsection (b)(1) as a "charged and convicted provision." Specifically per *Carter*, "the applicable Guidelines provision directs us to apply the provisions of § 2G1.1(a)(1) **as though** these defendants were convicted of violating § 1591(b)(1)." [Emphasis Added]. This is because the issue in § 1594 cases generally is whether – although a conspiracy defendant is not subject to the mandatory minimum provisions of (b)(1) - conviction under (b)(1) still qualifies as a "conviction" for guidelines purposes **in conspiracy cases**. But virtually all of these cases expressly include a indictment charging conspiracy to violate (b)(1) and findings of such conspiracy.

Petitioner is unaware of a case like the one here, involving aa sentence based on an uncharged claim of "conviction" under subsection (b)(1). However, resolving the §1594 issues has in certain cases resulted in conflicting resolution of the underlying question of whether a "conviction" under subsection (b)(1) is separate from a conviction under subsection (a).

As noted above, the Ninth Circuit, in *Todd*, took the position that subsection (b)(1) is a summary reference to subsection (a)(1) and that "The summary reference does not enlarge the crime identified in (a). Section (b) is punishing the act identified in (a)." *Todd* at 334-335. Appellant would note

that this is in direct contradiction of the Eighth Circuit's initial analysis in this case that "effected" offenses are a subset of (a)(1), as well as the Eighth Circuit's analysis of the scope of conviction under (a)(1) in *United States v. Taylor*, 44 F.4th 779 (8th Cir. 2022). [See discussion at 20-21, *supra*.]

Further, in *United States v. Pennington*, 78 F.4th 955, (2023), the Sixth Circuit found that the term "conviction" is a term of art under the guidelines, and held, after detailed analysis, that,

> Guideline § 2G1.1(a)(1)'s express direction to use a base-offense level of "34, if the offense of conviction is 18 U.S.C. § 1591(b)(1)," plainly requires that a base-offense level of thirty-four should be applied only if a defendant has been convicted under 18 U.S.C. § 1591(b)(1). Guideline § 2G1.1 does not define "conviction." We "presume that an undefined word comes with its ordinary meaning, not an unusual one."

The *Pennington* court determined that, "We hold that because Pennington has not been convicted of violating 18 U.S.C. § 1591(b)(1) and no guideline permits us to treat him as if he had been, U.S.S.G. § 2G1.1(a)(2) provides his base-offense level, which is fourteen." See also *United States v. Nicolescu*, 17 F.4th 706 (6th Cir. 2021).

C. In addition to the above Circuit divergence, the *Todd* error creates a conflict with this Court's clear jurisprudence regarding sentencing enhancement based on proof of additional facts

An uncomfortable outcome should not diminish the due process rights of a defendant in sentencing, particularly where that outcome stems from the failure of the government to conform to clearly established practice in charging

under the statute in question. In attempting to resolve that outcome here, the Eighth Circuit has created a different problem. While the Circuit relies on its opinion in *Carter* to bypass the sentencing guidelines requirement of "conviction", it is clear that *Carter* cannot support this conclusion because Mr. Womack's case is not subject to the guidelines' language under U.S.S.G. § 2X1.1. In other words, *Carter* turned entirely on a separate authorizing provision in the guidelines, which, because it has no applicability here, cannot excuse application of U.S.S.G § 2G1.1 without an actual "conviction." And nothing in *Womack II* actually addresses the Circuit's correct determination in *Womack I* that subsection (a)(2) and (b)(2) criminalize different categories of conduct, by their plain language.

The result is application and consideration of a guidelines number that is required only by a "conviction" that does not exist. Petitioner submits that the Circuit clearly and correctly determined the correct interpretation of the underlying statute in *Womack I*. Petitioner submits that the Circuit then, apparently concerned by the implications of its holding on the ability of the District Court actually to resentence Mr. Womack, fell back on case law that clearly relied on inapplicable (in Mr. Womack's case) guidelines provisions, attempting to eliminate the "conviction" requirement under the guidelines and render lack of charges under § 1591(b)(1) a non-issue. In this the Circuit completely failed, as its analysis in *Carter* simply cannot apply here. The core

distinction is that in *Carter*, unlike Mr. Womack's case, the defendants **were** clearly charged and convicted under 1591§(b)(2) – Mr. Womack clearly was not. The additional distinction is that a separate guideline provision made the 34 month provision applicable in *Carter*, superseding any "conviction" requirement in U.S.S.G. § 2G1.1(a)(1). There is no such provision permitting bypassing of the "if the offense is a conviction" language of that section in this case.

Thus Mr. Womack has been sentenced based on a guidelines provision that is completely dependent on proof of additional facts for applicability – i.e. a provision that only permits an enhanced offense level if "the offense of conviction is 18 U.S.C. § 1591(b)(1)."

Additionally, the Circuit's footnoted citation to *Todd* cannot be a valid solution here unless *Todd's* disregard of any distinction between "reckless disregard", "knowledge" and "effected" is upheld. Any such determination creates a separate problem for the first time on appeal – that the conviction as charged is then infirm because the jury was never fully instructed on an underlying element. It is absolutely clear that to obtain a conviction that satisfies the terms of 1591(b)(1) the jury must find that the crime was "effected." The jury instructions given here only required that the jury find that "the defendant knew" or "recklessly disregarded" the fact that "force,

threats of force, fraud, coercion or any combination of these means **would be** used."

As was concisely set out in *Womack I*, "[t]he indictment specified only § 1591(a) as the charged offense and tracked that subsection's language of "know[ledge]" and "reckless disregard," language not shared by (b)(1)." In other words, if the Eighth Circuit's *Carter* basis is invalid, then the only saving analysis requires upholding a conviction without proof of a necessary element, based on proof of different elements of the offense. Even if (b)(1) only establishes sentencing minimums and guidelines authorization, rather than constituting a separate offense, this outcome directly violates this Court's opinions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296, and *Alleyne v. United States*, 570 U.S. 99 (2013).

D. Conclusion

The Court should grant certiorari here both to remedy the apparent due process violation in Mr. Womack's case, and to clarify interpretation of both the applicable guideline and the underlying statutory provisions.

II. The Court should grant certiorari or alternatively should summarily reverse because the Eighth Circuit's reliance on evidence outside the scope of the evidence presented to the jury in making an appeal determination of sufficiency of the evidence to support conviction violates this Court's clear case law and due process under the Sixth Amendment

A. The Eighth Circuit's factual reliance on a statement on the ultimate issue that was not presented to the jury at trial renders its determination on the issue of evidentiary sufficiency constitutionally infirm and in contravention of this Court's clear case law

In evaluating Petitioner's appeal on the issue of evidentiary sufficiency, Petitioner has been unable to find any support in the trial record for the Court's statement that alleged victim, "A.B. told law enforcement that she continued working for Womack because she was afraid of what he would do if she stopped." The only point in the record where this "fact" was asserted, it appears, was in the pretrial "Notice of Intent" filed by the government (R. Doc. 57 at 2, lines 9-10). That Notice was neither under oath, nor presented to the jury and did not even contain alleged direct quotations from A.B. *Id*.

Per *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), sufficiency determinations are made based "upon the record evidence adduced at trial". *Jackson* 443 U.S. at 324. Any other evaluation based on evidence from outside the jury trial would violate both Mr. Womack's rights to due process and trial by jury under the Fifth and Sixth Amendments per *Jackson*. In the context of circuit decisions, Petitioner would point to:

United States v. Staggers, 961 F.3d 745 (5th Cir. 2020) ("[R]eviewing court assesses the sufficiency of the evidence that was actually presented to the jury, not the evidence that might have been—but was not—admitted at trial.") citing *Musacchio v. United States*, —— U.S. ——, 136 S. Ct. 709, 715, 193 L.Ed.2d 639 (2016); *United States v. Van Nguyen*, 602 F.3d 886 (8th Cir. 2010)(" The amendment to [Fed. R. Crim. P. 29] provides that the trial court is to consider only the evidence submitted at the time of the motion in making the ruling, whenever made. And in reviewing a trial court's ruling, the appellate court would be similarly limited."); *U.S. v. Moore*, 504 F.3d 1345 (11th Cir. 2007)(appellate review of trial sufficiency ruling "as well as the district court's own consideration, is limited to the evidence in the government's case in chief."); *See also U.S. v. Ham*, 628 F.3d 801 (6th Cir. 2011) (sufficiency challenge relates to the "the evidence presented to the jury"); *Herrera v. Collins*, 506 U.S. 390, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993)(sufficiency of the evidence review authorized by *Jackson* is limited to "record evidence.").

This issue is particularly important, as none of the other evidence listed by the court in its evaluation actually has any direct testimonial tie either to "working" or prostitution. The Court specifically called out the fact, in making its sufficiency determination, its prior case law to the effect that, "a victim's testimony is sufficient to persuade a reasonable jury of the defendant's guilt beyond a reasonable doubt."

Womack II, 154 F.4th at 590, Appendix B; App. 2 at App. 8. Petitioner submits that this error also renders invalid the Circuit's 404(b) analysis in terms of prejudice. Womack II, 154 F.4th at 589; Appendix B; App. 2 at App. 6. It was exactly the fact that this specific question was never asked of any alleged victim of a charged offense in this proceeding **at trial** that was used both to illustrate the prejudicial nature of 404(b) testimony in this proceeding, and to show the lack of any linking evidence between Mr. Womack's behavior in his relationships with A.B. and J.G. and their work as prostitutes.

B. Conclusion

Petitioner respectfully submits that the Court should grant certiorari or summary reversal on this issue in order to conform the review of sufficiency in this case to the due process requirements of the cases cited.

CONCLUSION AND REQUEST FOR RELIEF

Petitioner requests that the Court issue a writ of certiorari in this matter to review the judgment of the United States Court of Appeals for the Eighth Circuit, and on the issuance of such writ, find and determine

Dated this 17th day of February, 2026

/s/ Jeremy B. Lowrey

JEREMY B. LOWREY
Attorney at Law
Arkansas Bar No. 2002153
Post Office Box 188
West Memphis, Arkansas 72303
(870) 329-4957
Facsimile No: (479) 222-1459
jlowrey@centerlane.org

ATTORNEY FOR PETITIONER
DEONTE WOMACK