**No. 25-6875**

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**In The**

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 2025

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DEONTE WOMACK, *Petitioner,*

**v.**

UNITED STATES OF AMERICA, *Respondent*.

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# Petitioner's Reply to Brief of the United States in Opposition to Petition for a Writ of Certiorari

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## 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):
   Case Caption: *United States of America v. Deonte Womack*
   Date of Judgment:

2. Court: United States Court of Appeals, 8th Circuit
   Case Number(s):
   Case Caption: *United States of America v. Deonte Womack*
   Date of Judgment:
   Substituted Judgment on Rehearing:
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*United States v. Womack*, 154 F.4th 584 (8th Cir. 2025)

*[No Other Applicable Citations Available]*

SUPPLEMENTAL STATEMENT OF THE CASE

The government, in furtherance of the theory it presented at trial, states in conclusory fashion that "[t]he FBI interviewed three women – A.B., J.G., and T.S. --- that petitioner had forced to work as prostitutes." Respectfully, this is the factual issue that is directly on point with Petitioner's claim that the 8th Circuit here relied (and had to do so to make the point) on facts outside the trial record in determining sufficiency of the evidence. The government's conclusory statement is presented as fact, but this "fact" was not presented in testimony.

First, Petitioner would note that charges against him relating to T.S. on this issue were dismissed by the Court for insufficiency of the evidence. (TR Vol. at 299). Second, both J.G. and A.B. affirmatively testified that they were NOT forced to work as prostitutes. A.B. testified that she chose to be a prostitute, and that nobody forced her. (TR Vol. 2, 179). J.G. testified that threats and violence by Deonte had nothing to do with prostitution – it was that Deonte was a volatile person and was angry. (TR Vol. 2, 278). She said any violence wasn't about the girls getting out of the business. J.G. was in a twelve plus year relationship with Womack – one that she stayed in through at least one period in which he was incarcerated. Petitioner consistently argued this point on appeal, and the only direct argument the government made in briefing response was that Womack was violent toward the two

women. (Appellee 8th Circuit Brief at 37). The government equated in argument A.B.'s statement she attempted to leave the "situation" as being related to prostitution, but there was no testimony to that effect, and in testimony, A.B. characterized her relationship with him as a "personal relationship" and a "romantic relationship." (TR Vol 1, 106). She even returned to live with Womack after he had been charged in this case.

## REASONS FOR GRANTING THE WRIT

### I. The government has not significantly supported an alternative interpretation of (b)(1) and has, as the 8th Circuit did, conflated caselaw relating to conspiracy under 18 U.S.C. § 1594 with interpretation of § 1591.

### A. This is not Merely a Sentencing Guidelines Issue

This is not simply an "interpretation of the Sentencing Guidelines" case. Rather, it involves interpretation of the underlying federal statute, and the extent to which sentencing under the Guidelines is authorized. *Braxton v. United States*, 500 U.S. 344, 348 (1991), cited by the government, also notes specifically that "A principal purpose for which we use our certiorari jurisdiction, and the reason we granted certiorari in the present case, is to resolve conflicts among the Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law" and that, "[o]rdinarily . . . we regard the task as initially and primarily ours." Here, the underlying issue is not "interpretation of the Guidelines", but rather, whether the Guidelines are even applicable ***or authorized*** where no jury finding or judgment relating to the sentencing element under (b)(1) was obtained.

### B. 18 U.S.C. § 1591(a) and (b) are not "inextricably linked" as argued by the Government

The Government relies heavily on *United States v. Sims*, 957 F.3d 362, 367 n.2 (3rd Cir. 2020) cert. denied, 141 S. Ct. 404 (2020) in its analysis. In doing so, it commits exactly the same error committed by the Circuit here – the

government fails completely to note that, unlike the cases cited by the Eighth Circuit, and unlike *Sims*, Mr. Womack's case lacks the sentencing authority of 18 U.S.C. § 1594 (and by extension, U.S.S.G. § 2X1.1). In *Sims*, just as in *United States v. Carter*, 960 F.3d 1007 (8th Cir. 2020), authority for sentencing stemmed from the provisions of 18 U.S.C. § 1594(c), and the jury was instructed specifically on the elements of (b)(1).

The *Sims* court noted that the "underlying ***offenses***" [the court should note the specific plural usage] that constituted the "substantive offense underlying the conspiracy" were 18 U.S.C. § 1591(a) **and** (b)(1). Sims expressly pled guilty to conspiracy to violate **both** § 1591(a) and (b)(1). Id. at 363.

In addition Petitioner would note the following:

- *U.S. v. Todd*, 584 F.3d 788 (9th Cir. 2009) *rev'd U.S. v. Todd*, 627 F.3d 329 (9th Cir. 2010) (*Todd I*) shows that distinction and issues with the statute here. The *Todd I* Court noted specifically that,

> The statute provides punishment of imprisonment of fifteen years to life if "the offense was effected by fraud, force or coercion." 18 U.S.C. § 1591(b)(1). If the offense "was not so effected" and the victim was 14 to 18, imprisonment for ten years to life. *Id.* § (b)(2). The statute provides no punishment for acts not described in (a) or (b).

*Todd*, 584 F.3d at 793. While the 9th Circuit in the successor Todd case, *U.S. v. Todd*, 627 F.3d 329 (9th Cir. 2010) changed this analysis based on its Congressional intent reading (with which Petitioner has taken

direct issue), *Todd I* shows that multiple courts, when simply taking the statute on its face, have read the statute the same way, just as the 8th Circuit originally did here. At the very least the rule of lenity should require that any penalty imposed be imposed under this on-the-face-of-the-statute reading. *See e.g. United States v. Davis*, 139 S. Ct. 2319, 204 L.Ed.2d 757, 588 U.S. 445 (2019)(" Applying constitutional avoidance to narrow a criminal statute, as this Court has historically done, accords with the **rule of lenity**. By contrast, using the avoidance canon instead to adopt a more expansive reading of a criminal statute would place these traditionally sympathetic doctrines at war with one another.")

- That the differing "means" of completing an offense under §1591(a) have been regularly recognized as just that – separate means. See 8th Cir. Model Jury Instruction 6.18.1591 comment 6, requiring a "special verdict form to insure unanimity "as each option presented here represents a separate offense." This annotation expressly notes different punishment ranges established by subsection (b) "depending on whether a minor victim is under or over the age of 14." In other words, subsection (b) is recognized an operative section for establishing "punishment ranges" – not simply an "interlinked" general sentencing authorization.

## C. Petitioner Has not Forfeited His Argument

The government asserts that Petitioner "appears to have abandoned the argument he advanced below that Sentencing Guidelines § 2G1.1(a)(1) cannot apply because Section 1591(b)(1) is a penalty provision." This was not Petitioner's full argument on appeal, nor was it understood to be so by the Circuit in either opinion. And on Certiorari, Petitioner has expressly argued in his petition that the 8th Circuit correctly found in its first opinion that "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." In other words, as advanced below, Appellant argues that, 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." See Petition for Certiorari at 8. It is exactly the trial court's finding that "the jury findings "track[ed]" the requirements of Section 1591(b)(1)" that has been the point of Petitioner's challenge throughout, and this is clearly the reading that was given Petitioner's claims by the Eighth Circuit.

Initially, Petitioner would point to his argument on direct appeal that,

> Appellant argued at trial in his sentencing objection that the Guideline for one convicted of violating 18 U.S.C. § 1591(a) is U.S.S.G. §2G1. 1(a)(2). Probation sought to apply, (PSR para. 19), and the Court did apply (STR 13) – (STR 18), (ADD 13) the enhancement provided under 2G1.1(a)(1). The guideline 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.

Petitioner further argued that "the provisions of subsection (a)(1) should only be read to apply where unequivocal evidence of violence as the basis for conviction is established." It is clear from the argument presented that Petitioner was specifically arguing that there had been no proof of effected violence under (b)(1). It is further clear that this is the understanding of Petitioner's argument that was adopted by the Circuit in both its original opinion, and in its final opinion, the second of which noted that, "Womack contends that because his "offense of conviction" is § 1591(a) – not § 1591(b)(1) – his base offense level should have been 14." Inherent in that argument and finding is an argument that no mandatory minimum could be applicable, as a base 14 would result in sentence well below that number. The 8th Circuit clearly understood the nature of this challenge, and in both opinions at least characterized this part of the challenge correctly.

Additionally, and separately, Mr. Womack was not sentenced under the mandatory minimum provisions of section (b)(1), but under a guideline resulting in a sentence **above** that minimum. Under those circumstances, there was no "mandatory minimum sentence" here to appeal, but even if there were, Mr. Womack's argument would still result in a reduction in sentence from at worst 235 months to 180, even if the minimum issue were waived.

Notably, however, the final judgment entered by the trial court **only** shows conviction under subsection (a)(1) with no mention of (b)(1) or mandatory minimum. In other words, Mr. Womack was not actually sentenced under the mandatory minimum provision. It was the government on appeal that argued that Mr. Womack was "convicted under § 1591(b)(1)" with no reference to any charge or judgment on that section. The Court, in entering its final order on sentencing did **not** ultimately impose a mandatory minimum, but rather, "a low end of the guidelines range." (Sent. TR 38).

Third, even if there were nominal waiver, the government is arguing effectively that where a final sentence has been entered, all alternative lesser sentences which might have been applied must have been challenged. Respectfully, there is no case law cited for this proposition. And in any event, if petitioner is correct and subsection (b)(1) establishes a separate element that must be proved for applicability – an element not proved or even charged in this proceeding - then the government's "waiver" position would result in his "conviction" and sentencing under subsection (b)(1). Under those circumstances, Petitioner would submit that this error – i.e. a sentence based on an element not charged, found by a jury, or even registered in judgment as part of Petitioner's conviction, would in any event constitute a defect in sentencing subject at a minimum, even in this Court, to plain error review, where, as the government argues here, this error would result in Petitioner

both being sentenced under an element that was not found by a jury to a sentence not otherwise authorized by statute, and where it would result in consideration of sentence under a guidelines standard that .

Petitioner did not "acknowledge forfeiture" as asserted by the government. Rather, he addressed a limited "waiver" finding by the Court of Appeals – one which is belied by both Appellate opinions. But in any event, the government appears to concede in its response that even if waiver applied here the issue in this case would be subject to review for plain error. Certiorari Response at 11. Appellant submits that sentencing him to a completely unauthorized sentence would constitute exactly such plain error. Indeed, failure both to charge an element of an offense and to instruct a jury as to that element implicates substantive, fundamental components of constitutional due process. In *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) the Supreme Court held that: "Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged". *See also Apprendi v. New Jersey*, 530 US 466, 477 (2000) (Sixth and Fourteenth amendment "rights indisputably entitle a criminal defendant to 'a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.'"). *Alleyne*

*v. United States*, 133 S.Ct. 2151, 186 L.Ed.2d 314, 570 U.S. 99 (2013)("The Sixth Amendment provides that those "accused" of a "crime" have the right to a trial "by an impartial jury." This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to the jury beyond a reasonable doubt.").

And per *Alleyne*, there is no distinction between "elements" and "sentencing factors." This case clearly involves what would be characterized as Alleyne sentencing error. *See also Burrage v. United States*, 134 S. Ct. 881, 187 L. Ed. 2d 715, 571 U. S. 204 (2014) ("Because the "death results" enhancement increased the minimum and maximum sentences to which Burrage was exposed, it is an element that must be submitted to the jury and found beyond a reasonable doubt."). *Johnson v. United States*, 318 U.S. 189, 199, 63 S.Ct. 549, 87 L.Ed. 704 (1943); *U.S. v. Aldridge*, 413 F.3d 829 (8th Cir. 2005). Indeed, the impact of the error here was clearly recognized by the 8th Circuit in this case in its original opinion, which found that, "Womack's correct base offense level under the guidelines depends on whether the jury's verdict supports a conviction under (b)(1)." *Womack I*, Appendix C to Cert. Petition.

## II. Petitioner's sufficiency challenge is not "fact bound" but rather directed at the evidence actually reviewed by the Eighth Circuit in making its determination. The government's "inference" arguments are not well taken.

The government provides no real factual basis outside the reference made by the Circuit to which Petitioner objects for linkage between the alleged violent actions of Mr. Womack, and the connection to prostitution that Petitioner has consistently argued was not proved in this proceeding. It is this connection that creates exactly the factual problem that was "resolved" by the 8th Circuit by stepping outside the trial record. Petitioner would note that charges against him relating to "T.S." resulted in acquittal by the trial court based on insufficient evidence, and that a review of the record would show that while it is true there was testimony of violent actions by Mr. Womack toward J.G. and A.B., both A.B. and J.G. testified that there was no correlation between any violence from Mr. Womack and their choices to engage in prostitution.

The government admits that A.B. did not "directly testify" that she told law enforcement she continued working for petitioner out of fear. But in fact, she did not testify that she continued **working** out of fear at all. The government argues that the Court of Appeals did not indicate that its recounting of the evidence was premised on material not presented at trial, but this linkage issue – i.e. the violence A.B. and J.G. testified to, and whether it

was related to prostitution – was the primary factual issue at trial and on appeal. And in resolving this issue, the Circuit did not draw the conclusions argued by the government, but instead mirrored a specific line from the government's pretrial disclosure. The Eighth Circuit found, as a matter of core support for its sufficiency determination, that A.B. "told law enforcement that she continued working for Womack because she was afraid of what he would do if she stopped." The fact that she told law enforcement anything relating to "fear" which *directly links that fear to prostitution* can only be found in the pretrial disclosure. And it is absolutely clear that the Circuit's determination of linkage – between alleged violence and continuation in prostitution – was highly dependent on the only asserted testimony making that direct link – testimony which in fact did not exist.

The government attempts to divert the discussion to whether the jury could "infer" that A.B. talked to law enforcement. But this is not the issue. The issue is the "continued **working** for Womack" part of this testimony – testimony that is glaringly missing from any evidence presented to the jury here. See Appellant's Brief on Appeal at 18-22, arguing that, "The prosecution interpreted Alyssa's testimony that she 'wanted to leave' as relating to prostitution. But there is no direct testimony to that effect. And in fact, both witnesses testified that the prostitution part of the equation was their choice." And this lack, and the Circuit's filling of the resulting void, clearly calls into

question the Circuit's application of constitutional standards to its sufficiency evaluation.

Finally, Petitioner's argument is not "fact-bound." It expressly relates to the flawed standard of review used by the Circuit, not the underlying merits on sufficiency.

Petitioner would reiterate his appeal argument that,

> There is no question that Alyssa Barker testified to occurrences, which, if proved, could potentially constitute offenses under Arkansas state law. But what is notably missing from her testimony is any connection between those offenses and her acts of prostitution or choice to pursue it. It is certain that she testified several times that she was intent on "leaving" Deonte, but at no point did she tie any of the violence to which she testified to any threat or implication that her leaving impacted Deonte's income. Alyssa clearly testified that she was in a "relationship" with Deonte, and that it was "him" she was leaving. (TR 169). She indicated that she didn't leave him sooner because she loved him. (TR 178).

The Circuit dismissed this theory out of hand, based on "testimony" that simply is not in the trial record.

Dated this 2nd day of June, 2026

*/s/ Jeremy B. Lowrey*

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