

ORIGINAL

~~25-7085~~

No. _____

FILED
JAN 09 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER ADIN GRAHAM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
U.S. Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Christopher Adin Graham
74187-065
FCI SHERIDAN
Inmate Mail/Parcels
P.O. BOX 5000
SHERIDAN, OR 97378

RECEIVED
MAR - 3 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

RECEIVED
JAN 21 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

QUESTION PRESENTED FOR REVIEW

When the alleged victim is an adult, a criminal defendant can only be convicted of violating 18 U.S.C. § 1591(b)(1)—relating to sex trafficking—if the offense is accomplished using “by means of force, threats of force, fraud, or coercion . . . , or by any combination of such means[.]” The question presented for review is:

Whether, in prosecutions involving adult victims under 18 U.S.C. § 1591, the Government must prove to the jury beyond a reasonable doubt that the “offense was effected by means of force, fraud or coercion” before the sentencing Judge may impose the statutory mandatory minimum sentence under § 1591(b)(1), or whether a sentencing judge may instead find that fact by a preponderance of the evidence, consistent with the Fifth and Sixth Amendments.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES TO THE PROCEEDING

Petitioner is Christopher A. Graham, defendant-appellant below.

Respondent is the United States of America, plaintiff-appellee below.

TABLE OF CONTENTS

Page

1		
2	QUESTION PRESENTED FOR REVIEW.....	i,
3	PARTIES TO THE PROCEEDING.....	ii,
4	TABLE OF CONTENTS.....	iii, iv
5	TABLE OF AUTHORITIES.....	v,
6	PETITION FOR WRIT OF CERTIORARI.....	1,
7	OPINIONS BELOW.....	2,
8	UNITED STATES SUPREME COURT JURISDICTION.....	1,2,
9	STATUTES AND GUIDELINES INVOLVED.....	2,
10	STATEMENT OF THE CASE.....	3,
11	A.) INDICTMENT.....	3,
12	B.) TRIAL.....	3,4,
13	C.) SENTENCING.....	5,
14	D.) NINTH CIRCUIT (previously filed).....	6,
15	E.) 2255 MOTION (previously filed).....	6,
16	F.) RECENTLY DISCOVERED JURY INSTRUCTIONS.....	7,8,
17	G.) 60(b) (instant).....	8,
18	H.) NINTH CIRCUIT (instant).....	8,
19	REASON FOR GRANTING WRIT.....	9,
20	WHEN A PERSON IS CONVICTED OF VIOLATING 18 U.S.C. 1591(a)(1), 1591(b)(1), INVOLVING AN ADULT VICTIM, THE GOVERNMENT MUST 21 PROVE TO THE JURY BEYOND A REASONABLE DOUBT "THAT THE OFFENSE WAS EFFECTED BY MEANS OF FORCE, FRAUD OR COERCION".	
22	MISAPPREHENSION	
23	1.) 2006 ADAM WALSH ACT.....	9,10,
24	2.) 15 U.S.C. 1591(a), 1591(b)(1).....	10,11,
25	3.) UNCONSTITUTION SENTENCING.....	12,
26	4.) CONFRONTATION CLAUSE.....	13,
27		
28		

1	5.) INEFFECTIVE ASSISTANCE OF COUNSEL.....	13,14,15,
2	6.) FRAUD UPON THE COURT.....	15,
3	7.) RULE 404(B) MISUSE.....	15,16,
4	8.) MISAPPLICATION OF U.S. v. TODD.....	16,
5	9.) NOVALTY OF CASE.....	17,
6	10.) APPLICATION OF U.S.S.G. 2G1.1.....	17,
7	11.) DOUBLE COUNTING 3A1.3.....	18,
8	12.) JURISDICTION BREAKDOWN OF ADVERSARIAL PROCESS.....	18,
9	13.) LACKS JURIDICITION.....	
10	SUMMERY OF ARGUMENT.....	19,
11	PRAYER FOR RELIEF.....	20,
12	CONCLUSION.....	20,
13	PROOF OF SERVICE.....	21,
14	STATEMENT OF RELATED CASES.....	22.
15	-----	
16	APPENDIX:	
17	60(b) Ninth Circuit Court Order, (October 27, 2025) No: 25-5766.....	Appx: 1
18	60(b) District Court Order, (August 22, 2025) No: 3:12-cr-00178-AN-1.....	Appx: 2
19	Indictment (Count 1, 18 U.S.C. 1591(a), 1591(b)(1)).....	Appx: 5
20	Jury Instructions (U.S. v. Christopher Adin Graham).....	Appx: 6
21	Jury Instructions (U.S. v. Johnl Jackson).....	Appx: 7
22	Preliminary Hearings, (Fraud Upon Court).....	Appx: 8
23	Defense Counsel Defense theory/Trial strategy.....	Appx: 9
24	Sentencing Judge Considerations (Misapprehension).....	Appx: 10
25	Preliminary Rulings (Misapplication of U.S. v. Todd).....	Appx: 19
26	U.S.S.G Sentencing Guidelines 2G1.1.....	Appx: 22
27	U.S. v. Todd (Concurring Opinion, Circuit Judge M. Smith) 627 F. 3d 329 (9th Cir. 2010)..	Appx: 25
28	U.S.S.G. 3A1.1.....	Appx: 29
	18. U.S.C. 1591(a) Federal Statute.....	Appx: 30

TABLE OF AUTHORITIES

	<u>Federal Cases</u>	Page
1		
2	United States Constitution Amendment 5.....	12,13,16
3	United States Constitution Amendment 6.....	12,13,16
4	U.S. v. Alleyne 570 f. U.S. 99; 133 S. ct. 2151 186 L. Ed 2d 314; 2010.....	12,22,
5	Apprendi v. New jersey, 520 U.S. 466 (2000).....	17,
6	U.S. v. Winship, 397 U.S. 358, 25 L. Ed 2d 368, 90 S. ct 1068.....	
7	Lafler v. Cooper, 132 S. ct. 1376; 182 L. Ed 398; (2012).....	13,14
8	U.S. v. Wei Lin, 841 F. 3d 823; 2016 (9th Cir.).....	17,
9	U.S. v. Johnl Jackson, case No: 3:19-cr-00458-MO-01.....	7,18
10	U.S. v. Afyare, 632 Fed, Appx. 272, 278 (6th Cir. 2016).....	10,
11	U.S. v. Evans, 476 F. 3d 1179 n. 1 (11th Cir).....	10,
12	U.S. v. Evans, 552 U.S. 878 (2007).....	10,
13	U. S. v. Todd, 627 F. 3d 329, 337 (9th Cir. 2009)(Smith, J., Concurring).....	10,16,22,
14	U.S. v. Powell, 04-cr-885,2006 WL 1155947, at *1 (N.D. Ill. July 2, 2012).....	10,
15	John Roe v. Bridgestone Corp., 492 F. Supp. 2nd 988, 1002-03(S.D. Ind. 2007).....	10,..
16	U.S. v. Elbert, 561 F. 3d 771 (8th Cir. 2009).....	11,
17	Crawford v. Washington, 541 U.S. 36 (2004).....	13,
18	U.S. v. Fuertes, 805 F.3d 485 (4th Cir. 2015).....	
19	U.S. v. Resendiz-Ponce, 549 U.S. 102 (2007);	19
20	Stirone v. United States, U.S. 212 (1960).....	19
21		
22		
23		
24		
25		
26		
27		
28		

PETITION FOR A WRIT OF CERTIORARI

Petitioner Christopher Adin Graham respectfully petitions for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit denying a certification of appealability ordered on October 27th, 2025 in case No. 25-5766 (Appx. 1) because;

1.) The lower Courts have fundamentally misapprehended the statutory structure of the 18 U.S.C. 1591(a) criminal offense and the 1591(b)(1) statutory mandatory minimum sentence.

2.) This misapprehension has precluded Petitioner from any forum capable of correcting a profound constitutional violation, and

3.) Only this Court can resolve the national conflict involving whether the government must prove "that the offense was effected by means of force, fraud or coercion" to the jury before the sentencing Judge may impose the mandatory minimum sentence term of imprisonment under 1591(b)(1).

This petition presents an exceptional legal question of national significance, critical to the administration of federal sex trafficking prosecutions nationwide and essential to protect the Constitutional rights of defendants and victims alike.

OPINIONS BELOW

United States District Court for the District of Oregon, Portland Division. The order denying Rule 60(b) motion (August 22nd, 2025). No.: 3:12-cr-00178-AN-1 APPX 2

United States Court of Appeals for the Ninth Circuit. The order denying Certificate of Appealability (October 27th, 2025). No. 25-5766 APPX 1

UNITED STATES SUPREME COURT JURISDICTION

The 9th Circuit Court of Appeals motion panel issued an order in this case denying Petitioner's request for Certificate of Appealability on October 27th, 2025. Case No. 25-5766 (Appx. 1) This petition is timely filed within 90 days of the entry of the memorandum opinion. This U.S. Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

The Ninth Circuit denied Petitioner's request for instructions or Certificate of Appealability on October 27th, 2025, Case No. 25-5766 (Appx.1) foreclosed all ordinary avenues for review.

No other Court can hear these claims.

A writ may be issued only where:

- 1.) It is necessary to aid the Court's appellate jurisdiction;
- 2.) Exceptional circumstances justify the exercise of the Court's discretionary authority; and
- 3.) No adequate alternative remedy exists.

The Petitioner satisfies each requirement.

EXCEPTIONAL NATIONAL IMPORTANCE

The requesting ruling impacts:

- 1.) Every federal sex-trafficking prosecution involving an adult victim;
- 2.) Every sentencing court applying U.S.C. 1591(b)(1);
- 3.) Thousands of future prosecutions in light of the D.O.J's intensified national sex-trafficking initiative;
- 4.) Victim protection and offender accountability nationwide;
- 5.) The proper application of jury-trial rights under Apprendi and Alleyne
- 6.) Properly classified as a non-violent offender while in B.O.P custody.

STATUTES AND GUIDELINES INVOLVED

18 U.S.C. 1591(a).....1,9,10,12,13,17,20,

18 U.S.C. 1591(b)(1).....1,9,10,12,13,17,20,

18 U.S.C. 1591(e)(2)18,

Supreme Court Rule 20 All Writs Act, 28 U.S.C. 1651(a)1,

Fed. Civ. Rule 60(b) 1,8,6,

U.S.C. S. 3A1.3 (restraint of victim) 5,6,18,

U.S. Sentencing Guideline Range 2G1.1(a)(2)5,6,11,17,

Adam Walsh Child Protection Act of 20069,11,17,

47A.03 (18 U.S.C. 1591) Modern Jury Instructions.....22,

STATEMENT OF THE CASE

1 INDICTMENT

2 On April 17th, 2012, a federal grand jury returned an indictment alleging one count of
3 Sex Trafficking by force, fraud or coercion, 18 U.S.C.1591(a)(1), (b)(1) and two counts
4 of Tampering with Witness 18 U.S.C 1512(b)(3) ER-111.

5 TRAIL

6 The alleged victim involved was an adult 31 year old woman named Misty Losinger.
7 Misty Losinger had been previously prostituting since the age of 17 without Petitioner.
8 The case centered on allegations by Ms, Losinger that in 2010 Petitioner had become her pimp and
9 he had used force, fraud and coercion to compel her to engage in interstate sex trafficking. The
10 case had initially been filed against the Petitioner in State Court.

11 Opening statements began on the morning of March 5th, 2014. Er-459. Evidence was heard
12 over four days. ER-495-1404. The government called 12 witnesses; the defense called 17.

13 Petitioner and Ms. Losinger had met in the 1990's. The case centered on what happened when
14 they reconnected in Portland in 2010.

15 At trial, the jury was instructed that the following facts are true:

- 16 1.) In 1999, the Defendant used force, or intimidation on two occasions to compel
17 Angela Lee to engage in prostitution in Multnomah County, Oregon.
- 18 2.) Before Mr. Graham and Ms. Losinger reconnected in 2010, Ms Losinger had been
19 engaging in prostitution activities, that is, she engaged in "commercial sexual acts" as
20 the term is defined in these instructions. Mr. Graham was aware of the fact when he and
21 Ms. Losinger reconnected in 2010.
- 22 3.) After Mr. Graham and Ms. Losinger reconnected in 2010, escort ads were placed in
23 various online media outlets advertising services by Ms. Losinger, and these ads led to
24 Ms. Losinger engaging in such commercial sex acts here in Portland, Oregon, and in other
25 areas of the country. Proceeds from these commercial sex acts were put into a joint bank
26 account that could be accessed by either Mr. Graham or Ms. losinger. ER-1388

27 The critical question presented to the jury was whether Petitioner had violated 18 U.S.C. 1591(b)(1)
28 That is (to simplify the indictment) whether beginning in about January 2010, and continuing

1 through November 2010, Petitioner had used FORCE, FRAUD or COERCION to compel Ms. Losinger
2 to engage in commercial sex acts. ER-111.

3 The government's theory was that Petitioner forced Ms. Losinger to engage in prostitution.
4 Ms. Losinger claimed that he had enticed her to work with him through a romantic relationship
5 and with promises of changing her life. However, the government maintained, Petitioner's real
6 intention was to compel Ms. Losinger to work as a prostitute for his benefit in Portland and in
7 cities across the country. Ms. Losinger testified that Petitioner's method of compelling her was
8 by means of mental, emotional and physical force.

9 The defense denied that Petitioner and Ms. Losinger's relationship had ever involved force, fraud
10 or coercion. ER-1445. It challenged Ms. Losinger's credibility in cross examination, ER-661-701, and
11 with witnesses who testified about her reputation for being untruthful, and memory concerns created
12 by her past. See, eg., ER-1256; ER-1315. Affirmatively, witness like Ms. Losinger's son attested to the
13 loving relationship Petitioner and Ms. Losinger appeared to him to have, and the fatherly interest
14 Petitioner took in him. ER-1120-23.

15 The defense introduced evidence of Petitioner working several legitimate jobs, sobriety and
16 positive life change since the 1990's. see, e.g., ER-996.

17 The defense introduced evidence that in fall of 2010, Petitioner engaged in a new
18 relationship with a woman named Mara Gabriela Andrews. Ms. Andrews and Ms Losinger's
19 roommate testified that when Ms. Losinger discoverd Ms. Andrew with Petitioner, Ms. Losinger
20 threatened to ruin him and she knew who his Parole Officer was. ER-1340 (Mara Gabriela Andrews);
21 ER-1294 (Akili Smith). Soon thereafter, Ms. Losinger learned Petitioner had taken some property
22 from her apartment, and had contacted the police. ER-656. After the police had contacted her to
23 inform her they could not press criminal charges against the Petitioner for removing her items
24 from her apartment, she soon brought on the allegation that he had been compelling her to act as
25 a prostitute. ER-656. The defense trial strategy and defense theory was that It was her anger
26 about these events, and not any violence in their relationship, that had prompted her to make the
27 allegations.
28

JURY VERDICT

Petitioner was found guilty by jury verdict based on a version of jury instructions that did not include the 4th critical element that proves whether "the offense was effected by means of force, fraud or coercion." (see page 15, also App: 6)

SENTENCING

At sentencing, it was decided that the applicable guideline would be U.S.S.G. 2G1.1(a)(1), and that the base offense level 34, because the Court -through preponderance of evidence- had concluded that Petitioner had accomplished the sex trafficking through force and coercion.

At sentencing, the thrust of Defense counsel presentation was to expose falsehoods in Ms. Losingers testimony and showed that the jury had not actually reached a verdict that proved that "force, fraud or coercion were actually used" to cause the victim to engage in commercial sex acts, and Petitioner should therefore receive the lowest sentence legally applicable. ER1542-1550

In response, the sentencing Judge made statements about the legal applicability of the 1591(b)(1) statutory mandatory minimum sentence and found Ms. Losinger's testimony alleging she was forced and coerced into prostitution credible by the preponderance of the evidence standard, and imposed the Petitioner to the U.S.C. 1591 (b)(1) statutory mandatory minimum sentence.

Thereafter, the trial Court concluded that the advisory guideline range for Petitioner's combined offenses was 292 to 365 months imprisonment, based upon the following guidelines

calculations:	U.S.S.G. 2G1.1 (a)(1):	34
	(Base offense level)	
	U.S.S.G. 3A1.3:	+2
	(Restraint of Victim)	
	U.S.S.G. 3C1.1	+2
	(Obstruction)	—
		38

Criminal: History Category: III

The sentencing Judge imposed the Petitioner to the U.S.C. 1591(b)(1) statutory mandatory minimum sentence, which resulted in a total sentence of 300 months on Count 1; and 60 months on Counts 2 and 3 for "Tampering with a Witness" (consecutive to Count 1, concurrent with each other). The Court also imposed supervised release for life on Count 1.

1 NINTH CIRCUIT APPEAL

2 On appeal, Petitioner argued that his case should be remanded for resentencing because
3 the district Court had improperly calculated his advisory guideline range when making its
4 sentencing determinations. U.S.S.G. 2G1.1 provides an enhanced base offense level of 34 if
5 the "offense was effected by means of force, fraud or coercion...or any combination of such
6 means." 18 U.S.C. 1591(b)(1). Because that enhanced base offense level fully captured the
7 conduct referenced in U.S.S.G 3A1.3, which requires a two-level enhancement "[i]f the victim
8 was physically restrained in the course of the offense," the Court had erred when it had applied
9 that two-level enhancement.

10 In a memorandum opinion, the Ninth Circuit rejected Petitioner's arguments.

11 As to his claim that the District Court had erred when sentencing Petitioner, the Appeal Court stated:

12 2. The district court did not plainly err in calculating Graham's Sentencing Guidelines range. Section
13 3A1.3 calls for a two-level increase "[i]f a victim was physically {644 Fed. Appx. 796} restrained in
14 the course of the offense." Under the Guidelines, the term "[p]hysically restrained" means the forcible
15 restraint of the victim such as by being tied, bound, or locked up." U.S.S.G. § 1B1.1 cmt. n.1(K). The
16 jury heard evidence that Graham locked his victim in the trunk of his car and drove her to a location
17 in order to coerce her into engaging in further commercial sex activity. Such restraint was not
18 necessary to the application of U.S.S.G. § 2G1.1, which sets a Base Offense Level of 34 for
19 Graham's offense of conviction, sex trafficking accomplished by force, fraud, or coercion under 18
20 U.S.C. § 1591(b)(1). The two guidelines thus serve distinct purposes. There was no improper double
21 counting. See *United States v. Smith*, 719 F.3d 1120, 1125 (9th Cir. 2013); see also U.S.S.G. §
22 3A1.3 cmt. n.2.

23 **AFFIRMED.**

24 2255 MOTION

25 On May 7th, 2018, Petitioner timely filed a 2255 motion alleging ineffective assistance
26 of counsel when defense counsel failed to hold the government to it's true burden of proof by
27 requesting a version of jury instruction that would require the jury to vote if "force, fraud or
28 coercion were actually used to cause the victim to engage in a commercial sex act." 18 U.S.C
1591(b)(1).

District Judge Mosman rejected Petitioners 2255 argument.

As to his claim that defense counsel rendered "Ineffective Assistance of Counsel" for failing to
request a version of jury instructions that would require the government to prove that "Force or
Coercion" were actually used, District Judge Mosman stated:

1 **Jury Instruction on Count 1**

2 Defendant alleges trial counsel rendered ineffective assistance when they failed to request a jury instruction on Count 1 "that would have held the government to its true burden of proof."

3 With respect to Count 1, the Court instructed the jury that the government must prove beyond a
4 reasonable doubt that "Defendant knowingly recruited, enticed, {2018 U.S. Dist. LEXIS 25} harbored,
5 transported, provided, or obtained Misty Losinger; [and] . . . Defendant did so knowing that threats of
6 force, force, fraud or coercion *would be used* to cause Misty Losinger to engage in a commercial sex
7 act." Emphasis added. Defendant contends trial counsel were ineffective when they did not request
8 the jury instruction to state the "Defendant did so knowing that threats of force, force, fraud or
9 coercion *actually were used* to cause Misty Losinger to engage in a commercial sex act." Emphasis
10 in original.

11 Defendant does not cite any legal authority to support his position that his version was more legally
12 correct. In addition, Defendant cannot show prejudice from trial counsel's alleged ineffective
13 assistance in this regard because substantial evidence was before the jury from which it could have
14 concluded Defendant actually used force, threats of force, and coercion against Losinger to cause
15 her to engage in a commercial sex act. For example, Losinger testified Defendant hit her with
16 telephone books, broke her back; beat her with high-heeled shoes in a pillow case, and showed her a
17 hole in the ground and told her it was her grave. Losinger stated she feared if she failed {2018 U.S.
18 Dist. LEXIS 26} to make her quota, Defendant would assault her.

19 On this record the Court concludes trial counsel did not provide ineffective assistance when they
20 failed to request Defendant's suggested jury instruction on Count 1.

21 --
22 **RECENTLY DISCOVERED JURY INSTRUCTIONS**

23 Petitioner recently discovered a more legally correct version of jury instructions provided by
24 the authority of Honorable Judge Mosman himself that included the 4th critical element that
25 required the government to prove to the jury that "the offense was effected by means of force,
26 fraud or coercion."

27 Judge Mosman: "First, beginning on or about August 1, 2018 and continuing through on or
28 about, September 6, 2018, The defendant either knowingly recruited, enticed, harbored,
29 transported, provided, obtained or maintained by any means M.T. to engage in a commercial
30 sex act or benefitted financially anything of value from the participation in a venture that did so.

31 Second, The defendant knew or was in reckless disregard of the fact that by means of
32 force, threats of force, fraud or coercion or any combination of such means "would be used" to
33 cause M.T. to engage in a commercial sex act.

34 Third, the defendant's actions were in or effecting interstate commerce.

35 And fourth, "THE OFFENSE WAS EFFECTED BY MEANS OF FORCE FRAUD OR
36 COERCION."

37 United States v. John Jackson. Case No: 3:19-cr-00458-MO-01.

1 This recently discovered version of jury instructions completely contradicts Judge Mosmans
2 previous ruling denying Petitioners "Ineffective Assistance of Counsel" claim, and caused a
3 complete and total paradigm shift in Petitioners legal understanding of the 18 U.S.C. 1591(a)
4 crime and 18 U.S.C 1591(b)(1) mandatory minimum sentence.

5 Petitioner comes now, pro se before this Honorable Supreme Court respectfully attempting
6 to show the lower Courts misapprehension of the 1591(a) crime, and unlawful imposition of the
7 1591(b)(1) statutory mandatory minimum sentence.

8
9
10 Petitioner was convicted under 18 U.S. 1591(a) involving an adult victim. At trial, the
11 jury was not required to find beyond a reasonable doubt that "the offense was effected by
12 means of force, fraud or coercion".

13 Nevertheless, at sentencing, the District Court imposed the statutory mandatory minimum
14 sentence under 1591(b)(1) based on its own judicial factfinding, applying a preponderance of
15 the evidence standard.

16 Petitioner later filed a Rule 60(b) motion challenging defects in the integrity of the prior
17 habeas proceedings, including;

- 18 1.) Fundamental misapprehension of the statutory elements,
- 19 2. (Fraud upon the Courts,
- 20 3.) Ineffective assistance of counsel,
- 21 4.) Newly discovered evidence,
- 22 5.) Complete breakdown in the adversarial process.

23 The District Court refused jurisdiction labeling the motion "successive." The Ninth
24 Circuit declined to intervene.

25
26
27
28

REASONS FOR GRANTING THE WRIT

1
2 WHEN A PERSON IS CONVICTED OF VIOLATING 18 U.S.C. 1591(a), 1591(b)(1), INVOLVING
3 AN ADULT VICTIM, THE GOVERNMENT MUST PROVE TO THE JURY BEYOND A REASONABLE
4 DOUBT THAT "THE OFFENSE WAS EFFECTED BY MEANS OF FORCE, FRAUD OR COERCION":

5
6 The Lower Courts Misapprehension of the 18 U.S.C. 1591(a) criminal offense and
7 U.S.C. 1591(b)(1) statutory mandatory minimum sentence has severed this 4th critical
8 element from the offense itself and is in serious violation of Apprendi and Alleyne.

9 MISAPPREHENSION OF STATUTORY ELEMENTS

10 Congress fundamentally changed the U.S.C. 1591 sex trafficking statute in 2006. Before
11 the Adam Walsh Act, Courts had the broad discretion to impose a zero to life sentence based
12 on judicial findings. But once Congress amended the 1591 statute to add the 1591(b)(1)
13 mandatory minimum sentence, the triggering fact whether the offense was "effected be means
14 of force, fraud or coercion" became the critical element that must be proven beyond a reasonable
15 doubt. (emphasis added)

16 Lower Courts have failed to adjust accordingly. The conflation of the future-tense mens rea
17 with the 1591(b)(1) aggravator is illogical and unconstitutional.

18 The U.S.C. 1591 statute is unusually broad and awkwardly structured:

19 Section 1591(a) contains two distinct mens rea structures, including a future tense
20 knowledge element rarely found in Federal criminal law; whether the defendant "knew that
21 force, fraud or coercion WOULD BE USED" by another.

22 Subsection 1591(b)(1), enacted later through the Adam Walsh Act, added a statutory
23 mandatory minimum sentence only if "the offense was effected by means of force, fraud or
24 coercion." The lower Courts have conflated these two completely separate concepts that serve
25 two distinct separate purposes. (emphasis added)

26
27 The Courts are conflating the scienter with the sentencing consequences, which allow
28 the punishment to be imposed absent jury findings on operative conduct. The 2nd mens rea

1 element ("knew force, fraud or coercion WOULD BE USED") cannot logically be substituted for
2 the 4th actual use element ("the offense WAS EFFECTED by means of force, fraud or coercion")

3 To allow the lower Courts to impose a statutory mandatory minimum sentence based solely on
4 the knowledge of hypothetical future force is both illogical and contrary to Congressional intent.

5 18 U.S.C. § 1591(a)(1). § 1591(b)(1)

6 1591(a), 1591(b)(1)

7 Before a jury can find a defendant guilty of violating 18 U.S.C 1591 when the alleged
8 victim is an adult, the jury must find beyond a reasonable doubt that the offense was actually
9 "effected by means of force, fraud or coercion." 18 U.S.C. 1591(b)(1). As the Sixth Circuit
10 recently explained the statute;

11 The Punishment subsection 1591(b) covers three possibilities:

12 Section (b)(1): (with force/fraud/coercion) + (victim any age)=
13 15 year minimum;

14 Section (b)(1): (no force/fraud/coercion) + (victim age less than
15 14) = 15 year minimum;

16 Section (b)(2): (no force/fraud/coercion) + (victim age 14 to 18) =
17 10 year minimum.

18 To be sure, 1591(b) imposes no punishment for the fourth possibility:
19 (no force/fraud/coercion) + (victim 18 or older). But it is reasonable, and consistent
20 with 1591(a), to read this as merely omitting that scenario (i.e., ordinary adult
21 prostitution) from this federal sex-trafficking statute.

22 United States v. Afyare, 632 Fed. Appx. 272, 278 (6th Cir. 2016). The other Courts that have
23 considered the statute have likewise concluded that it applies to those over 18 only when there
24 was, affirmatively, force, fraud, or coercion employed during the offense to compel the victim
25 to engage in commercial sex acts. See, e.g., United States v. Evans, 476 F.3d 1179 n.1
26 (11th Cir.), cert. den. sub nom., Evans v. United States, 552 U.S. 878 (2007)("Section 1591 does
27 not criminalize all acts of prostitution..., its reach is limited to sex trafficking that involving
28 children or is accomplished by force, fraud, or coercion."); United States v. Todd, 627 F. 3d 329,
337 (9th Cir. 2009) (Smith, J., concurring) (same); United States v. Powell, 04-CR-885, 2006
WL 1155947, at *1 (N.D. Ill. July 2, 2012) (same); John Roe v. Bridgestone Corp., 492 F. Supp.
2nd 988, 1002-03 (S.D. Ind. 2007) (stating that 18 U.S.C. 1591 "addresses sex trafficking of

1 children by any means and of adults by force, fraud or coercion"); see also United States v.
 2 Elbert, 561 F. 3d 771 (8th Cir. 2009) (minor victims "could not legally consent, [thus,] the
 3 government did not need to prove the elements of fraud, force or coercion" which are required
 4 for adult victims").

5 By creating an enhanced base offence level of 34 versus 14 for this type of sex trafficking,
 6 U.S.S.G. 2G1.1 accounts for the reality that criminal defendants convicted of violating 18 U.S.C.
 7 1591(b)(1) with an adult victim necessarily left her no alternative but compliance, by way of some
 8 used combination of force, fraud or coercion to compel the victim to engage in a commercial sex
 9 act.

10 In 2006, Congress added a 15-year mandatory mandatory minimum term to 18 U.S.C, 1591(b)(1)
 11 (2006). In response, the Sentencing Guidelines were significantly revised to reflect this change in
 12 the statute; since 2007, U.S.S.G. § 2G1.1 has provided, in relevant part:

13
 14 **§ 2G1.1. Promoting a Commercial Sex Act or Prohibited**
 15 **Sexual Conduct with an Individual Other than a**
 16 **Minor**

17 (a) Base Offense Level:

- 18 (1) 34, if the offense of conviction is
 19 18 U.S.C. § 1591(b)(1); or
 20 (2) 14, otherwise.

21 (b) Specific Offense Characteristics:

- 22 (1) If (A) subsection (a)(2) applies; and (B) the offense
 23 involved fraud or coercion, increase by 4 levels.

24 The United States Sentencing Commission explained the amendment as follows:

25 [S]ection 208 of the Adam Walsh Act added a new mandatory minimum term of
 26 imprisonment of 15 years under 18 U.S.C. 1591(b)(1) for sex trafficking of an adult by
 27 force, fraud, or coercion. In response, the amendment provides a new base offense level
 28 of 34 in 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an
 Individual Other than a Minor) If the offense of conviction is 18 U.S.C. 1591(b)(1), but
 retains a base offense level of 14 for all other offenses. In addition, the amendment limits
 application of the specific offense involved fraud or coercion only to those offenses receiving
 a base offense level of 14, Offenses under 18 U.S.C 1591(b)(1) necessarily involve fraud and
 coercion and, therefore, such conduct is built into the heightened base offense level of 34.
 This limitation thus avoids unwarranted double counting.

NATIONWIDE MISAPPREHENSION HAS PRODUCED UNCONSTITUTIONAL SENTENCING;

The post-Alleyne requirement that all facts increasing mandatory minimum sentences must be found by a jury by a reasonable doubt has been inconsistently applied. Some Courts allow sentencing Judges to find the critical 1591(b)(1) aggravating factor by the preponderance of the evidence. This violates the Sixth Amendment, Rule 29, and well established sentencing doctrine.

Without clarification, criminal indictments and jury instructions remain duplicitous.

The Petitioner's indictment and trial demonstrate a myriad of practical consequences;

- 1.) The Indictment failed to articulate the essential fourth element ("whether the offense was effected by means of force, fraud or coercion"), instead cryptically listing 1591(b)(1). APPX 5
- 2.) Defense counsel, misapprehending the elements, gave incorrect advice during plea negotiations. See PAGE 14
- 3.) Petitioner was affirmatively misled in preliminary hearing about the one and only disputed issue, defense theory, trial strategy and governments burden of proof. APPX 8
- 4.) Jury instructions omitted the 4th essential element entirely, which was the Petitioners one and only disputed issue, trial strategy, thrust of the trial, aggravating factor of the 1591(a) crime, the critical element that triggers the 1591(b)(1) mandatory minimum sentence. APPX 6
- 5.) Defense counsel presented a completely invalid defense theory in her trial strategy attempting to prove to the jury that "force, fraud or coercion" were never actually used. APPX: 9
- 6.) The Court unlawfully imposed the 1591(b)(1) mandatory minimum sentence by judicial factfinding, while on record completely conflating the 2nd (mens rea) element, with the 4th (use of force) element in her sentencing considerations. These errors create a non-unanimous juror risk, Confrontation Clause violation, double jeopardy concerns, and exposure to an aggravated statutory range without jury findings. APPX 10

ELEMENT OF CRIME -- FINDING

Headnote:[10]

The core crime and the fact triggering the mandatory minimum sentence together constitute a new, aggravated crime, each element of which must be submitted to the jury. (Thomas, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

US V. Allen Alleyne. 570 f. US. 99; 133 S.Ct. 2151 186 L.Ed 2d 314; 2010

1 CONFRONTATION CLAUSE DENIED

2 The Entire thrust of the trial, the 1591(a) aggravating factor and the 1591(b)(1) triggering
3 element were effectively decided outside the jury's presence.

4 The Petitioner was deprived of his fundamental Sixth Amendment right to confront and
5 cross examine his accuser. This violation began at trial where the government's key witness
6 was shielded from effective cross examination and continued into sentencing, direct appeal,
7 2255 proceedings, and through-out his lifetime of supervised release conditions.

8 The Supreme Court has held that the Confrontation Clause is a core structural protection
9 against the over-reaching powers of the government and that ensures the integrity of criminal
10 trials. Crawford v. Washington, 541 U.S. 36 (2004). Yet in this case the Petitioner was denied
11 any meaningful opportunity to expose the falsehoods, inconsistencies, and slanderous claims
12 underpinning the government's narrative. The government was permitted to rely on untested
13 allegations, hearsay, and repugnant character implications while simultaneously blocking the
14 Petitioner from presenting the truth.

15 Because U.S.C. 1591 trials often rest solely on credibility determinations in "He said-She said"
16 scenarios, the denial of confrontation is uniquely prejudicial. The Petitioner's inability to challenge
17 the government's allegations infected the trial, the sentencing enhancements, the direct appeal,
18 the 2255 review, and the lifetime restrictions imposed under supervised release. This type of
19 sustained, systematic violation of confrontation rights constitutes a structural error requiring reversal.

20 INEFFECTIVE ASSISTANCE OF COUNSEL

21 Petitioner is an innocent black man who was accused of a violent sex crime against an adult
22 white woman, who denied the governments very reasonable 137 month plea offer based on his
23 unwaveringly commitment to proceed with trial in order to prove to the jury that he had never
24 used any form of physical or threatening "force or coercion" to cause Ms. Losinger to engage in a
25 commercial sex act. APPX 28

26 1.) Pre-trial counsel failed to inform the Petitioner that "the actual use of force" would not be an
27 essential element that the government would be required to prove beyond a reasonable doubt during
28 plea bargain negotiations. in violation of Lafler v. Cooper, 132 S. ct. 1376; 182 L. Ed 398; (2012)

at ¶ 6. In her Declaration Shipsey states:

1 I presented client with the [June 2013] offer,
 2 highlighting several important issues. One, he
 3 had a significant prior conviction for the same
 4 type of behavior where he received a ten year
 5 sentence. Second, in federal court he was charged
 6 with a crime that carried a mandatory 15 year
 7 minimum and the government was willing to offer an
 8 amount below the minimum. Third, based on the
 9 investigation that had already been done, it
 10 appeared that the victim was cooperating
 11 extensively and would be prepared to testify
 12 against [Defendant]. At one point, [Defendant]
 13 felt that if I couldn't find the letter
 14 documenting negotiations between TO Hester and
 15 Mr. Ujifusa, then somehow he could use that for
 16 appeal. I explained to him very clearly, that he
 17 was being given a 10 year offer, it was a very
 18 reasonable settlement proposal and I felt strongly
 19 that he should take the deal. He did not wavier
 20 in declining the offer.

21 2.) Trial counsel failed to challenge the omission of the essential 4th element and unconstitutional
 22 sentencing procedure.

23 3.) Trial counsel presented an invalid defense theory to the jury attempting to prove "force, fraud or
 24 coercion" were NEVER USED, in a trial where the ACTUAL USE of force was not a required element.

25 Shipsey: "The only issue that's really contested here with respects to prostitution is
 26 whether force, fraud or coercion 'were used' to compel Ms.. Losinger to
 27 perform commercial sex acts." [er 490 line 24-er 491 line 4] APPX: 9

28 4.) Sentencing Counsel, again attempts to present the same invalid mitigating sentencing considerations
 to the Courts attempting to prove force was never "actually used" in sentencing.

Shipsey; ..."But we went to trial, not because we didn't think he did anything
 wrong but because we've always maintained that 'FORCE WAS NEVER USED.' And
 so much of this case relied on the testimony of Ms. Losinger saying she was
 brutally beaten, and we never had any---no doctor, no reports, no pictures, and
 no testimony from one single person that ever saw, witnessed any type of abuse,
 or evidence of any injuries"....[er 1542 line 22---er 1550 line 3]

1 JURY INSTRUCTION OMISSION

2 The jury was never instructed to determine whether "the offense was effected by means
3 of force, fraud or coercion" beyond a reasonable doubt, an omission that removed the most
4 essential element of the 1591(a) crime and 1591(b)(1) mandatory minimum sentence.

5 Jury Instructions

6 First, beginning on or about January 2010 and
7 continuing until November 2010, the defendant knowingly
8 recruited, enticed, harbored, transported, provided, or
9 obtained Misty Losinger.

10 Second, the defendant did so knowing that threats of
11 force, fraud -- pardon me. That threats of force -- force,
12 fraud, or coercion would be used to cause Misty Losinger to
13 engage in a commercial sex act.

14 And, third, that the defendant's actions were in or
15 affecting interstate commerce. ER 1393--1394
16

17 FRAUD UPON THE COURT

18 The Government and Court proceeded on a legally false premise regarding the statutory
19 structure of 1591(a), 1591(b)(1).

20 Constructive fraud arises when misrepresentation, omissions, or misleading conduct by
21 officers of the Court (including defense counsel) resulting in a miscarriage of justice. Here, all
22 parties operate under a false assumption of the legal standard, misleading the defendant and jury
23 alike. Courts recognize constructive fraud as grounds for relief where misleading conduct, even
24 without malicious intent, obstructs the fair adjudication of a case.

25
26 RULE 404(b) MISUSE

27 Propensity evidence was admitted to substitute for proof of statutory elements.
28

1 The Courts allowed the government to use the Petitioner's past conviction to prove the
2 Defendant's state of mind in the instant case. Specifically the government's theory that the
3 Petitioner "knew force would be used" (the 1591 2nd mens rea element). But because the jury
4 was not instructed to decide whether "the offence was effected by means of force fraud or
5 coercion" (the 1591(b)(1) triggering element), the admitted other-act evidence effectively told
6 the jurors that because Petitioner had done this crime before he must have done it this NOW.

7 MISAPPLICATION OF U.S v. TODD

8 Todd was improperly used to justify judicial factfinding that Todd itself does not permit.

9 The Ninth Circuit's decision in U.S. v. Todd (627 F. 3d 329 (9th Cir. 2010)) as applied by the
10 lower Courts in Petitioner's case exemplifies the misapplication fueling this injustice. In Todd,
11 the Court of appeals concluded that evidence of the defendant's prior pattern of conduct
12 could support a juror's inference about the defendant's mens rea (knowledge that future
13 force would be used). That holding was fact-specific and was aimed at showing sufficiency of
14 evidence for the knowledge of future force theory tied to the U.S.C. 1591 mens rea element
15 in the context decided. APPX 20

16 But Todd does not and cannot stand for the proposition that prior-act evidence may be used
17 to prove an aggravating, sentencing enhancement element in circumstances where the jury was
18 never required to vote on that critical element. Applying Todd to validate the use of prior-act
19 evidence as the primary rout to a statutory mandatory minimum sentence is deeply problematic.
20

21 Amplification risk of unanimity and prejudice. When the Jury is never instructed to decide
22 whether the offense was "effected by means of force fraud or coercion, the use of prior-act
23 evidence substantially increases the risk that jurors convict based on propensity, extraneous
24 misconduct, or prejudicial inference rather than on proof beyond a reasonable doubt of the
25 required element. Especially considering the complex, racially charged, repugnant, sexually
26 offensive nature of the 1591 crime.

27 Thus, the way Todd has been read and applied in the lower Courts particularly in the
28 Petitioner's case has helped produce a systemic misapprehension of the U.S.C. 1591 statute
and evidentiary practice that undermines both 403/404(b) and the Sixth Amendment jury trial rights.

1 NOVALTY OF CASE

2 First Defendant Ever Tried Under This Theory Petitioner became the test case for an unreviewed
3 and unconstitutional interpretation of 1591(a), 1591(b)(1).

4 The Petitioner was the first Defendant in the District of Oregon ever tried under U.S.C.
5 1591(a), 1591(b)(1); the Court proceeded without guidance, resulting in the misapprehension
6 of the statutory elements.

7 No Ninth Circuit or District of Oregon pattern instructions existed. No prior Oregon case had
8 established the required elements, the role of the 4th critical "force, fraud, coercion" element,
9 or how the 2006 Adam Walsh amendment changed the 1591 sex trafficking statute.

10 As a result, the trial court proceeded in a legal vacuum with no guiding precedent and incorrectly
11 omitting the critical fourth element, "whether the offense was effected by means of force, fraud or
12 coercion." This omission carried catastrophic consequences. Allowing the lower Courts to impose the
13 1591(b)(1) statutory mandatory minimum sentence WITHOUT a jury finding the triggering fact that
14 increases the penalty, in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000)

15
16 **The Application of U.S.S.G. § 2G1.1(1)(a).**

17 The most straight forward interpretation of the US sentencing guideline manual 2G1.1(a)(1)
18 is that a base offense level 34 applies only when a defendant is actually convicted on an offense
19 subject to the punishment's provided in the subsection 18 USCS 1591(b)(1).

20 To determine if the 18 USCS 1591(b)(1) is the offense of the conviction courts should simply
21 ask if the defendant was convicted of the offense subject to the punishment provided in the 18
22 USCS 1591(b)(1). {US v. WEI LIN 841 f.3d 823; 2016 9th Cir.}

23 The Petitioners 1591(a) conviction can not be subject to the drastic 20 level enhancement
24 because the record clearly shows was not found to have been effected by means of "force, fraud
25 or coercion" by a jury beyond a reasonable doubt.

26 The Petitioners correct base offense level should be calculated from base offense level 14 based
27 on the elements that were proven under the actual conviction of the crime. (emphasis) APPX 22
28

DOUBLE COUNTING: **The Application of U.S.S.G. § 3A1.3.**

The 3A1.3 enhancement duplicated conduct already embedded in the statutory definition of coercion.

The U.S.C. 1591 subsection (e)(2) specifically includes the definition of "COERCION".

(2) The term coercion means:

(a) Threats of serious harm or RESTRAINT OF VICTIM" against any person.

The Petitioner was denied the ability to effectively challenge the U.S.C.S 3A1.3 restraint of victim enhancement under "Plain Error" in his direct appeal due to the lower Court's statutory misapprehension of the element of the 1591(a) crime and 1591(b)(1) mandatory minimum sentence.

Had the lower Courts properly understood the U.S.C.S 1591(a), 1591(b)(1) and required the jury to vote whether "the offense was effected by means of force, fraud or coercion, then the sentencing Judge could not have legally applied the 3A1.1 restraint of victim enhancement and would have been considered inherently subsumed in the drastically raised base offense level 34.

Differential Treatment Compared to U.S. v. Jackson

Compounding the error, the same Judge Mosman that denied the Petitioner timely filed 2255 motion, later delivered the correct version of jury instructions in the trial of United States v. Johnl Jackson case no 3:19-cr-00458-MO-01. (emphasis added)

This is an intra-district divergence in application of the Federal law extraordinary and deeply disruptive.

JURISDICTIONAL BREAKDOWN OF ADVERSARIAL PROCESS.

No court has ever adjudicated the merits of Petitioner's constitutional claims under a correct apprehension of the 1591(a) crime and 1591(b)(1) mandatory minimum sentence.

These compounding failures resulted in a complete breakdown of the adversarial process constituting jurisdictional defect under U.S v. Cronin, 466 U.S. 648 (1984). When both defense, prosecution and the courts operate under a mutual misapprehension of the law, and the court does not correct this, the structural integrity of the trial is compromised. This failure deprived the petitioner of a fair opportunity to present a defense and amounted to a denial of due process and effective representation and appeal rights.

1 LACK OF JURISDICTION

2 A federal Court lacks jurisdiction to convict or impose a statutory mandatory minimum
3 sentence where the essential element of a federal offense was not presented to the jury. See
4 U.S. v. Resendiz-Ponce, 549 U.S. 102 (2007); Stirone v. United States, U.S. 212 (1960) This is
5 a structural error not subject to harmless error analysis.

6

7

8
9 SUMMERY OF ARGUMENT

10 This case presents a clean recurring and nationally significant constitutional question;
11 "Whether statutory mandatory minimum sentences under 1591(b)(1), involving adult victims
12 may be imposed without jury findings." The lower Courts' errors have insulated the issue from
13 review, creating an unconstitutional enforcement regime.

- 14
- 15 A.) Misapprehension of 18 U.S.C. 1591(a) crime,
 - 16 B.) Misapprehension of 18 U.S.C. 1591(b)(1) Mandatory Minimum Sentence,
 - 17 C.) Jury Instructions Omission,
 - 18 D.) Apprendi and Alleyne Violation,
 - 19 E.) Mens Rea Confusion,
 - 20 F.) Newly Discovered Version of Jury Instructions,
 - 21 G.) Duplicity,
 - 22 H.) Fraud Upon the Court,
 - 23 I.) Ineffective Assistance of Counsel,
 - 24 J.) Rule 404(b) Misuse
 - 25 K.) Misapplication of U.S. v. Todd
 - 26 L.) First Step Act Misclassification,
 - 27 M.) First Defendant Ever Tried Under This Theory,
 - 28 N.) Lacks Jurisdiction,

- 1 O.) Confrontation Clause,
- 2 P.) Differential Treatment Compared to U.S. v. Johnl Jackson,
- 3 Q.) Double Counting (restraint of Victim Enhancement)
- 4 R.) Complete Adversarial Breakdown.

5
6
7

8 **The Proper Application of the 18 U.S.C. § 1591(b)(1),**
 9 **in this Context Presents an Important Federal**
 10 **Question that Should Be, But Has Not Been, Resolved by This**
 11 **Court.**

12

13 **PRAYER FOR RELIEF**

14

Petitioner respectfully asks this Court to:

15
16
17

- 1.) Issue a writ of certiorari under Rule 20 directing the Ninth Circuit and the District Court to recognize Petitioner's filing as a bona fide Rule 60(b) motion and permit consideration on the merits.

18

OR IN THE ALTERNATIVE:

19
20
21

- 2.) Grant the writ to resolve The Question Presented, holding that the U.S.C. 1591(b)(1) statutory mandatory minimum sentence (involving adult victims) applies only when the jury finds beyond a reasonable doubt that "the offense was effected by means of force, fraud or coercion".

22
23

- 3.) And grant any additional relief this Court deems just and proper to protect Petitioner's Constitutional rights.

24
25

CONCLUSION

26
27
28

For the foregoing reasons, this Court should grant this petition for a writ of certiorari.