

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL DEON FULCHER,

Defendant-Appellant

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

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BRIEF FOR THE UNITED STATES AS APPELLEE

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## **STATEMENT REGARDING ORAL ARGUMENT**

The United States agrees with defendant-appellant that oral argument is unnecessary in this case. The facts and legal arguments are adequately presented in the briefs and record, and the issues presented on appeal are straightforward. The decisional process would therefore not be significantly aided by oral argument. The United States will appear for oral argument if this Court believes that argument would be helpful.

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## STATEMENT OF JURISDICTION

This appeal is from a district court's final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. The court sentenced defendant-appellant Michael Deon Fulcher on April 30, 2024, and entered final judgment on May 8, 2024. ROA.24-25.<sup>1</sup> Fulcher filed a notice of appeal on April 17, 2024, and a supplemental notice of appeal on May 6, 2024; his appeal is timely. ROA.23-24, 370, 377; *see also* Fed. R. App. P. 4(b)(2)-(3). This Court has jurisdiction under 28 U.S.C. 1291 and 18 U.S.C. 3742(a).

## STATEMENT OF THE ISSUES

1. Whether sufficient evidence supported Fulcher's convictions for sex trafficking by force, fraud, or coercion and conspiracy to commit the same in violation of 18 U.S.C. 1591(a) and 1594(c).
2. Whether the district court abused its discretion in denying Fulcher's post-trial motion for judgment of acquittal and a new trial.

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<sup>1</sup> Citations to "ROA.\_\_\_\_" refer to the record on appeal. Citations to "Br. \_\_\_\_" refer to the page numbers in Fulcher's opening brief.

3. Whether the district court clearly erred or committed legal error in overruling Fulcher's objections to certain sentencing enhancements that increased his total offense level.

4. Whether the district court's imposition of a life sentence for Fulcher's violations of 18 U.S.C. 1591(a) and 1594(c) was substantively reasonable and consistent with the Eighth Amendment's prohibition against cruel and unusual punishment.

## **STATEMENT OF THE CASE**

### **A. Factual Background**

From April 2020 to June 2020, defendant-appellant Michael Deon Fulcher engaged in a scheme consisting of violent force, threats of force, and psychological manipulation to coerce A.J., an adult female, to engage in commercial sex acts across multiple States for his benefit. The trial evidence is viewed in the light most favorable to the verdict, *see United States v. McDowell*, 498 F.3d 308, 312 (5th Cir. 2007), and consists here of direct evidence of Fulcher's sex trafficking through the testimony of A.J. and Fulcher's co-defendant, Jonzie Hamilton; corroborating testimony of investigators and a jailhouse informant; and documentary evidence.

1. In late April 2020, A.J. was a recovering drug addict living in a sober-living facility in Las Vegas, Nevada. ROA.807-808, 874. While visiting acquaintances off-site, A.J. suffered a relapse that left her disoriented. ROA.809, 884, 901-902. She attempted unsuccessfully to return to the facility and injured herself on the property. ROA.809-811, 890. After an abbreviated stay in the hospital to treat her injury and another unsuccessful attempt to return to the sober-living facility, A.J. found herself lost and exhausted in a convenience store parking lot with a dead cellphone and nowhere to go. ROA.811-813, 909-910, 980.

Fulcher drove up next to A.J. and offered her a bottle of water and a ride to the hospital. ROA.813-814, 910-911. Believing that Fulcher was not a threat because of his appearance, A.J. accepted his offer and entered the backseat of his car. ROA.814-815, 873, 911, 1108, 1131. Once A.J. was in the car, however, Fulcher refused to allow her to use his phone charger to charge her phone and prevented her from leaving the car by using its child locks. ROA.817-819. Rather than take A.J. to the hospital as he promised, Fulcher drove her to his house and told A.J. that he was “saving” her. ROA.818-820, 980, 1110-1111, 1132.

At his house, Fulcher gave A.J. food and marijuana that caused her to fall asleep. ROA.820-821. A.J. woke up to find Fulcher attempting to rape her. ROA.823. A.J. told Fulcher “No” three times and attempted to crawl away but was unable to prevent Fulcher’s sexual assault because of her exhaustion and injury and their size disparity. ROA.823-825. Following the assault, Fulcher told A.J. that he was a pimp with a girl in California and asked her if she wanted to go there with him to make money. ROA.828-829. A.J. repeatedly told Fulcher that she did not want to participate in sex work, but finally agreed based upon her fear that Fulcher would attack her otherwise. ROA.829-830. She continuously talked to Fulcher about her personal life during the drive because she believed that doing so would prevent him from further harming her. ROA.830-832.

2. In California, Fulcher brought A.J. to meet Jonzie Hamilton, one of his commercial sex workers, who took photos of A.J. for escort site online profiles and taught her Fulcher’s rules for commercial sex work. ROA.832-834, 837, 928-930, 979-982, 1149. In addition to meeting clients through these sites, A.J. was required to “walk the

track”—*i.e.*, walk around outside and wait for customers to pull up in cars to offer money for sexual acts. ROA.834, 838, 984-985, 1149.

In addition to arranging her commercial sex acts, Fulcher took whatever money A.J. made and limited her access to other funds. Fulcher expected A.J. to meet a daily financial quota—anywhere from \$500 to \$1100 per day—through sexual activities and turn over all the money to him. ROA.834-835, 984, 986, 1020, 1115, 1138. He also confiscated A.J.’s Social Security Disability Insurance (SSDI) debit card and forced her to withdraw all the money in the account for him. ROA.844-847, 956-958, 989-990.

Fulcher further controlled A.J. in several other ways. He refused to allow A.J. to take a day off even if she was menstruating or to seek medical treatment for her chronic kidney disease and its painful symptoms. ROA.838, 842-843, 1002. To improve A.J.’s appearance, Fulcher brought her to an unlicensed dentist, who pulled four of her teeth at Fulcher’s direction and against her will. ROA.838-841, 926, 991, 1021, 1117-1119. Fulcher monitored A.J.’s activities through Hamilton and other associates when he was not around, letting A.J. know that he was watching her by calling her and commenting on those

activities. ROA.843-844, 987. Fulcher required Hamilton to check in with him several times per day and to request his permission to buy everyday items. ROA.985-986.

Both Fulcher and Hamilton regularly threatened A.J. with harm if she broke Fulcher's rules. ROA.847-848, 860, 908, 984, 990-991. Fulcher told A.J. that he "busted [the] ribs" of a former sex worker who disobeyed him, resulting in her admission to the hospital's intensive care unit. ROA.847, 858. Fulcher and Hamilton also isolated A.J. from her family and ex-boyfriend by limiting her access to her phone and changing its number, preventing her from accessing her Facebook account, and threatening that her family and ex-boyfriend would be harmed if she reached out to them. ROA.861-862, 908, 995-997.

3. In May 2020, Fulcher told A.J. and Hamilton to go on a road trip across the country to perform commercial sex acts and rented a car for them to drive. ROA.848-850, 907-908, 927-928, 993-994, 1022. Over the next several weeks, the women traveled to multiple states at Fulcher's direction, including Colorado, Texas, Louisiana, and Mississippi. ROA.851-852, 935-936, 941-942, 944-946, 1001, 1003-1004. At each stop, Hamilton posted online commercial sex advertisements

and both women “walked the track.” ROA.908, 983, 1001-1002. As he did in California, Fulcher required A.J. and Hamilton to follow his rules while on the road, including turning over all proceeds to him, checking in with him several times per day, and seeking his permission to buy everyday items. ROA.850-851, 947-948, 954-956, 993-994, 997-999. A.J. believed that Fulcher was present or nearby watching her based upon his comments to her on what she was wearing or doing. ROA.852-853.

Fulcher required A.J. to “walk the track,” even in inclement weather, and displayed little concern for her safety and well-being. ROA.853-854. One night in Dallas, for example, a customer attempted to force A.J. to perform a sexual act in his car at knifepoint. ROA.855-857. A.J. called Fulcher to tell him about the incident; he responded that she was at fault for not getting the money first and that she needed to “act right and get back out there.” ROA.857-858. Also in Dallas, A.J. was stopped and ticketed by a police officer in an area known for illegal sex work but was too afraid to tell the officer that she was being held against her will. ROA.860, 936-937.

In addition, while A.J. and Hamilton were working their way across the country, Fulcher kept possession of A.J.'s SSDI debit card and continued to withdraw funds from her account for his own use. ROA.845, 958.

4. A.J. and Hamilton eventually arrived in Biloxi, Mississippi, in June 2020. ROA.863, 933, 940-941, 1125. One evening, A.J. arranged an "out call" with a commercial sex customer at his residence in Pascagoula, Mississippi. ROA.863-865, 960-961, 1004. During the encounter, A.J. confided to the customer that she was being forced to engage in commercial sex acts against her will. ROA.865-866, 1019. The customer and A.J. orchestrated a plan for A.J. to escape Fulcher and Hamilton, which included ordering her a new SSDI debit card to be sent to the customer's house. ROA.866-867, 958-962.

The following day, A.J. snuck away from Hamilton and called the man to ask him to pick her up in Biloxi. ROA.868-870, 964-965, 1005, 1019, 1125. He picked A.J. up from a Biloxi hotel different from the one where she was staying and drove her to the hospital, where the employees called the police. ROA.870-871. A.J. eventually spoke to the police and told them about her situation. ROA.871, 1021-1022. The



officers subsequently reported the crime to state investigators and the FBI, who initiated a federal human trafficking investigation. ROA.802-803, 916.

5. Fulcher was arrested in January 2022, and Hamilton was arrested in May 2022, after the return of a three-count federal indictment against them. ROA.33, 116-117. While Fulcher was awaiting trial between April 2022 and June 2023, he confided several aspects of his criminal conduct to a prison-mate, Ucurtis Pollard. This information included his expectation of how much money Hamilton and A.J. would make each day from commercial sex acts, his taking A.J. to an unlicensed dentist, his direction that Hamilton and A.J. travel across the country to engage in commercial sex, and A.J.'s escape and subsequent reporting to the police. ROA.1019-1022. According to Pollard, Fulcher looked for Hamilton every day in the prison facility to tell her that he wanted her to go along with his account of events. ROA.1022-1023.

## **B. Procedural Background**

### **1. Indictment And Verdict**

In January 2022, a federal grand jury in the Southern District of Mississippi returned a three-count indictment against Fulcher and Hamilton. Count 1 charged Fulcher and Hamilton with sex trafficking of A.J. by force, fraud, or coercion, in violation of 18 U.S.C. 1591(a)(1), (b)(1), and 1594(a). ROA.5, 37. Count 2 charged Fulcher and Hamilton with conspiracy to commit sex trafficking of A.J. by force, fraud, or coercion, in violation of 18 U.S.C. 1591(a), (b)(1), (b)(2), (c), and 1594(c). ROA.5, 37-38. Count 3 charged Fulcher and Hamilton with interstate transportation of A.J. for purposes of prostitution, in violation of 18 U.S.C. 2421. ROA.5, 38.

Fulcher pleaded not guilty to the charges and proceeded to trial on all three counts.<sup>2</sup> ROA.21. At the close of the government's case, he moved the district court under Federal Rule of Criminal Procedure 29 for a judgment of acquittal on Counts 1 and 2 based upon insufficient evidence and instructional error, which the court denied. ROA.1071-

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<sup>2</sup> Hamilton pleaded guilty to Count 3 of the indictment and was sentenced to 29 months' imprisonment. ROA.974.

1082. At the close of evidence, Fulcher renewed his motion for judgment of acquittal on those grounds, which the court again denied. ROA.1154-1155. A jury found Fulcher guilty of all counts. ROA.1250-1251. After the verdict, Fulcher moved the district court for a judgment of acquittal or a new trial under Federal Rules of Criminal Procedure 29 and 33 based upon the two prior objections and the court's alleged improper restriction of his counsel's closing argument, which the court denied. ROA.1255-1280.

## **2. Sentencing**

a. Before sentencing, a probation officer prepared a Presentence Investigation Report (PSR). ROA.1814-1883. The PSR calculated a base offense level of 30 under Sentencing Guidelines §§ 2A3.1(a)(2) and 2G1.1(c)(1) for Fulcher's conviction for violating 18 U.S.C. 1591(a). ROA.1834, 1838.

The PSR then included multiple adjustments based upon Fulcher's conduct that resulted in a significantly increased adjusted offense level. Specifically, the PSR added four levels under Section 2A3.1(b)(1) for criminal sexual abuse because the offense included Fulcher's forcible rape of A.J. at his Las Vegas home (ROA.1834, 1838);

four levels under Section 2A3.1(b)(4)(A) for permanent or life-threatening bodily injury because the extraction of four of A.J.'s teeth without her consent resulted in permanent injury to her oral cavity (ROA.1834-1835, 1839); four levels under Section 2A3.1(b)(5) for abduction because Fulcher took A.J. from a Las Vegas parking lot and transported her against her will to California (ROA.1835, 1839); two levels under Section 3A1.3 for physical restraint because Fulcher confined A.J. to the backseat of his car using the car's child locks (ROA.1835, 1839); four levels under Section 3B1.1(c) for Fulcher's extensive leadership role in the offense (ROA.1835, 1839); and two levels under Section 3C1.1 for obstruction of justice because Fulcher attempted to influence Hamilton's testimony and committed perjury at trial (ROA.1835-1836, 1839).

These adjustments resulted in a total offense level of 50, which was reduced to 43 under Sentencing Guidelines Chapter 5, Part A comment. (n.2). ROA.1836, 1839. With Fulcher's criminal history category of IV and a total offense level of 43, his advisory Guidelines sentence was life imprisonment for Counts 1 and 2 and a statutory maximum of 120 months' imprisonment for Count 3. ROA.1851.

b. The case proceeded to sentencing. ROA.1281-1409. At the hearing, Fulcher objected to all sentencing enhancements and to the PSR's calculation of his criminal history. ROA.1285-1334. The court sustained Fulcher's objection to the two-level enhancement under Section 3A1.3 for unlawful physical restraint. ROA.1335. The court reasoned that applying this enhancement may result in impermissible double counting of the abduction enhancement the court already applied, given Section 3A1.3's commentary that it does not apply to abduction offenses covered by Section 2A4.1. ROA.1347-1348. The court also reduced the four-level enhancement under Section 3B1.1(c) for Fulcher's leadership role to a two-level increase in accordance with the government's concession that the latter was appropriate. ROA.1335-1336, 1348.

The court overruled all of Fulcher's other objections to the PSR's sentencing enhancements. ROA.1334-1353. The court first found that the four-level enhancement under Section 2A3.1(b)(1) for aggravated sexual abuse was warranted because A.J.'s detailed and credible testimony showed that Fulcher forcibly raped her at his Las Vegas home. ROA.1337-1339. Next, the court found that the four-level

enhancement for permanent or life-threatening bodily injury under Section 2A3.1(b)(4)(A) was appropriate because A.J.'s testimony demonstrated that she did not consent to having her permanent teeth pulled by an unlicensed dentist, that this procedure was not medically necessary, and that pulling her teeth resulted in permanent injury that involved a substantial impairment that is likely to be permanent or an obvious disfigurement that is likely to be permanent. ROA.1339-1342.

The court also found that the four-level enhancement under Section 2A3.1(b)(5) for abduction was justified because the testimony of A.J., Hamilton, and Fulcher showed that Fulcher's initial approach of an exhausted and injured A.J., his confinement of her in his car with its child locks activated, his failure to take her to the hospital as he promised, his rape of her at his house, and his involuntary transport of her to California and elsewhere for commercial sex acts, constituted an abduction. ROA.1343-1347. Finally, the court found that a two-level increase under Section 3C1.1 for obstruction of justice was warranted, given Pollard's testimony that Fulcher attempted to get Hamilton to go along with his false account of events and the numerous examples of Fulcher's perjury throughout his testimony that contradicted the

testimony of A.J. and Hamilton and stretched the bounds of credibility.  
ROA.1022-1023, 1348-1353.

Because Fulcher's recalculated total offense level of 46 was still higher than the maximum offense level of 43, his advisory Guidelines sentence of life imprisonment did not change. ROA.1358-1360.

Fulcher also sought a downward variance from his recommended Guidelines sentence based upon the factors set forth in 18 U.S.C. 3553(a). ROA.1376-1377. To this end, Fulcher pointed to the significant disparity between his advisory Guidelines range and Hamilton's 29-month sentence, as well as his advanced age, poor health, difficult upbringing, and supportive character letters.  
ROA.1378-1380, 1387-1388.

The district court rejected Fulcher's arguments, finding that the appropriate sentence under Section 3553(a) was life imprisonment for Counts 1 and 2 and 120 months' imprisonment for Count 3, with the sentences to run concurrently. ROA.1388, 1397. In particular, the court concluded that this sentence was necessary to capture the "extraordinarily serious" nature of the offense and Fulcher's history and characteristics (Section 3553(a)(1)); to reflect the seriousness of

Fulcher's sex-trafficking offense, which included rape (Section 3553(a)(2)(A)); to promote respect for the law given Fulcher's extensive criminal history and to provide just punishment for his "horrific" offense (Section 3553(a)(2)(A)); and to deter criminal conduct by others and protect the public from Fulcher's future crimes (Section 3553(a)(2)(B) and (C)). ROA.1388-1397.<sup>3</sup>

### **SUMMARY OF ARGUMENT**

This Court should affirm Fulcher's convictions and sentence. Fulcher challenges the sufficiency of the evidence for his convictions under 18 U.S.C. 1591(a) and 1594(c), the district court's denial of his post-trial motion for judgment of acquittal and a new trial, and the procedural and substantive reasonableness of his sentence, as well as its validity under the Eighth Amendment. Each challenge lacks merit.

1. Ample evidence supported Fulcher's convictions for sex trafficking of A.J. by force, fraud, or coercion and conspiracy to commit

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<sup>3</sup> The district court also awarded restitution in the amount of \$18,200, consisting of \$3200 to the Social Security Administration and \$15,000 in damages to A.J., owed jointly and severally by Fulcher and Hamilton. ROA.1397-1400. Fulcher did not raise restitution as an issue in this appeal. Nor has Fulcher challenged his conviction and sentence on Count 3 for violating 18 U.S.C. 2421.



the same under 18 U.S.C. 1591(a) and 1594(c). To establish Fulcher's guilt, the government was required to prove beyond a reasonable doubt, among other things, that Fulcher knew or recklessly disregarded the fact that force, threats of force, fraud, or coercion would be used to cause A.J. to engage in commercial sex acts. Fulcher essentially argues that A.J. was a willing participant in these acts, and that no rational juror could find beyond a reasonable doubt that he used force, fraud, or coercion to cause her to engage in such acts for his financial benefit. Based upon the evidence presented and the jury's assessment of the witnesses, however, a reasonable jury could have concluded—and did conclude—otherwise. That Fulcher would have preferred a different outcome is no reason to disturb the verdict.

2. The district court did not abuse its discretion in denying Fulcher's post-verdict motion for judgment of acquittal and a new trial. As an initial matter, Fulcher waived his arguments on this issue by inadequately briefing them on appeal and instead incorporating by reference his post-trial motion. In any event, the arguments are meritless. Because the evidence was sufficient—in fact, ample—for a jury to find beyond a reasonable doubt that Fulcher used force, fraud, or

coercion to cause A.J. to engage in commercial sex acts, the district court did not err in denying the Rule 29 motion. Nor did the court clearly abuse its discretion in denying Fulcher's motion for a new trial based upon the weight of the evidence. The court also did not err, much less cause a miscarriage of justice warranting a new trial, by instructing the jury that sex trafficking by force, fraud, or coercion includes a "reckless disregard" standard and by precluding Fulcher's counsel from mentioning in closing that "prostitution" is legal in Nevada. Both rulings were supported by the law and the record.

3. The district court did not clearly err in overruling Fulcher's objections to the sentencing enhancements that the Probation Office and the court applied to increase his total offense level. The court properly relied upon and adopted in part the factual findings of the PSR, which were based upon the record evidence and thus bore sufficient indicia of reliability. Fulcher's unsupported objection to the PSR's findings falls far short of the requirement that he show that these findings are materially untrue, inaccurate, or unreliable. Nor is there any legal error related to the court's application of these enhancements.

4. Fulcher's sentence of life imprisonment for his sex-trafficking convictions is substantively reasonable and consistent with the Eighth Amendment's prohibition against cruel and unusual punishment. Because the district court properly considered and weighed Section 3553(a)'s sentencing factors and because Fulcher's life sentence was within the properly calculated Guidelines range, the sentence was presumptively reasonable. Fulcher's argument that the district court erred by failing to give proper weight to aspects of his case, without more, fails to rebut this presumption. Fulcher's life sentence also was not greatly disproportionate to his offenses in violation of the Eighth Amendment. His offenses were more serious than the offense for which the Supreme Court upheld a life sentence against a similar challenge, and Fulcher's sentence reflected his extensive criminal history and was statutorily authorized and consistent with his advisory sentence.

## **ARGUMENT**

### **I. Sufficient evidence supported Fulcher's convictions under 18 U.S.C. 1591(a) and 1594(c).**

#### **A. Standard of review**

This Court "reviews claims [for a judgment of acquittal] preserved through a Rule 29 motion de novo, but with substantial deference to the

jury verdict.” *United States v. Suarez*, 879 F.3d 626, 630 (5th Cir. 2018) (internal quotation marks and citation omitted). Where, as here, the motion is based upon sufficiency of the evidence, this Court will affirm “if a reasonable trier of fact could conclude the elements of the offense were established beyond a reasonable doubt, viewing the evidence in the light most favorable to the verdict and drawing all reasonable inferences from the evidence to support the verdict.” *United States v. McDowell*, 498 F.3d 308, 312 (5th Cir. 2007) (citation and alteration omitted). This Court’s sufficiency review “does not evaluate the weight of the evidence or the credibility of witnesses,” as “[c]redibility assessments are squarely within the jury’s domain.” *United States v. Runyan*, 290 F.3d 223, 240 (5th Cir. 2002). In sum, “a defendant seeking reversal on the basis of insufficient evidence swims upstream.” *United States v. Capistrano*, 74 F.4th 756, 766 (5th Cir.) (internal quotation marks and citation omitted), *cert. denied*, 144 S. Ct. 516 (2023).

**B. Sufficient evidence supported the jury’s finding that Fulcher both caused and conspired for A.J. to engage in commercial sex through force, fraud, or coercion.**

Count 1 charged Fulcher with sex trafficking A.J. by force, fraud, or coercion, in violation of 18 U.S.C. 1591(a)(1), (b)(1) and 1594(a), and Count 2 charged Fulcher with conspiring with Hamilton to commit the same, in violation of 18 U.S.C. 1591(a), (b)(1), (b)(2), (c), and 1594(c). To convict Fulcher, the government was required to prove beyond a reasonable doubt that (1) Fulcher knowingly recruited, enticed, harbored, transported, provided, obtained, or maintained by any means A.J.; (2) Fulcher knew or recklessly disregarded the fact that force, threats of force, fraud, or coercion would be used to cause A.J. to engage in a commercial sex act; and (3) the offense was in or affected interstate commerce. *See* 18 U.S.C. 1591(a)(1).

Fulcher challenges the sufficiency of the government’s evidence only as to the “force, fraud, or coercion” element. He argues that A.J.’s access to money, forms of communication, and opportunities to leave demonstrates that he did not use force, fraud, or coercion to compel her to stay and engage in commercial sex acts. Br. 18-19. Rather, he would

have preferred that the jury deem A.J. a willing participant. This argument finds no support in the law or the record.

Section 1591 defines “coercion” in relevant part to include “threats of serious harm to or physical restraint against any person” and “any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person.” 18 U.S.C. 1591(e)(2)(A) and (B). The statute in turn defines “serious harm” as “any harm, whether physical or nonphysical . . . that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.” 18 U.S.C. 1591(e)(5). Because Section 1591 does not define the terms “force” or “fraud,” the district court instructed the jury to give these words their ordinary meaning. ROA.1197-1198. In common and relevant parlance, force means “violence, compulsion, or constraint exerted upon or against a person or thing,” *Force*, Merriam-Webster, <https://perma.cc/UWQ6-KDSB> (Nov. 27, 2024), and “fraud” means “an

act of deceiving or misrepresenting,” *Fraud*, Merriam-Webster, <https://perma.cc/2H9U-EFDB> (Dec. 8, 2024).

Viewed in the light most favorable to the verdict and drawing all reasonable inferences from the evidence to support the verdict, ample evidence enabled the jury to find beyond a reasonable doubt that Fulcher used force, fraud, *and* coercion to cause A.J. to engage in commercial sex acts. For instance, the record makes clear that Fulcher preyed upon and exploited a vulnerable and helpless individual when he first approached an exhausted and injured A.J. in his car and offered to take her to the hospital. A.J. accepted the offer and climbed into the car’s backseat because Fulcher appeared non-threatening. Instead of driving A.J. to the hospital, however, Fulcher confined her to the car using its child locks and drove to his house, where he began grooming her to engage in commercial sex. *See* p. 3, *supra*. A reasonable jury could conclude that Fulcher deceived A.J. and misrepresented his interest in helping her to prey upon her vulnerabilities for his benefit.

Soon after taking her to his house, Fulcher raped A.J. despite her repeatedly telling him “No” and attempting to crawl away. Following the rape, Fulcher told A.J. that he was a pimp and sought to have her

accompany him to California to engage in commercial sex work. After repeatedly telling Fulcher that she did not want to participate in this scheme, A.J. finally agreed because she was afraid that Fulcher would harm her further. While in California, Fulcher directed an unlicensed dentist to remove four of A.J.'s teeth against her will to improve her appearance. *See* pp. 4-5, *supra*. A reasonable jury could conclude that Fulcher exerted violence, compulsion, and constraint upon A.J. to cause her to engage in commercial sex.

Finally, the record is replete with evidence showing that Fulcher controlled A.J. through deprivation and fear, belying his argument that she was free to leave at any time—an argument that holds no weight where a defendant places a person “in such fear of physical harm that the victim is afraid to leave, regardless of the victim’s opportunities for escape.” *United States v. Bibbs*, 564 F.2d 1165, 1168 (5th Cir. 1977); *see also United States v. Toure*, 965 F.3d 393, 398 (5th Cir. 2020) (affirming human trafficking convictions even though the victim was periodically banished from the house and once “chose to return to the [home of the defendants] because she feared involving the police”). For instance, Fulcher confiscated A.J.’s SSDI debit card and forced her to withdraw



all the money in the account for him. He then kept her card and continued to withdraw money for his own personal use. He also required her to turn over all her earnings from commercial sex to him. *See pp. 5, 8, supra.*

To keep A.J. from reaching out for help, Fulcher limited her communications to the outside world by controlling access to her phone, changing its number, and preventing her access to Facebook. He also threatened serious harm to her ex-boyfriend and family if she reached out to them. Fulcher continuously reminded A.J. that he was monitoring her actions from a distance, which also inhibited her from telling a police officer that she was being held against her will. Fulcher also threatened A.J. with serious harm, including by telling her that he struck one of his female sex workers who disobeyed him so severely that she required treatment in a hospital's intensive care unit. *See pp. 5-6, supra.*

Based upon this evidence, a reasonable jury could conclude that Fulcher used threats of serious harm against A.J. and her loved ones—and a scheme, plan, or pattern intended to cause her to believe that failure to obey him would result in serious harm to or physical restraint

against her or her loved ones—to cause her to engage in commercial sex. *See* 18 U.S.C. 1591(e)(2). Accordingly, this Court should uphold Fulcher’s convictions against his sufficiency challenge.

**II. The district court did not abuse its discretion in denying Fulcher’s post-trial motion for judgment of acquittal and a new trial.**

**A. Standard of review**

Federal Rule of Criminal Procedure 33 authorizes a district court to grant a new trial on the motion of a defendant “if the interest of justice so requires.” Fed. R. Crim. P. 33(a). Relief is warranted only in “exceptional cases.” *United States v. Robertson*, 110 F.3d 1113, 1120 n.11 (5th Cir. 1997). Accordingly, this Court reviews a district court’s denial of a new trial for abuse of discretion. *See United States v. Hoffman*, 901 F.3d 523, 552 (5th Cir. 2018).<sup>4</sup>

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<sup>4</sup> As noted above, this Court applies de novo review to the district court’s denial of a Rule 29 motion for judgment of acquittal. *See United States v. Suarez*, 879 F.3d 626, 630 (5th Cir. 2018). Fulcher’s argument for judgment of acquittal fails for the same reasons as those set forth in Argument I, pp. 19-26, *supra*. Accordingly, we focus on Fulcher’s arguments regarding the district court’s denial of his Rule 33 motion for a new trial.

**B. Fulcher waived his arguments on appeal for a new trial, which in any event are meritless.**

A new-trial motion is generally based upon two grounds.

*Hoffman*, 901 F.3d at 552. “The first, like sufficiency review, focuses on the evidentiary support for the verdict, with the movant having to show that the verdict is so strongly against the weight of the evidence that it affects the defendant’s substantial rights.” *Ibid.* The second alleges that procedural defects in the trial—such as prosecutorial misconduct, erroneous admission or exclusion of evidence, or faulty jury instructions—caused a miscarriage of justice. *See id.* at 552-554.

Fulcher argues that a new trial is warranted both because the verdict is against the weight of the evidence and because erroneous district court rulings caused a miscarriage of justice. Br. 40-43.

As an initial matter, Fulcher waived these arguments by failing to brief them adequately on appeal. *See United States v. Scroggins*, 599 F.3d 433, 447 (5th Cir. 2010). Federal Rule of Appellate Procedure 28 requires the argument section of an appellant’s brief to contain “appellant’s contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies.” Fed. R. App. P. 28(a)(8)(A); *see also Scroggins*, 599 F.3d at 447. Fulcher’s

arguments fall well short of this mandate because they provide cursory explanations bereft of *any* case or record citations, and thus are waived as inadequately briefed. *See United States v. Stalnaker*, 571 F.3d 428, 439-440 (5th Cir. 2009). His attempt to incorporate by reference arguments he made below (Br. 39) is unavailing because this Court does not consider arguments presented in earlier filings. *See Yohey v. Collins*, 985 F.2d 222, 224-225 (5th Cir. 1993).

In any event, Fulcher's arguments for a new trial fail on the merits. In reviewing a district court's denial of a Rule 33 motion based upon the weight of the evidence, this Court "must not revisit evidence, reevaluate witness credibility, or attempt to reconcile seemingly contradictory evidence," but rather must decide whether this decision constituted a "clear abuse of . . . discretion." *United States v. Tarango*, 396 F.3d 666, 672 (5th Cir. 2005). No clear abuse of discretion exists here. As explained already, ample evidence permitted the jury to find beyond a reasonable doubt that Fulcher used force, fraud, or coercion to cause A.J. to engage in commercial sex. *See pp. 23-26, supra*. Accordingly, this is not one of those "exceptional cases" in which the

jury's verdict is so strongly against the weight of the evidence that it affected Fulcher's substantial rights. *See Hoffman*, 901 F.3d at 552.

No more persuasive is Fulcher's argument that two allegedly erroneous district court rulings caused a miscarriage of justice warranting a new trial. Fulcher first objects to the district court's instruction to the jury that sex trafficking by force, fraud, or coercion under 18 U.S.C. 1591 includes a "reckless disregard" standard. He contends that this standard applies only to minor victims, and that applying this standard to cases involving adult victims eliminates the requirement that a criminal defendant have knowledge of wrongdoing, thus lowering the government's burden of proof to that of a civil case. Br. 40-41.

Not so. Section 1591(a) is phrased in the disjunctive, applying to any individual who "knowingly . . . recruits, entices, harbors, transports, provides, obtains, . . . or maintains . . . by any means a person" "knowing . . . *or* in reckless disregard of the fact, that means of force, threats of force, fraud, coercion" "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.” 18 U.S.C. 1591(a) (emphases added). The plain text of the statute refutes Fulcher’s first argument.

Nor does applying the “reckless disregard” standard to adult victims impermissibly lower the government’s burden of proof. The government still had to prove beyond a reasonable doubt two scienter requirements—that Fulcher “*knowingly* . . . recruit[ed], entice[d], harbor[ed], transport[ed], provide[d], obtain[ed], . . . or maintain[ed]” A.J. for commercial sex, “*knowing*” or “*in reckless disregard of the fact*” that force, fraud, or coercion would be used. 18 U.S.C. 1591(a) (emphases added); ROA.1197-1198 (jury instructions); *see United States v. Copeland*, 820 F.3d 809, 812 n.6 (5th Cir. 2016) (observing that Section 1591(a) imposes the scienter requirement of “knowingly”). Simply put, the district court’s instruction to the jury on the “reckless disregard” standard (*see* ROA.1197-1198) was not erroneous, much less a miscarriage of justice.

Fulcher also argues that he is entitled to a new trial because the district court improperly restricted his counsel’s closing argument. He contends that by preventing him from arguing that “prostitution” is

legal in Nevada, the court eviscerated his ability to present a central theme to his defense—that A.J. was a willing participant. Br. 41-42.

Again, Fulcher is mistaken. A district court has broad discretion to limit a party's closing argument, *see United States v. Griffin*, 324 F.3d 330, 361-362 (5th Cir. 2003), and the district court did not abuse that discretion here. As an initial matter, Fulcher's argument is an incorrect statement of the law: although commercial sex is legal in some parts of Nevada, such as in licensed facilities, it is never legal in Las Vegas, where A.J. lived and was recruited by Fulcher. *See Nev. Rev. Stat. § 201.354* (2023); *Ford v. State*, 262 P.3d 1123, 1131 (Nev. 2011).

Fulcher also takes unwarranted liberties with the record: Fulcher did not testify that he legitimately recruited A.J. for commercial sex in Nevada—indeed, he attempted to shift blame to Hamilton and claimed that he played no role in providing A.J. for commercial sex in Nevada or elsewhere. ROA.1125, 1138, 1142, 1149, 1151. And there was no evidence that A.J. ever engaged in commercial sex in Nevada. In any event, the possibility that A.J. *voluntarily* engaged in *legal* sex work in *Nevada* is irrelevant to the crime for which Fulcher was charged and

convicted—that he *caused* A.J. through force, fraud, or coercion to engage in *illegal* commercial sex acts in *Mississippi*. See *United States v. Carson*, 870 F.3d 584, 593-594 (7th Cir. 2017) (holding that “whether the victims had previously worked as prostitutes was irrelevant to the required *mens rea* for [18 U.S.C. 1591(a)]” because “voluntary prostitution is a completely separate act from commercial sex transactions that occur as the result of force or coercion in the context of sex trafficking”). Nor does it answer at all the evidence of commercial sex acts A.J. performed in Colorado, Texas, and Louisiana at Fulcher’s behest.

And finally, even if Fulcher could demonstrate that A.J. had previously engaged in voluntary commercial sex work, he could not plausibly argue that she willingly worked for him given the overwhelming evidence at trial that he used force, fraud, and coercion to cause her to engage in commercial sex. See *Carson*, 870 F.3d at 594. Accordingly, the district court’s restriction of defense counsel’s closing argument on this issue was not a miscarriage of justice.



**III. The district court did not clearly err in overruling Fulcher’s objections to sentencing enhancements that raised his total offense level.**

**A. Standard of review**

This Court reviews the district court’s application and interpretation of the Sentencing Guidelines de novo and the factual findings the court makes in support of its decision to apply a Guidelines enhancement for clear error. *United States v. Rodriguez*, 630 F.3d 377, 380 (5th Cir. 2011). Review for clear error is a deferential standard that “only requires a factual finding to be plausible in light of the record as a whole.” *Ibid.* Accordingly, this Court “will conclude that a finding of fact is clearly erroneous only if a review of all the evidence leaves [it] with the definite and firm conviction that a mistake has been committed.” *Ibid.* (internal quotation marks and citation omitted).

**B. The district court properly relied upon and adopted in part the PSR, which bore sufficient indicia of reliability.**

“When making factual findings for sentencing purposes, a district court may consider any information which bears sufficient indicia of reliability to support its probable accuracy.” *United States v. Zuniga*, 720 F.3d 587, 590 (5th Cir. 2013) (internal quotation marks and citation omitted). “Generally, a PSR bears sufficient indicia of reliability to be

considered as evidence by the sentencing judge in making factual determinations,” shifting the burden to the defendant to provide rebuttal evidence that “demonstrate[s] that the PSR is inaccurate.” *Id.* at 591 (citations omitted). “Rebuttal evidence must consist of more than a defendant’s objection; it requires a demonstration that the [PSR’s] information is materially untrue, inaccurate or unreliable.” *Ibid.* (internal quotation marks and citation omitted). “[I]n the absence of rebuttal evidence, the sentencing court may properly rely on the PSR and adopt it.” *Ibid.* (citation omitted). No further inquiry into the PSR’s facts is required. *See United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012).

The district court properly considered the PSR as evidence in applying several sentencing enhancements that raised Fulcher’s total offense level. Each of these enhancements—for criminal sexual abuse, permanent or life-threatening bodily injury, abduction, and obstruction of justice—had sufficient evidentiary support in the trial record that permitted the court to apply the enhancement under a preponderance standard. *See pp. 3-9, 13-15, supra.*

At sentencing, the district court carefully considered Fulcher's objections to each upward adjustment and independently reviewed the PSR's factual findings before making its own findings. ROA.1334-1358. Indeed, while the court overruled most of Fulcher's objections, it sustained one objection in full and another one in part. *See* p. 13, *supra*. Because the district court's factual findings based upon the PSR were plausible considering the entire record—which the district court knew well from trial—the burden shifted to Fulcher to demonstrate that the PSR was inaccurate. *See Zuniga*, 720 F.3d at 591.

Fulcher does not even attempt to carry this burden. Instead, he recites the proceedings below, then baldly asserts that the district court's factual findings were erroneous given the significant disparity between his life sentence and Hamilton's 29-month sentence, and that the enhancements the court applied were unnecessary, harsh, and unsupported by the government's evidence. Br. 34-36. This objection falls far short of demonstrating that the information upon which the district court based its findings was "materially untrue, inaccurate or unreliable." *Zuniga*, 720 F.3d at 591 (citation omitted).

Equally unavailing is Fulcher's argument that a district court plainly errs by relying solely upon the PSR without corroborating evidence when imposing sentencing enhancements. Br. 37. All three cases that Fulcher cites involved a PSR's conclusory and unsupported characterization of a defendant's prior conviction as a crime of violence. Although "mere inclusion in the PSR does not convert facts lacking an adequate evidentiary basis with sufficient indicia of reliability into facts a district court may rely upon at sentencing," *Harris*, 702 F.3d at 230 n.2, that is not the case here. Because the PSR's factual findings supporting its sentencing enhancements possessed a solid evidentiary foundation—indeed, the district court heard many of these facts during trial—the district court did not need to inquire further into these findings and corroborate their truthfulness. *See id.* at 230. Accordingly, the district court properly relied upon and adopted in part the PSR in determining Fulcher's total offense level. There is no procedural error to correct in this case.

**IV. Fulcher’s sentence of life imprisonment for his sex-trafficking convictions was substantively reasonable and did not violate the Eighth Amendment.**

**A. Standard of review**

This Court reviews the substantive reasonableness of a sentence for abuse of discretion. *United States v. Woods*, 102 F.4th 760, 765 (5th Cir. 2024). Under this “highly deferential” standard of review, this Court “will not reverse the district court’s sentence merely because [it] would have concluded that a different sentence was appropriate.” *Ibid.* (internal quotation marks and citation omitted).

This Court’s review of an Eighth Amendment challenge to a sentence is “narrow” because it does not “substitute its judgment for that of the legislature nor of the sentencing court as to the appropriateness of a particular sentence” but rather “decide[s] only if the sentence is within the constitutional limitations.” *United States v. Thomas*, 627 F.3d 146, 160 (5th Cir. 2010) (citation omitted). Where a defendant raises this argument for the first time on appeal, this Court’s review is for plain error. *United States v. Smith*, 895 F.3d 410, 418 (5th Cir. 2018). To establish plain error, “a defendant must show: (1) there was legal error, (2) the error was plain, (3) the error affected the

defendant's substantial rights, and (4) the error seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 418 n.22 (internal quotation marks, citation, and alteration omitted).

**B. The district court appropriately weighed the 18 U.S.C. 3553(a) sentencing factors.**

A criminal sentence “must be sufficient but not greater than necessary to comply with” the sentencing factors set forth in 18 U.S.C. 3553(a). *United States v. Lugo-Lopez*, 833 F.3d 453, 461 (5th Cir. 2016). This Court presumes that a sentence within the properly calculated Sentencing Guidelines range, including a sentence of life imprisonment, is reasonable so long as the district court “gives proper weight” to the Guidelines and those factors. *Ibid.* In such instance, this Court “will infer that the [district court] has considered all the factors for a fair sentence set forth in the Guidelines in light of [Section 3553(a)’s] sentencing considerations.” *Ibid.* (internal quotation marks and citation omitted). A defendant “can rebut the presumption only upon a showing that the sentence does not account for a factor that should receive significant weight, gives significant weight to an irrelevant or improper factor, or represents a clear error of judgment in balancing

sentence factors.” *Id.* at 462 (internal quotation marks and citation omitted).

The district court properly considered and weighed Section 3553(a)’s factors and the information contained in the PSR in arriving at Fulcher’s sentence of life imprisonment. The court focused on the “extraordinarily serious” nature of the offense and Fulcher’s history and characteristics (Section 3553(a)(1)); the seriousness of Fulcher’s crime of sex trafficking, which included rape (Section 3553(a)(2)(A)); the need to promote respect for the law given Fulcher’s extensive criminal history and to provide just punishment for his “horrific” offense (Section 3553(a)(2)(A)); and the need to deter criminal conduct by others and protect the public from Fulcher’s future crimes (Section 3553(a)(2)(B) and (C)). *See* pp. 15-16, *supra*; ROA.1388-1397. Because Fulcher’s sentence, although lengthy, was within the properly calculated Guidelines range, it was presumptively reasonable, as he concedes. *See* Br. 23. Thus, the burden shifted to Fulcher to rebut this presumption. *See Lugo-Lopez*, 833 F.3d at 461.

Fulcher offers no legitimate rebuttal warranting the reweighing of these factors in his favor. He argues that life sentences under Section

1591 should be reserved for sex trafficking of minors and that the district court failed to give proper weight to the lack of evidence that he trafficked A.J., his background, and the significant disparity between his life sentence and Hamilton's 29-month sentence. Br. 23-31. The district court expressly considered and rejected these contentions at sentencing (ROA.1388-1397), and Fulcher offers no reason why the court abused its discretion in doing so. And though Fulcher would restrict life sentences in this context to offenses against minors, Congress reached a different judgment and authorized life imprisonment for cases involving sex trafficking by force, fraud, or coercion. *See* 18 U.S.C. 1591(b)(1).

Fulcher's disagreement with the statutorily authorized maximum sentence and "mere belief that the mitigating factors presented for the court's consideration should have been balanced differently is insufficient to disturb th[e] presumption" that his sentence is substantively reasonable. *United States v. Alvarado*, 691 F.3d 592, 597 (5th Cir. 2012). Indeed, in all three cases Fulcher cites to support his argument (*see* Br. 21-23), this Court *rejected* the defendant's argument that the sentence was substantively unreasonable, underscoring the



significant deference this Court gives to district courts in fashioning an appropriate sentence.

**C. Fulcher’s sentence was not greatly disproportionate to his offenses in violation of the Eighth Amendment.**

Fulcher also argues that his life sentence violates the Eighth Amendment’s prohibition against cruel and unusual punishment because life imprisonment is intended for “the most severe and exploitative conduct,” such as sex trafficking of minors. Br. 31-32, 37. Because Fulcher raises this argument for the first time on appeal, this Court’s review is for plain error. *See Smith*, 895 F.3d at 418.

No error, much less plain error, exists here. The Eighth Amendment “preclude[s] a sentence that is greatly disproportionate to the offense,” requiring this Court to “first make[] a threshold comparison of the gravity of the offense against the severity of the sentence.” *Smith*, 895 F.3d at 419 (citation omitted).

In determining whether a sentence is “greatly disproportionate,” this Court treats as a benchmark the Supreme Court’s decision in *Rummel v. Estelle*, 445 U.S. 263 (1980), which rejected an Eighth Amendment challenge to the life sentence given to the defendant in that case. *See United States v. Mills*, 843 F.3d 210, 217 (5th Cir. 2016).

Compared to this benchmark, Fulcher’s life sentence is not greatly disproportionate to his far more serious crimes of sex trafficking and conspiracy to commit sex trafficking through force, fraud, or coercion. Moreover, his sentence appropriately reflected his extensive criminal history and was within the properly calculated Guidelines range, which this Court considers a “convincing objective indicator of proportionality.” *Id.* at 218 (citation omitted). These factors compel the conclusion that the district court did not commit plain error and violate the Eighth Amendment when imposing Fulcher’s life sentence.<sup>5</sup>

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<sup>5</sup> Other federal courts of appeals have held that a sentence of life imprisonment is not greatly disproportionate to the offense of sex trafficking of adults through force, fraud, or coercion in violation of the Eighth Amendment. *See United States v. Alaboudi*, 786 F.3d 1136, 1146 (8th Cir. 2015); *United States v. Flanders*, 752 F.3d 1317, 1342-1343 (11th Cir. 2014). Because the same conclusion applies here, this Court need not proceed to the second step of the Eighth Amendment analysis, which requires a reviewing court to “compare the defendant’s sentence to sentences for similar crimes in this and other jurisdictions.” *Smith*, 895 F.3d at 419 (citation and alteration omitted). In any event, the Mississippi state crime of promoting prostitution Fulcher cites as a comparator (Br. 32) is not a similar crime to the federal crimes for which he was convicted—sex trafficking and conspiracy to commit sex trafficking through force, fraud, or coercion.

## CONCLUSION

For the foregoing reasons, this Court should affirm Fulcher's convictions and sentence.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 8029 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

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