

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

MUHAMMAD MASOOD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

Whether the application of the "terrorism enhancement" under USSG § 3A1.4 requires the government to prove that a defendant's actions were "calculated to influence or affect that conduct of government by intimidation or coercion" as set forth in 18 U.S.C. § 2332b(g)(5), the statute cross-referenced in the Guidelines?

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Petitioner Muhammad Masood respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, filed on April 3, 2025.

OPINION BELOW

The opinion of the Court of Appeals for the Eighth Circuit that is the subject of this petition is reported in *United States v. Masood*, 133 F.4th 799 (8th Cir. 2025), and is reprinted in the appendix hereto, p. 1A-16A, infra. The Eighth Circuit denied a petition for rehearing en banc or panel rehearing in an order filed on June 27, 2025. (Appendix 17A).

The final judgment of the United States District Court for the District of Minnesota and rulings (Senior District Judge Paul A. Magnuson) that are the subject of this Petition have not been reported. The document deemed relevant to this Petition are reprinted in the Appendix.

JURISDICTION

Petitioner Muhammad Masood pleaded guilty to providing material support to a designated foreign terrorist organization in violation of 18 U.S.C. § 2339B. He was sentenced to 216 months imprisonment by the Judge Paul A. Magnuson, Senior United States District Judge for the District of Minnesota. Sentence was imposed and final judgment was entered on August 25, 2023. Mr. Masood timely appealed his sentence.

The United States Court of Appeals for the Eighth Circuit affirmed Mr. Masood's sentence on April 3, 2025, and denied his petition for rehearing en banc or panel rehearing on June 27, 2025. Mr. Masood now timely files this petition for writ of certiorari.

The jurisdiction of this Court to review the judgments of the Eighth Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND GUIDELINES PROVISIONS

U.S.S.G. § 3A1.4(a). "If the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32."

Application Note 1. “For purposes of this guideline, "federal crime of terrorism" has the meaning given that term in 18 U.S.C. § 2332b(g)(5).

18 U.S.C. § 2332b(g)(5). “(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and . . .”

STATEMENT OF THE CASE

Muhammad Masood was a licensed physician from Pakistan who came to the United States in January, 2018 on a non-immigrant visa sponsored by the Mayo Clinic’s Student Exchange Visitor Program to work as an unpaid medical researcher in Rochester, Minnesota. (Appendix 1A). He attempted to become physician in the United States but filed the medical licensing examination in May 2018. Mr. Masood obtained a paid research position at the Mayo Clinic in May, 2019. (PSR, R. Doc. 103, para. 65).

Mr. Masood was emotionally ill-equipped to adjust to life in the United States due to a multitude of factors which included serious mental illness, cultural alienation, and social isolation. During his time as a medical student in Pakistan, Mr. Masood was hospitalized for a nervous breakdown, and was diagnosed with Bipolar Affective Disorder with Psychotic Features.” (Appendix 11A). Mr. Masood was nevertheless able to graduate from medical school and begin work as a physician in Pakistan. However, his father pressured Mr. Masood to leave Pakistan for the unpaid position in the United States. (Id.).

Mr. Masood had few social contacts and was culturally alienated when in the United States. He entered into an arranged marriage with the U.S. citizen but the marriage quickly fell apart because his wife was put off by Mr. Masood's traditionalist religious view and odd behavior which appeared to be indicative of mental illness. (Id.) After the divorce, Mr. Masood felt alone, depressed, worthless and a total failure. (PSR, R. Doc. 103, paras. 28, 65; see also Chahal Letter, R. Doc. 121 at 2; Maqbool letter, R. Doc. 120 at 2). He suffered another nervous breakdown and bout of major depression. (Allocution Letter, R. Doc. 119 at 3). Mr. Masood sought mental health counseling through a Mayo Clinic employee assistance program, but only attended one session because he could not afford further sessions due to his unpaid position. (PSR, R. Doc. 103, paras. 65, 79).

Masood's mother came from Pakistan to visit him in the fall of 2019. (PSR, R. Doc. 103, para. 65). His father did not come to visit because of his disappointment with Masood. (Id.) Masood's mother left to return to Pakistan in December 2019. (Id.) His mother stated that she would return to visit with his father in April, 2020. (Allocution Letter, R. Doc. 119 at 4). Mr. Masood "freaked out" when learning that his father would visit because he was scared of his father, and did not feel he could face his father as a failure. (Id.)

Mr. Masood was not thinking rationally due to his feeling alone, alienated and depressed. (PSR, R. Doc. 103, para. 28; Allocution Letter, R. Doc. 119 at 4). He withdrew from others and his isolation resulted in his spending a great deal of time on the

internet. (Id.) Masood's internet browsing also took him to Islamic extremist sites, particularly lectures of Anwar al-Awlaki. (PSR, R. Doc. 103, para. 29). He was susceptible to extremist propaganda materials due to depression and isolation. (Id.; Allocution Letter, R. Doc. 119 at 4). Masood had no one involved in his life with whom he could discuss the extremist propaganda he viewed, and could challenge it. (PSR, R. Doc. 103, para. 29; Allocution Letter, R. Doc. 119 at 5). In retrospect, Masood realized that "his internet viewing was being shaped for him by algorithms as he read more, and that he was offered more radical information that he did not seek. He indicated this likely influenced his actions more than he recognized at the time." (Forensic Psych. Report of Kenning, R. Doc. 113 at 11; Allocution Letter, R. Doc. 119 at 5). Masood later came to realize that the representations of Islam that he viewed on social media were not consistent with the positive religious beliefs and values that he was taught. (Allocution Letter, R. Doc. 119 at 5).

When reading media reports on the internet, Mr. Masood was moved by mainstream media reports of difficult conditions for people in Syrian, and was particularly struck by articles about babies dying in a refugee camp due to lack of medical care. (Id.; PSR, R. Doc. 103, para. 28; see also text message in Response Position, R. Doc. 118 at 14). He began researching positions with legitimate humanitarian NGOs such as Doctors Without Borders, the United Nations, World Health Organization, and Syrian American Medical Society. (Id.) Mr. Masood found that he had insufficient

qualifications to work as a doctor for one of these organizations. (Id.) He felt determined to find away to provide medical help in Syria, while later realizing that his underlying motive was to run away from his father who was planning to visit Masood in April, 2020 and Masood was afraid to face him. (PSR, R. Doc. 103, para. 28).

While in the United States, Masood was not taking medications that he was previously prescribed to address symptoms of his major depression and bi-polar disorder. (Allocution Letter, R. Doc. 119 at 2). He later learned in therapy that his failure to take medications harmed his mental health and judgment, and that had he been taking medications, would not have committed this offense. (Id.)

In the course of Mr. Masood's efforts to find a group to assist him in traveling to Syria use his medical expertise to help refugees in refugee camps, he made online contact with an undercover FBI informant who said he could assist with travel arrangements. (PSR, R. Doc. 103, para. 29; Allocution Letter, R. Doc. 119 at 5). He began contact with the FBI informant in January, 2020. (PSR, R. Doc. 103, para. 7-8. 65). The glitch was that the informant claimed to represent ISIS. (Id.) Mr. Masood, however proceeded to have discussions and meetings with that informant and a second informant where he agreed to join ISIS. (Id.) In the course of his text discussions with the informant, Masood expressed interest in fighting as well as providing medical care. (PSR, R. Doc. 103, paras. 8-13). Mr. Masood acknowledged his multiple statements expressing willingness to fight, but explained that he was trying to please the informants posing as ISIS members in order

to attain his objective of traveling to Syria to provide medical care for refugees. (Id., para. 30).

Mr. Masood explicitly communicated to the informant an urgency to travel by the end of February, 2020 because his father was returning in April, 2020. In a surreptitiously recorded video meeting between Masood and the first informant, and the second informant who was posing as an ISIS commander overseas, Masood stated that he was sick of the United States and discussed his listening to al-Awlaki's lectures. (PSR, R. Doc. 103, paras. 15-16). When asked why he wanted to go to Syria, Masood responded that wanted "to be a combat medic and also to fight." (Id., para. 16). He then took what he believed was a pledge of allegiance to ISIS. (Id.).

Masood proceeded to make arrangements to travel to Jordan, which had to be cancelled due to COVID pandemic restrictions. (PSR, R. Doc. 103, paras. 18-21). On March 16, 2020, the FBI informant made plans with Masood for him to fly from Minneapolis to Los Angeles, and then board a cargo ship across the Pacific Ocean which would take about two months to reach Syria. (Id., para. 22). The informant stated that he would help Masood to board the cargo ship. (Id.) Mr. Masood purchased an airline ticket on March 16. (PSR, R. Doc. 103, para. 22). Masood resigned his position at the Mayo Clinic on March 17, 2020. (Id., para. 65). He was arrested at Minneapolis-St. Paul International Airport after going through the security checkpoint on his way to board a flight to Los Angeles on March 19, 2020. (Id., paras. 23, 65).

Mr. Masood suffered another breakdown after his arrest. He was placed on suicide watch during his first week in jail. (Appendix 4A). He subsequently became incoherent or non-responsive in conversation and a psychologist retained to perform an evaluation. (Id.). The district court ordered a competency evaluation. The evaluating psychologist diagnosed Mr. Masood with psychotic and depressive disorders, and opined that he was not competent to proceed. (Appendix 5A). The district court found Mr. Masood to be incompetent and committed him for treatment to restore competency. (Id.) The district court found Mr. Masood to be competent to proceed to trial in June, 2022. (Id.) Mr. Masood pleaded guilty to the charged offense in August, 2022. (Id.)

Prior to sentencing, Mr. Masood obtained evaluations from a forensic psychologist and forensic psychiatrist who diagnosed him with various mental illnesses including Major Depressive Disorder with psychosis, Generalized Anxiety Disorder, and Bipolar Disorder Type II. (Report of Ronald Schouten, M.D., R. Doc. 112; Report of Mary Kenning, Ph.D., R. Doc. 113). Both evaluators concluded that Mr. Masood's mental illnesses substantially influenced his offense conduct, and found him to be amenable to treatment which would negate future public safety risks. (Id.)

While there multiple disputed issues raised in connection with Mr. Masood's sentencing, the issue presented in this Petition involves the dispute over the application of the "terrorism enhancement" under U.S.S.G. § 3A1.4. The PSR recommended the application of the enhancement which resulted in adjustment of the base offense level

from 26 to 38 (minus acceptance of responsibility) and increasing Mr. Masood's criminal history category from I to VI. (Appendix 5A). The application of the enhancement resulted in an increase of the sentencing guideline range from 46-57 months (with acceptance of responsibility) to the statutory maximum sentence of 240 months.

Mr. Masood objected to the terrorism enhancement on the grounds that his offense did not meet the specific intent that § 2332b(g)(5) requires for a federal crime of terrorism under § 3A1.4 because his primary purpose underlying his conduct was to provide medical aide and there was no evidence of any specific intent to influence or affect the conduct of a foreign government. (Appendix 5A). The district court, however, ruled that “§ 3A1.4 applies if Masood's offense was ‘intended to promote’ terrorism, not only if it was ‘calculated to influence or affect the conduct of a foreign government by intimidation or coercion.’” (Appendix 19A). It further ruled that the mere fact that Mr. Masood planned to fight for ISIS was sufficient to show the specific intent to influence or affect the conduct of government in any event. (Appendix 19A-20A). The Eighth Circuit affirmed the district court's determination, holding that Mr. Masood's motive was irrelevant in essence as long as the the organization had such intent. (Appendix 8A-10A).

REASONS FOR ALLOWANCE OF THE WRIT

This case presents an opportunity for the Court to address the unsettled issue of the requisite level intent required for application of the “terrorism enhancement” under U.S.S.G. § 3A1.4. The Eighth Circuit's standard for application of this enhancement in

this case, which it interprets based on its prior precedent, conflicts with standards applied in the Second, Fourth, Sixth, Ninth, Tenth, and Eleventh Circuits. The Eighth Circuit's opinion effectively makes any defendant convicted of a terrorism related offense subject to the terrorism enhancement, whereas the applicable guideline provision clearly requires conduct beyond the elements of the offense in order for the enhancement to apply.

USSG § 3A1.4 applies if the offense "involved, or was intended to promote, a federal crime of terrorism. §3A1.4, Application Note 1 defines "federal crime of terrorism" as set forth in 18 U.S.C. § 2332b(5). 18 U.S.C. § 2332b(5)(A) requires that the offense must be "calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct." § 2332b(5)(B) then requires lists the offenses that are eligible for the definition include 18 U.S.C. § 2339B. The fact that the offense must both include the violation of a specific statute **and** be calculated to influence the conduct of a government by intimidation or coercion or retaliate against government conduct, makes clear that a violation of § 2339B is not automatically a "federal crime of terrorism" which qualifies for the terrorism enhancement under the sentencing guidelines. Indeed, if the intent of the Guidelines was to subject all persons convicted of violation of § 2339B to the terrorism enhancement, there would be no reason to have a much lower set of applicable guidelines. Without the terrorism enhancement, Mr. Masood's applicable guideline range would have been 46-57 months rather than 240 months. (See PSR, R. Doc. 103, Addendum at A.5).

The Eighth Circuit relies on holdings in its prior decisions that "motive is simply not relevant" but the question is whether the offense "was calculated, i.e., planned -- for whatever reason or motive -- to achieve the stated object." (Appendix 8A, quoting United States v. Mohamed, 757 F.3d 757, 760 (8th Cir. 2014) and Ali, 799 F.3d at 1031). The Eighth Circuit then adopts the district court's interpretation of guideline provision that "§ 3A1.4 enhancement applies if Masood's offense was "'intended to promote' terrorism," not only if it was 'calculated to influence or affect the conduct of government by intimidation or coercion.'" (Appendix 8A). This interpretation of the law is fundamentally wrong because it effectively eliminates one of the two required elements for the enhancement by holding it to be optional.

The fact that Mr. Masood's offense was disturbing and involved contemplated violence does not render it a "crime of terrorism" under the criteria set forth in USSG § 3A1.4 in the absence of evidence linking the specific intent of the offense to influence or affect a government. Material support for terrorism in and of itself is a serious crime that will most likely lead to a substantial prison sentence. However, in order for the advisory guideline range to go from a range of 4-5 years to 20 years, there must be specific intent that the offense be directed at a government. The disturbing aspects of Mr. Masood's conduct did not include any evidence of the specific intent necessary to invoke the terrorism enhancement. Allowing the holding in this case to stand will create a harmful precedent where courts in this circuit will improperly apply the enhancement in all

terrorism related offenses without any requirement of specific intent that the offense be directed at government.

The Eighth Circuit's conflicts with case law of multiple other circuits. Other circuits are in agreement in imposing a specific intent requirement. United States v. Amer Sinan Alhaggagi, 978 F.3d 693 (9th Cir. 2020) explicitly recognized that it is possible for a defendant to commit the crime of material support to a terrorist group without intending the support to influence or retaliate against a foreign government, and in that case the government failed to prove defendant had the necessary specific intent to commit terrorism crime by distributing ISA propaganda on social media. Alhaggagi distinguished the lead 8th Circuit case of United States v. Ali on the grounds that the defendants sent money to al Shabaab after "Shabaab leaders directly communicated to defendants about victorious battles and suicide bombings, defendants vocally supported and expressed gratitude for al Shabaab's anti-government effort, and defendants raised funds to support that effort." Alhaggagi, 978 F.3d at 703 n. 10 (citing United States v. Ali, 799 F.3d 1008, 1016, 1031-32 (8th Cir. 2015)). The instant case is similarly distinguishable from Ali as Masood did not communicate with the FBI informants posing as an IS operative and leader about the Islamic State's actual political objectives or its military accomplishments, and did not express any political agenda or any government related goals. Masood expressed a desire to be a combat medic and at worst sent text messages to show his commitment to the organization, but did not indicate any

expectation or intention of accomplishment of any specific goals, much less influencing or retaliating against a government. Clearly Mr. Masood would not have received the terrorism enhancement in the Ninth Circuit.

United States v. Ramirez, 16 F.4th 844 (11th Cir. 2021) also held that it was erroneous to apply the terrorism enhancement where the defendant supplied firearm parts and components to foreign terrorist group but without proof that his conduct was calculated to influence or retaliate against a government. Ramirez concluded:

We agree with Awan and our other sister circuits that "calculated" imposes an intent requirement. For U.S.S.G. § 3A1.4 to apply, the government must satisfy the "calculated" prong of § 2332b(g)(5)(A). To do that, the government must show that the defendant's offense was planned to influence, affect, or retaliate against government conduct, even if that was not the defendant's personal motive.

Id. at 854. This case is highly instructive of the instant case where Mr. Masood expressed a desire to join IS without any proof that his conduct had any calculated objectives beyond providing medical care and at most fighting.

The Tenth Circuit similarly required specific intent directed at government in United States v. Ansberry, 976 F.3d 1108, 1126-29 (10th Cir. 2020), which held that it was error to apply the terror enhancement where defendant attempted to detonate a bomb in front of a police station in retaliation for prior actions of a town marshal where there was no evidence the action was calculated to retaliate against a government. If directly planting a bomb in front of a police station, the most clear symbol of government authority, is insufficient to establish the requisite intent directed at government, certainly

Masood's discussion of providing medical care along with discussion about fighting or even acts of violence cannot be sufficient to establish the requisite intent to influence government.

Other circuits have similarly made clear a specific intent requirement for the terrorism enhancement which was rejected in the Eighth Circuit. See United States v. Wright, 747 F.3d 399, 408 (6th Cir.2014) (“A defendant has the requisite intent if he or she acted with the purpose of influencing or affecting government conduct and planned his or her actions with this objective in mind.”); United States v. Hassan, 742 F.3d 104, 148–49 (4th Cir.2014) (requiring the district court to find “the specific intent necessary for the terrorism enhancement”); United States v. Siddiqui, 699 F.3d 690, 709 (2d Cir.2012) (same)(quoting United States v. Awan, 607 F.3d 306, 317 (2d Cir.2010)).

The district court case of United States v. Jumaev, No. 12-CR-00033-JLK, 2018 WL 3490886 (D. Colo. July 18, 2018), aff'd, 20 F.4th 518 (10th Cir. 2021), which extensively analyzes the terrorism enhancement, is also instructive. Jumaev observes that "The Terrorism Enhancement, when applied, 'takes a wrecking ball' to the initial Guidelines range." Id. at *5 (citing George D. Brown, *Punishing Terrorists: Congress, the Sentencing Commission, the Guidelines, and the Courts*, 23 Cornell J.L. & Pub. Pol'y 517, 520 (2014)). In Jumaev, although the defendant was found guilty of 18 U.S.C. § 2339B after trial, the terrorism enhancement was not applied because there was no **specific intent** to commit crimes calculated to influence or retaliate against a foreign

government. These holdings apply equally to the conduct of Mr. Masood who also lacked any specific intent to influence or retaliate against a foreign government.

The district court and Eighth Circuit both misapplied the Second Circuit case of United States v. Awan, 607 F.3d 306, 314-15 (2nd Cir. 2010) as support for their holding.

Awan which held:

even if Awan's crimes of conviction and relevant conduct did not satisfy the calculation requirement for a federal crime of terrorism, Awan's crimes and relevant conduct were intended to promote a federal crime of terrorism committed or to be committed by other individuals -- in his case, KCF members who participated in fundraising in the United States or attacks in India.

Id. The lower courts appeared to rely on Awan's nuance regarding motive where if the persons operating in a foreign terrorist organization for whom the defendant was raising funds, were using those funds to influence the conduct of a foreign government by intimidation or coercion, then the enhancement would apply. "[A] person may intend and may commit an offense that is so calculated even if influencing or retaliating against government is not his personal motivation." Id. at 317. Awan further explained,

if the evidence showed that Awan engaged in criminal conduct with knowledge that confederates solicited his actions to effectuate politically motivated bombings in India, or homicidal attacks on that country's security forces or its political leaders, such proof could demonstrate that Awan's crimes were calculated to influence the conduct of government even if he was not personally motivated by that object.

Id. at 317-18.

Awan did not actually reach any conclusion as to whether the defendant's conduct

constitute a federal crime of terrorism thereby triggering the terrorism enhancement but merely overruled the district court's more strict interpretation of the statute, and the case to district court to apply the standard set forth. Id. at 315-316. The defendant ultimately received the same sentence. See Awan v. United States, 2014 U.S. Dist. LEXIS 43989, *10 (E.D. NY, March 31, 2014). It is therefore clear that Awan did not dispense with the specific intent requirement, but held that the a defendant need not be specifically motivated by an intent to influence a government if the defendant knew that his confederates were politically motivated, and that the government still had the burden to prove a political motivation.

The holding in Awan could not support the imposition of the terrorism enhancement in Mr. Masood's case for two reasons. First, Awan erred by holding that there is no requirement to prove a defendant's specific motivation where the enhancement is based on a defendant's own conduct, and the statutory language requires a specific intent by the defendant to influence the conduct of government. This case presents an opportunity for this Court to confirm this important legal point. Second, the analysis in Awan in any event does not support imposition of the terrorism enhancement for Masood. Awan held that it was possible for the defendant to be held eligible for the terrorism enhancement if it would be proven that his confederates actions' were calculated to influence or affect conduct of the government. In Masood's case, there is no evidence that the FBI informants who led Masood to believe he was joining ISIS had a motivation to

influence the conduct of a foreign government. Indeed, their only motive was to lure Masood into attempting to travel abroad to join ISIS in order to provide grounds for his arrest. There is not even evidence that the FBI informants ever discussed with Masood any sort of plan to influence the conduct of a government, much less have Masood agree to help in some way a goal to influence the conduct of a government. The only plans Mr. Masood discussed with the informants were for him to serve as a medic and to fight. The purpose of the fighting was never explained, much less made clear by the informants or Masood. Clearly Mr. Masood would not have received the terrorism enhancement in the Second Circuit.

The Eighth Circuit law as established in the instant case casts aside the plan statutory language underlying the terrorism enhancement and conflicts with the law of numerous other Circuits. There will undoubtedly be many other prosecutions in the future in the Eighth Circuit and around the country involving terrorism-related offenses where the application of the terrorism enhancement is in dispute. It is necessary for this Court to set forth a clear standard of when the enhancement applies.

CONCLUSION

Petitioner Muhammad Masood respectfully prays that a writ of certiorari issue.

Respectfully submitted,

Dated: September 25, 2025

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