No. 25-5762

IN THE SUPREME COURT OF THE UNITED STATES

MUHAMMAD MASOOD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court erred in finding that petitioner's conviction for attempt to provide material support to a designated foreign terrorist organization "involved, or was intended to promote, a federal crime of terrorism" under Sentencing Guidelines § 3A1.4.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (D. Minn.):

United States v. Masood, No. 20-cr-76 (Aug. 25, 2023) (criminal judgment)

United States Court of Appeals (8th Cir.):

United States v. Masood, No. 23-2993 (Apr. 3, 2025) (judgment)

United States v. Masood, No. 23-2993 (June 27, 2025) (order denying petition for rehearing)

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OPINIONS BELOW

The order of the court of appeals denying rehearing (Pet. App. 17A) is available at 2025 WL 1785760. The prior opinion of the court of appeals (Pet. App. 1A-16A) is reported at 133 F.4th 799. The relevant order of the district court (Pet. App. 18A-24A) is available at 2023 WL 5499865.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1A-16A) was entered on April 3, 2025. A petition for rehearing was denied on June 27, 2025 (Pet. App. 17A). The petition was filed on September

25, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Minnesota, petitioner was convicted of attempting to provide material support to a designated foreign terrorist organization, in violation of 18 U.S.C. 2339B. Pet. App. 2A. He was sentenced to 216 months in prison to be followed by five years of supervised release. Judgment 2-3.

1. In 2018, petitioner traveled to the United States from Pakistan on a nonimmigrant visa sponsored by the Mayo Clinic to work as a medical researcher. Pet. App. 3A. By 2019, petitioner had "beg[u]n watching videos and internet content from radicalized Islamic extremists * * * which led him to believe that ISIS was 'where the truth was.'" Ibid. "Online content about conditions in Syria prompted [petitioner] to use his medical training to help," but his "intent [subsequently] shifted from intending to aid to intending to fight." Ibid.

In January 2020, petitioner used an encrypted social media platform to contact a person who turned out to be a confidential informant for the FBI. Pet. App. 3A. Petitioner asked the informant for help traveling to an area controlled by ISIS. Ibid. Throughout a month of communication, petitioner made a series of statements "reflecting an intent to fight for ISIS." Ibid.

Petitioner stated that he "wanted to fight on the front line as well as help the wounded brothers," that he "belong[ed] on the frontline and not anywhere else," and that he wanted "to help [the] mujahideen * * * on the ground." Pet. App. 3A (first brackets in original). Petitioner at one point indicated that he was considering an attack "'behind enemy lines' in the United States because many others cannot 'reach here to attack,'" but ultimately decided to travel to Syria to join ISIS. Ibid.

Petitioner sought the informant's assistance in acquiring a visa from Jordan for that travel. Pet. App. 4A. Petitioner told the informant that, once in Syria, "he would need weapons training and * * * could learn engineering to modify drones for use in bombings." Ibid. On February 1, 2020, petitioner twice wrote "[I] want to kill and get killed." Ibid.

On February 19, 2020, petitioner traveled to a hotel where he spoke by video with a person whom he believed to be an ISIS commander, but who was in fact another confidential informant. Pet. App. 4A. Petitioner told the person that he had learned the truth from the late al-Qaeda leader Anwar al-Awlaki and said that he wanted to go to Syria "to be a combat medic" as well as "fight." Ibid. Petitioner then pledged allegiance to ISIS. Ibid.

"In March 2020, after an earlier trip to Jordan was cancelled by COVID-19 restrictions," petitioner, with the aid of the first confidential informant, developed a new plan to travel to ISIS territory. Pet. App. 4A. That plan involved flying to Los

Angeles. Ibid. Petitioner was arrested at the Minneapolis airport. Ibid. "[A] search of his luggage found incriminating military equipment and a digital storage device containing deleted images of Islamic extremist propaganda, depictions of violence committed by ISIS, and graphics reporting deaths of citizens of various nations resulting from Islamic extremist attack." Ibid.

2. A federal grand jury in the District of Minnesota returned an indictment charging petitioner with one count of knowingly attempting to provide material support and resources to a foreign terrorist organization--namely, ISIS--in violation of 18 U.S.C. 2339B(a)(1). Indictment 1-2. In August 2022, petitioner pleaded guilty to that count. Judgment 1.

The Sentencing Guidelines specify that a "[t]errorism" enhancement should be applied to felony offenses that "involve[], or [are] intended to promote, a federal crime of terrorism," as defined in 18 U.S.C. 2332b(g)(5). Sentencing Guidelines § 3A1.4(a) & comment. (n.1). Section 2332b(g)(5), in turn, defines a "[f]ederal crime of terrorism" to include any offense that violates one of various enumerated statutes and "is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct."

Here, the Probation Office's presentence report applied the enhancement, and accordingly "adjusted [the base offense level of 26] twelve-levels upward" and increased petitioner's criminal history category from I to VI. Pet. App. 5A. Petitioner objected,

arguing that "the 'primary purpose' of his" actions "was providing medical care, not terrorism," id. at 19A, and his offense was not "'calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct,'" id. at 18A (citing 18 U.S.C. 2332b(g)(5)(A)).

The district court denied the objection. Pet. App. 18A-20A. As an initial matter, the court observed that "§ 3A1.4 applies if [petitioner'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.'" Id. at 19A (citing United States v. Awan, 607 F.3d 306, 314-315 (2d Cir. 2010), cert. denied 562 U.S. 1170 (2011)). And it recognized that the enhancement may therefore apply even if "the defendant's own crime of conviction or relevant conduct may not include a federal crime of terrorism." Ibid. (quoting Awan, 607 F.3d at 314). It explained that "so long as the defendant's offense was intended to encourage, further, or bring about a federal crime of terrorism as statutorily defined * * * the defendant's offense need not itself be 'calculated' as described in § 2332b(g)(5)(A)." Ibid. (quoting Awan, 607 F.3d at 314).

The district court then found that "[a] preponderance of the evidence establishe[d] that [petitioner] intended to promote [a] federal crime of terrorism." Pet. App. 19A. The court observed that petitioner "testified under oath * * * that he knew he was attempting to join ISIS, and that he knew that ISIS was a terrorist

organization"; that he "discussed * * * activities like developing drones for attack purposes" and "committing * * * attacks in the United States"; and that he "offered to 'kill and get killed'" when talking to the informant, whom he believed could help him travel to ISIS-controlled territory. Ibid.; see id. at 3A-4A. The court also noted that petitioner "packed a tactical vest, ammunition pouches, black camouflage military fatigues and similar items" for his travel to ISIS-controlled territory. Id. at 19A.

The district court found that "[a]ll of [those] facts evidence [petitioner's] desire to either fight with ISIS or provide support for ISIS's terrorist activities, not merely provide medical care," and therefore that petitioner intended to promote a federal crime of terrorism. Pet. App. 19A. The court also found that those facts "establish[ed] by a preponderance of the evidence that [petitioner's] conduct was * * * calculated" to "'influence or affect the conduct of government by intimidation or coercion.'" Id. at 20A (quoting 18 U.S.C. 2332b(g)(5)(A)). And it emphasized that the terrorism enhancement was appropriate either way. Id. at 19A-20A.

3. The court of appeals affirmed. Pet. App. 1A-16A. Petitioner again argued that the terrorism enhancement was inappropriate because "his only motivations were to provide medical aid and act according to his 'religious fanaticism,'" and thus there was no "evidence of conduct 'calculated to influence or

affect the conduct of government by intimidation or coercion.'" Id. at 8A (quoting 18 U.S.C. 2332b(g)(5)(A)). The court of appeals, like the district court, rejected that argument. Ibid.

The court of appeals observed that "[i]n applying § 2332b(g)(5)(A)[,] * * * motive is simply not relevant." Pet. App. 8A (quotations omitted). The court explained that while "[m]otive is concerned with the rationale for an actor's particular conduct," Section 2332b(g)(5)(A) "does not focus on the defendant but on his 'offense,' asking whether it was calculated, i.e., planned--for whatever reason or motive--to achieve the stated object." Ibid. (quotations and citations omitted). And the court additionally took note of the district court's recognition that the terrorism enhancement "applies if [petitioner'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.'" Ibid.

The court of appeals accordingly observed that "[t]he issue on appeal is whether the district court committed procedural error by improperly calculating the Guidelines range by imposing the § 3A1.4 enhancement based on factual findings made by a preponderance of the evidence." Pet. App. 9A. And the court of appeals found that the district court "did not err, much less clearly err, in finding by a preponderance of the evidence that [petitioner's] offense involved and was intended to promote a federal crime of terrorism." Ibid.

ARGUMENT

Petitioner renews (Pet. 9-17) his contention that the district court erred in applying the terrorism enhancement, Sentencing Guidelines § 3A1.4. The court of appeals correctly rejected that contention, and its factbound application of the federal Sentencing Guidelines does not conflict with any decision of this Court or of another court of appeals. No further review is warranted.

1. This Court ordinarily does not review decisions interpreting the Guidelines because the Sentencing Commission can amend the Guidelines to eliminate any conflict or correct any error. See Braxton v. United States, 500 U.S. 344, 347-349 (1991). Congress has charged the Commission with "periodically review[ing] the work of the courts" and making "whatever clarifying revisions to the Guidelines conflicting judicial decisions might suggest." Id. at 348; see United States v. Booker, 543 U.S. 220, 263 (2005) ("The Sentencing Commission will continue to collect and study appellate court decisionmaking. It will continue to modify its Guidelines in light of what it learns, thereby encouraging what it finds to be better sentencing practices."). Review by this Court of Guidelines decisions is particularly unwarranted in light of Booker, which rendered the Guidelines advisory only. 543 U.S. at 245.

Petitioner presents no sound reason to deviate from the Court's ordinary practice here. And that alone constitutes a

sufficient reason to deny further review.

2. Petitioner's claim would not warrant this Court's review in any event.

The Sentencing Guidelines provide for application of the terrorism enhancement where the offense of conviction is "a felony that involved, or was intended to promote, a federal crime of terrorism." Sentencing Guidelines § 3A1.4. The application notes to Section 3A1.4 provide that the term "federal crime of terrorism" has the meaning set forth in 18 U.S.C. 2332b(g)(5). Sentencing Guidelines § 3A1.4, comment. (n.1). Section 2332b(g)(5), in turn, defines "[f]ederal crime of terrorism" to mean an offense that "is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct," 18 U.S.C. 2332b(g)(5)(A), and that violates one of several statutory provisions listed in Section 2332b(g)(5)(B).

It is undisputed that petitioner's statute of conviction, 18 U.S.C. 2339B, is one of the provisions listed in Section 2332b(g)(5)(B). See Pet. App. 7A. Thus, the terrorism enhancement was properly applied if petitioner's crime either (1) itself "involved" conduct that was "calculated to influence or affect the conduct of government by intimidation or coercion," or (2) "was intended to promote" a listed crime with that feature. Sentencing Guidelines § 3A1.4. The lower courts concluded that petitioner's crime qualified for the terrorism enhancement under either of those alternative pathways. See Pet. App. 9A-10A, 19A-20A. In

particular, as the lower courts recognized, petitioner's "violent communications reflected an intent to support ISIS terrorist activities against governments opposed to ISIS, including attacks within the United States." Id. at 10A; see id. at 19A-20A.

Petitioner asserts (Pet. 11) that the court of appeals erred by applying the enhancement to offenses that are intended to promote a federal crime of terrorism "in the absence of evidence linking the specific intent of the offense to influence or affect a government." To the extent that petitioner is disputing the lower courts' evaluation of the evidence, his factbound claim does not warrant this Court's review. See Sup. Ct. R. 10; United States v. Johnston, 268 U.S. 220, 227 (1925) ("We do not grant a [writ of] certiorari to review evidence and discuss specific facts."); see also Kyles v. Whitley, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) ("[U]nder what we have called the 'two-court rule,' the policy [in Johnston] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.") (citing Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949)).

To the extent that petitioner is contending that the court of appeals has "effectively eliminate[d] one of the two required elements for the enhancement" by understanding the terrorism enhancement to apply if an offense is either "'intended to promote' terrorism" or "'calculated to influence or affect the conduct of government by intimidation or coercion,'" Pet. 11 (citation

omitted), that contention is both irrelevant to the lower courts' disposition of this particular case and incorrect. The contention is irrelevant because the courts below found that petitioner's offense satisfies both of those alternative requirements. Pet. App. 9A-10A; see id. at 19A-20A. And the contention is incorrect because they are indeed alternatives.

As the courts below recognized, there are two potential bases for applying the enhancement: one is that the defendant's offense itself "involved * * * a federal crime of terrorism," Sentencing Guidelines § 3A1.4(a), which requires that it be "calculated" to coerce, intimidate, or retaliate against a government, 18 U.S.C. 2332b(g)(5)(A); the other is that the defendant's offense "was intended to promote" such a crime, Sentencing Guidelines § 3A1.4(a). It is, of course, possible to commit one of the offenses listed in Section 2332B(g)(5)(B) without satisfying either of those alternative requirements--for example, by hostage-taking for the purpose of obtaining a ransom from a private party, in violation of 18 U.S.C. 1203. But that does not mean that petitioner's particular violation of the material-support statute, in which he volunteered to fight for ISIS and harbored an "intent to support ISIS terrorist activities against governments opposed to ISIS, including attacks within the United States," Pet. App. 10A, fails to satisfy the requirements of Section 3A1.4.

3. Petitioner claims (Pet. 12-17) that the court of appeals' decision conflicts with the decisions of numerous other

courts of appeals. He fails, however, to show that any circuit would have reached a different result on these facts.

In United States v. Alhaggagi, 978 F.3d 698 (2020), the Ninth Circuit "agree[d] with th[e] interpretation of § 2332b(g)(5) and the reasoning of [its] sister circuits"--including the court of appeals that decided this case--and adopted it. Id. at 700. The court noted, consistent with the decision of the court of appeals, that analyzing whether a particular offense "is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct," 18 U.S.C. 2332b(g)(5)(A), "does not require proof of a defendant's particular motive." Alhaggagi, 978 F.3d at 700 (citation and internal quotation marks omitted); see Pet. App. 8A. The Ninth Circuit went on to reverse the application of the terrorism enhancement in Alhaggagi, viewing the conduct underlying the defendant's offense--creating "six social media accounts on two occasions for * * * ISIS sympathizers"--to be, by itself, insufficient to meet the requirements of Section 2332b(g)(5)(A). 978 F.3d at 701; see id. at 702, 704. But that does not show that it would reverse petitioner's conviction, which rested on an attempt to fight for ISIS intending to support terrorist activities against governments opposed to it. Pet. App. 10A.

In the Eleventh Circuit's decision in United States v. Arcila Ramirez, 16 F.4th 844 (2021), "the government relie[d] on only the 'involved' prong of § 3A1.4(a) and not its 'intended to promote'

prong." Id. at 849. And, considering only the "involved" prong, the Eleventh Circuit vacated the terrorism enhancement there because the district court "made no fact findings as to the [terrorism] enhancement," but applied it because the defendant "pled guilty to knowingly providing material support to a known terrorist organization." Id. at 854. Here, the district court did not rest on the statute of conviction but instead made factual findings justifying the terrorism enhancement. See, e.g., Pet. App. 19A.

There is no reason to believe the Eleventh Circuit would have viewed the facts here differently than the court of appeals did. To the contrary, in Arcila Ramirez, the court observed that "[t]he defendant's personal motive is not relevant," and that "a defendant's knowledge that a terrorist organization solicited his actions to attack the government could demonstrate that a defendant's crimes were calculated to influence government conduct." 16 F.4th at 854. Both positions are consistent with the court of appeals' analysis in this case. See Pet. App. 8A, 10A.

The Tenth Circuit's decision in United States v. Ansberry, 976 F.3d 1108 (2020), likewise does not address the "intended to promote" prong of Section 3A1.4, see id. at 1123 n.7, and instead assessed only the potential application of the "involved" prong to an instance of "retaliation against non-government conduct," see id. at 1126. It does not indicate that petitioner's conduct, which

"reflected an intent to support ISIS terrorist activities against governments opposed to ISIS," Pet. App. 10A, falls outside the scope of the terrorism enhancement. Indeed, Ansberry, as well as Arcila Ramirez and Alhaggagi, all favorably cite the Second Circuit's decision in United States v. Awan, 607 F.3d 306 (2010), cert. denied 562 U.S. 1170 (2011), which petitioner views (Pet. 15) as the source of the error that he asserts in the decision below. See Arcila Ramirez, 16 F.4th at 852-854; Alhaggagi, 978 F.3d at 700; Ansberry, 976 F.3d at 1127.

The decisions that petitioner cites (Pet. 14) from the Second, Fourth, and Sixth Circuits all affirmed the application of the enhancement, and none contain analogous facts or suggest the court of appeals erred in this case. See United States v. Wright, 747 F.3d 399, 408, 410, 418-419 (6th Cir.) (affirming application of the enhancement and noting it is not "necessary that influencing the government be the defendant's ultimate or sole aim"), cert. denied, 574 U.S. 866 and 574 U.S. 887 (2014); United States v. Hassan, 742 F.3d 104, 149-150 (4th Cir.) (engaging in a fact-intensive analysis and affirming application of the enhancement), cert. denied, 573 U.S. 910, 574 U.S. 861, and 135 S. Ct. 192 (2014); United States v. Siddiqui, 699 F.3d 690, 709-710 (2d Cir. 2012) (rejecting a long-term planning requirement for the terrorism enhancement, reaffirming that "'[c]alculated' means 'planned--for whatever reason or motive--to achieve the stated

object,'" and affirming application of the enhancement) (quoting Awan, 607 F.3d at 317), cert. denied 569 U.S. 986 (2013).

Indeed, the Fourth Circuit cited evidence the defendants wished to engage in and to promote violent jihad. Hassan, 742 F.3d at 149-150. And the Sixth Circuit observed that "a defendant who provided material assistance to terrorist organizations, but claimed that his goal was to assist an oppressed group of Muslims, is eligible for the enhancement regardless of his purportedly benign motive." Wright, 747 F.3d at 408. Both accordingly suggest that the relevant courts would reach the same result as the courts below in this case.*

* Petitioner also cites (Pet. 14-15) an unpublished district court case, United States v. Jumaev, No. 12-cr-33, 2018 WL 3490886 (D. Colo. July 18, 2018). Even if there were a conflict between the court of appeals' decision here and the district court's decision in Jumaev, that would not create a conflict that would warrant this Court's review. See Sup. Ct. R. 10; Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011). In any event, the offending conduct in Jumaev involved giving a single $300 check to a creditor who indicated the money would support a terrorist organization. See 2018 WL 3490886, at *2. The district court declined to apply the terrorism enhancement, explaining that the offense was "the result of a convergence of factors[,] * * * the most significant of which is that [the defendant] owed a debt," and the case was "unique for that reason." Id. at *6. The facts here are not at all similar; moreover, the district court in Jumaev cited Awan favorably, like the court of appeals here. See id. at *5.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 2025