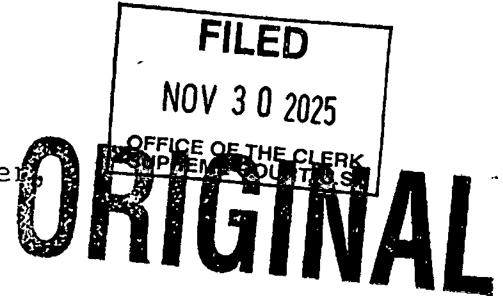
No. 25-7151

IN THE
SUPREME COURT OF THE UNITED STATES

ABID NASEER,

Petitioner,



v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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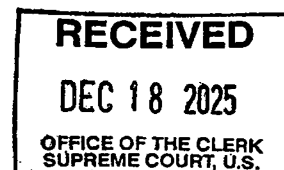

Questions Presented

After succeeding in vacating a 40 year sentence on §2255, Naseer had the remainder of his terms restructured to increase his term of incarceration. This was done with none of the requirements of due process - appointment of counsel, hearing, or a new P.S.R. The Second Circuit Court of Appeals upheld this as a "purely ministerial" sentence "correction."

What is the difference between a "sentencing correction," which does not require a hearing, and a "resentencing," which does? Where is the line between them?

Should a judge on §2255 be able to increase or restructure remaining counts after vacatur without a hearing?

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Opinions Below

The Opinion of the Second Circuit Court of Appeals, affirming the District Court's resolution of Naseer's §2255 appears at Appendix A to the petition and is reported at 2025 US App Lexis 9398.

The Eastern District of New York's opinion appears at Appendix B to the petition and is published at 2022 US Dist Lexis 226246.

Jurisdiction

The Second Circuit decided this case on April 25, 2025. A timely petition for rehearing was filed and the Court denied this on September 22, 2025, which is included at Appendix A.

This Court has jurisdiction under 28 U.S.C. §1254(1).

Constitutional & Statutory Provisions

Amendment V   No person shall... be deprived of life, liberty, or property without due process of law...

28 U.S.C. §2255(b) Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon

the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate. (c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

F.R.Cr.P.35(a) Correcting Clear Error. Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

Statement of the Case

Abid Naseer is a Pakistani native who immigrated to England in September of 2006 to study computer sciences at John Moore's University in Liverpool. In April of 2009, Naseer and numerous other foreign born Muslims came to the attention of the Greater Manchester Police. Twelve (12) men were arrested for a conspiracy to commit a terrorist attack on behalf of Al-Qaeda.

Despite the seriousness of the accusation, no criminal charges were ever filed. 10 of the 12 men were offered the choice of

voluntary deportation, which all but Naseer and another individual took. For a little over a year, he was kept in immigration detention, while he contested his case. In May of 2010, the Special Immigration Appeals Commission (SIAC) determined the evidence was not sufficient to remove him from England.

Shortly after this victory, the United States stepped in, demanding Naseer's extradition to the U.S. to face criminal charges. Naseer fought this, ultimately losing, where he was transferred to New York to stand trial. As no U.S. interests were implicated, Naseer challenged the Court's jurisdiction, only to be told that the terrorism statute "operated extra judicially outside the United States," "United States v. Naseer," 38 FSupp 3d 269, 271-73 (ED NY, 2014).

Naseer would go to trial in February 2015. The Government moved that much of the record in the U.K. proceedings, including its finding that the allegations could not be substantiated, should be excluded. Invoking explosions in New York City and Manhattan, the Government inflamed the jury with nightmare scenarios with no basis in the current case. Naseer was convicted on three counts, including conspiring to use an explosive device in a crime of violence. The Court imposed two sentences of 15 years and one of 40 years, run concurrently, all to be followed by lifetime supervised release. This was upheld by the Second Circuit August 20, 2019.

This Court then decided "United States v. Davis," 588 US 445 (2019) which called into question Naseer's conviction on using an explosive device in a crime of violence - as mere conspiracy would not qualify. The Government agreed that Count 10 had to be vacated, removing the 40 year term. However, the Court restructured the re-

maining two counts to run consecutively, and it did so without a hearing or any of the Constitutionally required safeguards.

Under then existing precedent, this was not permitted, and so Naseer appealed. Without attempting to distinguish Naseer's case from others where it had previously forbidden this very practice, the Second Circuit affirmed. Without meaningful explanation, it held Naseer's change in sentence was only a "purely technical correction," "United States v. Naseer," 2025 US App Lexis 9398. Rehearing was denied on September 22, 2025.

This Petition for Certiorari follows.

Reasons to Grant the Writ

Naseer was, for all intents and purposes, resentenced without any of the procedural safeguards required by the Constitution and the Federal Rules of Criminal Procedure. While not explicitly prohibitted by precedent, what occurred in this case is a radical departure from normal practices that, if left unchecked, could erode basic protections for criminal defendants and §2255 petitioners alike. This Court's intervention is necessary to provide guidance to the lower courts on the line between resentencing and correction.

I. There is No Clear Definition Between the Concepts of "Resentencing" and "Correction"

As the D.C. Circuit acknowledged, the line between these two concepts is "not well defined" and is "easily breached." Simply labelling a proceeding as one or the other does not determine the

actual nature or effect of the hearing, "United States v. Palmer," 854 F3d 39, 48-49 (DC App, 2017). Some Courts have used the procedures employed to try and define the difference, see, e.g. "United States v. Hadden," 475 F3d 652, 667 (4th Cir., 2007) (court did not resentence the defendant because it did not have a full sentencing procedure) but this becomes a tautology that raises more questions than it answers. It cannot be that no procedures or protections are needed simply because they were not employed.

Other Courts have attempted to draw the line between resentencing and correction based on the complexity of the relief. Purely "arithmetical, technical, or mechanical" results are corrections, "United States v. Fleck," 941 F3d 238, 241 (6th Cir., 2019) as are "purely ministerial" ones, "United States v. Pena," 58 F4th 613 at *12-13 (2nd Cir., 2023). However, resentencings are "open ended and discretionary," and are "akin to beginning the sentencing process anew," "United States v. Thompson," 940 F3d 1166, 1171 (11th Cir., 2019).

But, again, this description of the difference does little to illuminate when one is appropriate over the other. It is not always truly clear when sentences are separate or interdependent, see, e.g. "United States v. Ciavarella," 716 F3d 705, 724 (3rd Cir., 2013) (acknowledging that it is often difficult to determine when sentences are part of an "aggregate sentencing package" or are independent of one another). The lower courts have struggled to come up with a consistent definition or test to distinguish, and has spawned endless litigation with contradictory results.

There is a more fundamental problem than the lack of clarity: the case law determines the process due by the result received. Even though the information received at a full resentencing will

often affect the decision on whether the entire sentence needs to be reevaluated, the Judge can forego the process of obtaining the necesary information by making his decision first. Instead of the decision being driven by the facts, the decision drives the facts chosen. This raises concerns about the nature of the underlying proceedings.

II. The Holding Here Further Muddies the Waters

Prior to Naseer's case, the Second Circuit has been incrementally allowing in absentia "corrections" as a "limited" exception to their previous requirement of holding a hearing after determining a §2255 petitioner was entitled to relief. As it explained in "Pena," this was not available for a full resentencing:

> A sentencing correction, on the other hand, is appropriate when "it simply vacates 'unlike convictions' (and actual sentences) without choosing to evaluate the appropriateness of the defendant's original sentence."

at *14 (citing "United States v. Augustin," 16 F4th 227, 231-32 (6th Cir., 2021).

Applying that understanding here, Naseer had three related counts of conviction, two terms of 15 years and one term of 40 years, set to run concurrently. A "correction" would have vacated the 40 year term, and left the other two untouched. This would have resulted in a total sentence of 15 years, plus whatever term of supervised release that would have been imposed.

Yet that is not what occurred. The District Court reconsidered the whole sentence, and "unpacked" or "restructured" the whole deal,

now running the remaining terms consecutively instead of concurrently. Its reasoning for doing so was unambiguous. It intended Naseer get a 40 year sentence, and thus completely altered the remaining terms to increase, roughly doubling, Naseer's sentence, from 15 - 30 years, "Naseer," at 4-5.

Under then existing precedent, this falls clearly on the wrong side of the resentencing/correction line, by "unpacking" the sentence, see "United States v. Fowler," 749 F3d 1010, 1016 (11th Cir., 2014), and reconsidering the wisdom and fairness of the new term. Unhappy with the result a "ministerial" or "technical" correction would bring, the Judge changed the other sentences as well. It is not just that this was exactly what "Pena" disallowed; it was that it was a resentencing under any definition.

In upholding the result here, the Second Circuit acknowledged it has failed to provide any real guidance in distinguishing between these two results (and it would continue to decline to do so) at *2 (citing "Pena," at 623). Suffice it to say, if a resentencing would be an "empty formality," it need not be done, id at *3. But what made this an "empty formality" or "ministerial"? Again, there is no guidance.

This has led to a slow degradation of due process in §2255 processes. The amorphous and ill-defined concept of a mechanical hearing, transported from F.R.Cr.P.35 has slowly expanded. Much like in the context of the jury trial, the right to due process after prevailing in a §2255 is "lost not just by gross denial, but by erosion," "United States v. Haymond," 204 LEd 2d 894, 909 (2019) (citing "Apprendi v. New Jersey," 530 US 466, 483 (2000)).

It becomes less and less clear with each new ruling what these

concepts mean, and what is required when a petitioner prevails. Does the court have the ability to increase remaining sentences if one is vacated without a hearing? Can the total sentence be increased? These questions would have been clearly answered in the negative prior to "Pena;" they would seemingly have been no after "Pena;" now it is anybody's guess. After this case, it is uncertain just how far this "discretion" runs.

Certiorari would help clarify this confusion and protect vulnerable prisoners.

III. Due Process Should Be Held to Generally Require Hearing if the Sentence Will Change

While one can imagine cases where a hearing is truly unnecessary - for instance, vacating one of several concurrent mandatory minimum sentences, the decision between correction and resentencing should be abandoned where the actual total sentence will change. Current practices allow a judge to make his determination first as to the "type" of result he or she wants and then to tailor the due process given by that preordained result.

The obvious reason is that, if a sentence is to change, the extent of that change should be decided with the fullest and best information available. The evidence heard at a hearing will nearly always bear on the question of what remedy is warranted. Denying the Court access to that information calls the decision into question. This Court has routinely warned that judges should avoid engaging in activities that could potentially undermine the public perception of the justice system. Justice must not only satisfy

the actuality of justice, it must look like justice, "Offutt v. United States," 348 US 11, 14 (1954).

Even where the same judge is presiding over the §2255, a significant number of years, and hundreds, or even thousands, of cases may have passed. And the Defendant may have radically changed or other facts occurred that the Judge is unaware of. The presence of a lengthy minimum or high guidelines may have distorted the case presented by the defense. Where the Judge had no discretion, the original sentencing might not have been developed to fully inform the judge.

Relying on stale memories is a poor substitute for simply sentencing the defendant anew and getting a fresh picture of all the relevant, and current, facts. This is especially true as modern technology allows in camera hearings without the costs and complications of transport. The Defendant need no longer be physically present; he can participate in the hearings from any prison in the country.

Indeed, in many cases, a "mechanical resentencing" may work injustice. Because the Judge remembers the old, erroneous calculations, it may skew their judgment as to the appropriateness of a new term. Where a defendant had a minimum of 15 or 25 years on one count, another count might have been maxed out at 10 because, run concurrently, it did not matter. Without that minimum, the Defendant might have gotten 5, or even less, years.

What the Court recognized in "Rosales-Mireles v. United States," 201 LEd 2d 376, 386-87 (2018) is just as important in the §2255 process as it is on direct appeal. This extra time is of great importance, not just to the defendant, but to society at large who

must bear the costs of this extra incarceration. Given the relative ease of a new sentencing hearing and the public perception of refusing to give due process, a hearing should be the general default.

IV. Naseer's Case is an Excellent Vehicle for Resolving This

Both the procedural posturing and facts of Naseer's case are unique. Had Naseer accepted deportation, and not fought his case, like the majority of his accused 'accomplices,' he would not have been extradited to the United States, but would have faded to obscurity in Pakistan. Likewise, had Naseer pled, like the vast majority of terrorism defendants, he would not have gotten a sentence more than 1000% of that for domestic terrorists (around 3 years) or 500% for foreign born (8-9 years). It is not that the accusations in Naseer's case are particularly heinous; terrorist plots often revolve around bombings and death is the expected result in most of them.

Because Naseer denied his guilt, he got the full force of the federal guidelines, not the negotiated version pleading defendants receive. Later developments in the law have at least somewhat vindicated Naseer - his most serious conviction was vacated. At least some of the acts accused are now conceded not to have happened. Were Naseer to be sentenced today, he would likely get a sentence below the maximum on each count to be served concurrently. Without the 40 year sentence to compare it to, Naseer's term of 15 years on either count is unlikely.

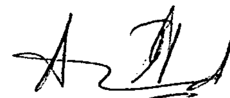
The only interaction the Court has had with Naseer is his successful challenge. Yet it has declined to hold a hearing or to

give Naseer credit for what the BOP has recognized as legitimate rehabilitation based on the dubious claim that it can identify no change in Naseer. Yet it has refused to give itself any contact with Naseer to either challenge or validate that baseless claim. Solely on the basis of nearly decade old observations (which may not have been accurate even then), the Court is opining about his current state of mind. It is basing a ruling on information it does not actually have, and that it is declining to consider. And yet it has still increased Naseer's otherwise applicable sentence.

Conclusion

For these reasons, a Writ of Certiorari should be granted.

Respectfully,



Abid Naseer

January 22, 2026