

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MYKAI DAVIS,

Petitioner,

18 **CIVIL** 1308 (VB)
S2 14 **CR.** 768-05 (VB)

-against-

UNITED STATES OF AMERICA,
Respondent.

JUDGMENT


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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated July 30, 2019, and Order dated July 20, 2020, Mykai Davis's motion under 28 U.S.C. § 2255 to vacate, set aside or correct his sentence is granted in part and denied in part; to the extent the motion is based on a claim of ineffective assistance of counsel or alleged defects in Davis's guilty plea and sentencing proceedings, the motion is denied; therefore, his conviction for conspiring to participate in the affairs of a racketeering enterprise (Count One) must stand; however, as the government acknowledges, Davis's firearms conviction under Section 924(c) (count Two) must be vacated in light of United States v. Davis 139 S. Ct. 2319 (2019). That being the case, although there is no basis to vacate Davis's racketeering conspiracy conviction, his sentence must be vacated and he will be resentenced on the racketeering conspiracy count; the Court will not enter a judgment in case No. 18 CV 1308 (VB) at this time after Davis is resentenced, the Court will enter an amended judgment in the criminal case and a final judgment in the civil case; Petitioner's Section 2255 motion was denied in all other respects; on July 10, 2020, petitioner was resentenced in the criminal case; an amended judgment, dated July 10, 2020, was entered in the criminal case on July 13, 2020; (14 CR 768-05 Doc. #469); accordingly, because petitioner has been resentenced and an amended judgment has been entered in the criminal case, final judgment is entered in 18 CV 1308 and the case is closed. As

petitioner has not made a “substantial showing of the denial of a constitutional right,” a certificate of appealability will not issue; 28 U.S.C. § 2253(c)(2); the Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal.

DATED: New York, New York
July 21, 2020

RUBY J. KRAJICK

Clerk of Court
BY: 
Deputy Clerk