No. 17-5639

In The Supreme Court of the United States

Adaucto Chavez-Meza, Petitioner,

v.

United States of America, Respondent.

REPLY BRIEF FOR PETITIONER

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When the district court declined to grant Petitioner Adaucto Chavez-Meza a proportional sentence reduction under 18 U.S.C. § 3582(c)(2), it provided no reasoning whatsoever beyond checking a box on the AO-247 form providing that it had considered the relevant factors, "if applicable." The Tenth Circuit, breaking with the Sixth, Eighth, Ninth, and Eleventh Circuits, concluded that no more explanation was needed, and that it was satisfied that the district court had not abused its discretion.

Yet effective appellate review depends upon a record of *why* the lower court decided what it did. Indeed, "[a]ppellate review for abuse of discretion is not an empty formality." *Gall v. United States*, 552 U.S. 38, 68 (2007) (Alito, J., dissenting). Within the Fourth, Fifth, and Tenth Circuits, so long as the district court checks the box on the AO-247 form, it can select any sentence within the new guidelines range that it wants, and does not need to give any reasons for its decision. This approach effectively nullifies appellate review and reduces it to an empty formality.

Contrary to the government's contentions, the Fourth, Fifth, and Tenth Circuits' approach starkly conflicts with the approach taken by the Sixth, Eighth, Ninth, and Eleventh Circuits. This case squarely presents the precise issue upon which the circuits are in conflict: whether district courts must provide some

explanation (other than checking the box on the AO-247 form) when they decline to grant proportional sentence reductions and the reasons for the decision are not readily apparent from the record. The factual and procedural posture of this case is clean. The issue surfaces a multitude of times whenever the U.S. Sentencing Commission retroactively revises the Sentencing Guidelines. The Court should grant certiorari to provide lower courts with guidance on this important question so as to maintain nationwide uniformity in the application of sentencing laws.

I. The Decision Below Conflicts With Multiple Circuits That Require District Courts to Provide Some Explanation When Declining to Grant Proportional Sentence Reductions Pursuant to § 3582(c)(2).

On multiple occasions and in multiple contexts, this Court has held that lower courts must explain their decisions with enough specificity to enable meaningful appellate review. *See, e.g.*, *United States v. Taylor*, 487 U.S. 326, 342–43 (1988) (holding that district court abused its discretion in dismissing indictment under the Speedy Trial Act without explaining its reasons); *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 557–58 (2010) (reversing affirmance of a district court's discretionary award of attorney's fees pursuant to 42 U.S.C. § 1988 because the district court did not provide reasonably adequate explanation for the award); *cf. Northcross v. Bd. of Educ.,* 412 U.S. 427, 428–29 (1973) (vacating and remanding case under the Emergency School Aid Act of 1972 because it was impossible to determine if the court of appeals applied the correct standard in denying motion for

attorney's fees); *Taylor v. McKeithen*, 407 U.S. 191, 193–94 & n.4 (1972) (vacating and remanding legislative redistricting case because court of appeals provided no opinion explaining its summary decision). The reason for this requirement is obvious: if appellate courts have no basis upon which to review how a district court exercised its discretion, then appellate review for abuse of discretion is meaningless.

The government acknowledges that multiple circuits, consistent with this Court's precedents, require district courts in § 3582(c)(2) proceedings to provide a level of explanation sufficient to enable the appellate court to conduct meaningful review. (BIO at 19.) The government then unsuccessfully attempts to characterize the Tenth Circuit's decision as being in complete harmony with that requirement. (*Id.* at 11–12, 19–21.) But the Tenth Circuit itself openly acknowledged that its decision directly conflicted with other circuits. (Pet. App. at 10a–11a.) Its ruling was direct and straightforward: "[A]bsent any indication the court failed to consider the [18 U.S.C.] § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." (Pet. App. at 9a.) This conflicts with the Sixth, Eighth, Ninth, and Eleventh Circuits, which have all reversed district courts in § 3582(c)(2) cases for failing to include any explanation (other than checking the box on the AO-247 form) when declining to grant proportional sentence reductions.

The government also argues that the Mr. Chavez-Meza misreads the Fourth and Fifth Circuit opinions on the other side of the split, (BIO at 22–23), but it does not contest that those circuits (contrary to the Sixth, Eighth, Ninth, and Eleventh Circuits) summarily affirm § 3582(c)(2) orders denying proportional sentence reductions unless there is record evidence showing that the district court neglected to consider the relevant factors. *See, e.g.*, *United States v. Locklair*, 668 F. App'x 477, 477–78 (4th Cir. 2016) (mem.); *United States v. Johnson*, 641 F. App'x 280, 281 (4th Cir. 2016) (mem.); *United States v. Washington*, 375 F. App'x 390, 390–91 (5th Cir. 2010).

Even if the government were correct (which it is not) as to the Fourth and Fifth Circuits, at a minimum there is still a real conflict between the Tenth Circuit and the Sixth, Eighth, Ninth,[1] and Eleventh Circuits. In light of the fact that nationwide uniformity is a central priority of federal sentencing laws, *see Rita v. United States*, 551 U.S. 338, 349 (2007), this conflict justifies the Court's review.

[1] The government also questions Mr. Chavez-Meza's characterization of *United States v. Trujillo*, 713 F.3d 1003 (9th Cir. 2013). In the next breath, however, it states that Mr. Chavez-Meza "correctly disavows the Ninth Circuit's approach and the rationale underlying it." (BIO at 22.) If the Ninth Circuit's rationale and approach should be disavowed, then surely they conflict with the rest of the circuits that are supposedly in "general accord" as to the level of explanation necessary to enable appellate review. (BIO at 19.)

II. The Issue Presented is Narrow, Focused, and Suitable for Review.

Contrary to the government's contention, this case represents an ideal vehicle for addressing the level of explanation a district court must provide when imposing a disproportionate sentence pursuant to § 3582(c)(2). The Tenth Circuit based its decision almost entirely upon its interpretation of relevant statutes and case law interpreting those statutes, and the record does not otherwise indicate the reasons for the district court's decision.

A. The Decision Below Was Not Factbound.

The government characterizes the Tenth Circuit's opinion as being "factbound" because the court concluded that it could "infer" that the district court had considered the relevant factors. (BIO at 18.) But the decision below is nearly devoid of actual facts—its description of what an AO-247 form contains is nearly as long as its description of both Mr. Chavez-Meza's crime and his original sentencing proceeding, (*see* Pet. App. at 3a–4a), and the opinion's background section omits entirely the facts regarding Mr. Chavez-Meza's post-sentencing conduct. (*See* BIO at 6.) The decision below did not turn on any particular facts in this case, but instead hinged on the purely legal question of how much explanation is required under § 3582(c)(2). (*See* Pet. App. at 5a–10a.) Instead of being a "factbound" determination, then, the Tenth Circuit's ruling was precisely the

opposite. Because the Tenth Circuit's opinion depended on its interpretation of the relevant statutes, this case presents a clean vehicle for certiorari.

B. The Record Does Not Indicate the Reasons for the District Court's Decision.

The government notes, (BIO at 19–20), that there is no need for additional explanation in § 3582(c)(2) proceedings when the reason for the decision can readily be gleaned from the record. *See, e.g.*, *United States v. Zaya-Ortiz*, 808 F.3d 520, 524–25 (1st Cir. 2015). But this case is nothing like *Zayas-Ortiz*. In that case, both the government and Probation opposed the sentence reduction on specific and particularized public safety grounds—namely, that the defendant had, *inter alia*, held an "enforcer" role in a drug trafficking organization and controlled "drug points" where drugs were sold. 808 F.3d at 524. In denying the motion for sentence reduction, it was readily apparent that the district court agreed with the government and Probation. *Id.* at 525. Here, by contrast, both the government and Probation agreed with Mr. Chavez-Meza that he was entitled to a sentence reduction, and neither objected to his request for a proportional reduction. Probation's memorandum outlining Mr. Chavez-Meza's post-sentencing conduct noted numerous positive achievements and one misconduct report, (BIO at 6), so the significance of that post-sentencing conduct on the district court's decision, if any,[2]

[2] While a district court must consider the § 3553(a) factors when deciding motions brought pursuant to § 3582(c)(2), it need not consider a defendant's post-

is indeterminable. Thus, unlike *Zayas-Ortiz*, the record does not indicate that the district court simply adopted a party's recommendation.

The government also cites *United States v. Christie,* 736 F.3d 191, 196 (2d Cir. 2013), for the proposition that "the reasons for the district court's action may be obvious from the history of the case." (BIO at 19.) But *Christie* is helpful to Mr. Chavez-Meza, not the government. In *Christie*, the Second Circuit *reversed* the district court for failing to provide any reasons, other than checking the box on the AO-247 form, in denying a § 3582(c)(2) motion. *Id.* at 194, 198. When pointing out that the reasons for a reduction may be "obvious" in some cases, it cited as an example *United States v. Batista*, 480 F. App'x 639 (2d Cir. 2012). As *Christie* explained, the reduction in *Batista* was proportional to the original sentence: both the original and the modified sentence were 31.5% below the low end of the applicable guidelines range. *Christie,* 736 F.3d at 196. Here, the modified sentence was disproportionate to the original sentence, so the rationale behind the reduction was not "obvious" and the Tenth Circuit could only speculate as to the district court's rationale.

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sentencing conduct. *Compare* U.S.S.G. § 1B1.10 cmt. 1(B)(*i*) ("[T]he court shall consider the factors set forth in . . . § 3553(a) . . . ."), *with* § 1B1.10 cmt. 1(B)(*iii*) ("The court may consider post-sentencing conduct of the defendant . . . .").

In sum, this is not a case where the reason for the disproportionate sentence reduction is readily apparent from the record. Thus, this case squarely presents the issue upon which the circuits are divided: whether any explanation is required in § 3582(c)(2) proceedings when the district court does not grant a proportional sentence reduction.

III. The Issue Presented Is Important and Recurring.

As Mr. Chavez-Meza pointed out, many thousands of federal inmates—over 50,000 in the past decade alone—have received sentence reductions under § 3582(c)(2) pursuant to retroactive amendments to the Sentencing Guidelines. (*See* Pet. at 13.) The government acknowledges that other parties have raised related issues in multiple unsuccessful petitions for certiorari in recent years. (BIO at 12.) This does not indicate, as the government suggests, that the issue is unworthy of this Court's review. To the contrary, it shows continuing confusion and inconsistency in the lower courts as to the degree of explanation required in § 3582(c)(2) orders.

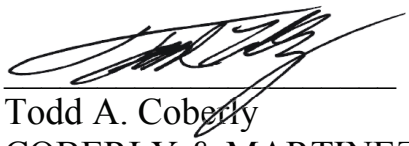
In fact, when the government opposed certiorari in *Verdin-Garcia* and *Hunnicutt*, one of the reasons it provided was that those cases did not cleanly present the issue underlying the putative circuit split—namely, whether a summary ruling without any explanation for the district court's decision is sufficient for appellate review. *See* Brief in Opposition at 26, *Verdin-Garcia v. United States*,

No. 16-6786 (Mar. 10, 2017); Brief in Opposition at 24–25, *Hunnicutt v. United States*, No. 16-8003 (May 17, 2017). In both *Verdin-Garcia* and *Hunnicutt*, the district courts had provided written reasons for denying the requested sentence reductions. *See United States v. Verdin-Garcia*, 824 F.3d 1218, 1219 (10th Cir. 2016); *United States v. Hunnicutt*, 664 F. App'x 521, 523 (6th Cir. 2016). This case, by contrast, does squarely present the issue at the heart of the circuit split. The district court failed to give any reasons (other than simply checking the box on the AO-247 form) when it declined to grant a proportional sentence reduction. The procedural and factual posture of this case is clean, and the issue presented is narrow and focused. Therefore, unlike *Verdin-Garcia* and *Hunnicutt*, this case is an ideal vehicle to resolve the circuit split as to the level of explanation necessary when district courts grant disproportionate sentence reductions in § 3582(c)(2) proceedings.

CONCLUSION

For the foregoing reasons, Petitioner Adaucto Chavez-Meza respectfully requests that the Court issue a writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,



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