No. 17-5639

IN THE

Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA,

Petitioner,

v.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF PETITIONER

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QUESTION PRESENTED

Whether, when a district court decides not to grant a proportional sentence reduction under 18 U.S.C. § 3582(c)(2), it must provide some explanation for its decision when the reasons are not otherwise apparent from the record, as the U.S. Courts of Appeals for the 6th, 8th, 9th and 11th Circuits have held, or whether it can issue its decision without any explanation so long as it is issued on a preprinted form order containing boilerplate language providing that the court has "tak[en] into account the policy statement set forth in U.S.S.G. § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," as the U.S. Courts of Appeals for the 4th, 5th and 10th Circuits have held.

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The opinion of the United States Court of Appeals for the Tenth Circuit is reprinted in the Joint Appendix (J.A.) at J.A. 49-60. It also is available at 854 F.3d 655 (10th Cir. 2017). The AO 247 Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2) of the United States District Court for the District of New Mexico is reproduced at Sealed J.A. 106-108.

JURISDICTION

The United States Court of Appeals for the Tenth Circuit entered its judgment on April 14, 2017, see J.A. 49. The petition for a writ of certiorari was filed on August 14, 2017, and granted on January 12, 2018.

STATUTORY PROVISIONS INVOLVED

The relevant statutes and provisions of the United States Sentencing Guidelines are reprinted in an appendix to this brief. App., *infra*, 1a-13a.

STATEMENT OF THE CASE

This case concerns the level of explanation a district court must include in an order reducing a criminal defendant's sentence pursuant to a retroactive amendment to the Sentencing Guidelines, when the reduced sentence is disproportionate to where the original sentence fell within the applicable guideline range. This Court should hold, consistent with the majority of the circuits that have passed on the question, that the district court must offer sufficient explanation to enable meaningful appellate review. Here, the district court provided no explanation when it refused to grant Petitioner Adaucto Chavez-Meza a

full reduction. The court's failure to state which relevant factors it considered and how it weighed them rendered the appellate tribunal's review an empty formality.

Statutory background

A criminal sentence generally is presumed final after the opportunity for direct review comes to an end. See *Brecht* v. *Abrahamson*, 507 U.S. 619, 633 (1993); 18 U.S.C. § 3582(c) ("The court may not modify a term of imprisonment once it has been imposed . . . ."). Congress, however, "has the power to fix the sentence for a federal crime, and the scope of judicial discretion with respect to a sentence is subject to congressional control." *Mistretta* v. *United States*, 488 U.S. 361, 364 (1989) (citation omitted). Through the Sentencing Reform Act of 1984, (the "SRA"), Pub. L. No. 98-473, 98 Stat. 1987, Congress enacted a limited exception to the general rule of finality, allowing a district court to modify an otherwise final sentence but setting parameters on how the district court is to exercise that discretion.

Section 3582(c) provides that,

> in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(*o*), upon motion of the defendant . . ., the court may reduce the term of imprisonment after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

§ 3582(c)(2). The applicable policy statement is found at U.S. Sentencing Guidelines Manual § 1B1.10 (U.S.

Sentencing Comm'n 2016) ("U.S.S.G"), which effectuates Congress's intent by allowing district courts to reduce the sentence of a defendant whose sentence was based on a guideline range subsequently amended by the Sentencing Commission. See *Dillon* v. *United States*, 560 U.S. 817, 831 (2010) (discussing how § 3582(c)(2) "permits a sentence reduction within the narrow bounds established by the Commission"); 28 U.S.C. § 994(u) ("If the Commission reduces the term of imprisonment recommended in the guidelines . . . , it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment . . . may be reduced.").

In sum, Congress has authorized a district court in limited situations to reduce a defendant's term of imprisonment after the sentence is otherwise final. This "congressional act of lenity [is] intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon*, 560 U.S. at 828.

Factual background

Without entering a plea agreement, Mr. Chavez-Meza pled guilty to a two-count indictment charging him with conspiracy and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. J.A. 29. Using the 2012 version of the Guidelines Manual in effect at the time of sentencing, the United States Probation Office ("Probation") calculated Mr. Chavez-Meza's total offense level to be 33. Sealed J.A. 80. Because Mr. Chavez-Meza had no prior convictions, he had no criminal history points, placing him in criminal history category I. *Id.* at 80-81. Probation accordingly determined Mr. Chavez-Meza's guideline sentencing range to be a term of imprisonment between

135 and 168 months. *Id.* at 87. Neither party objected to the guideline range calculations.

Mr. Chavez-Meza, without requesting any specific sentence, asked the district court to vary below the advisory guideline range. J.A. 20-22. The government requested a sentence at the low end of the range, i.e., to a term of 135 months. *Id.* at 20-21. The court accepted the government's position and sentenced Mr. Chavez-Meza to an aggregate 135-month term of imprisonment. *Id.* at 26. The court made clear that the chosen sentence was driven by the Guidelines when it stated that "the reason the guideline sentence is high in this case, even the low end of 135 months, is because of the quantity, 1.75 kilograms of actual methamphetamine," and because methamphetamine destroys lives, families, and communities. *Id.* at 25.

The Commission subsequently issued Amendment 782 to the Guidelines, which became effective on November 1, 2014. U.S.S.G. app. C, amend. 782. Amendment 782, commonly referred to as the "drugs minus two" amendment, generally lowered by two points the base offense levels found in the drug quantity table at U.S.S.G. § 2D1.1(c). The Commission made this amendment retroactive. U.S.S.G. app. C, amend. 788, supp. at 86.

After the issuance of Amendment 782, Mr. Chavez-Meza filed a pro se motion to reduce his sentence under § 3582(c)(2). J.A. 38-41. Probation prepared a memorandum in which it determined that Amendment 782 reduced Mr. Chavez-Meza's guideline range from 135 to 168 months to 108 to 135 months. Sealed J.A. 63-64. In the memorandum, Probation noted that, since being imprisoned, Mr. Chavez-Meza had completed educational courses in masonry, construction, and healthy living; he was enrolled in GED classes; and had been assigned work duties. The memo-

randum also noted that Mr. Chavez-Meza was trying to enroll in a non-residential drug treatment program and had received one minor disciplinary sanction for using another inmate's phone number. *Id.* at 64-65.

Through appointed counsel, Mr. Chavez-Meza and the government stipulated that Mr. Chavez-Meza was eligible for a reduction. J.A. 42-44. Pointing out that the district court at sentencing had stated that his sentence was driven by the type and quantity of drugs at issue in his case, Mr. Chavez-Meza asked the district court to reduce his sentence to the low end of the amended guideline range, i.e., to 108 months. *Id.* at 43. Such a reduced sentence would have been proportional to where his original sentence fell within the non-amended guideline range. The government did not take a position as to what the reduced sentence should be.

The district court, without holding a hearing, granted Mr. Chavez-Meza's motion, but only in part. Rather than proportionally reducing Mr. Chavez-Meza's sentence to 108 months, the district court reduced his sentence to 114 months. *Id.* at 46. The court provided no explanation for the sentence it chose. Instead, it simply typed in the new sentence after checking the "GRANTED" box on an AO-247 Form, a form order issued by the Administrative Office of the United States Courts. *Id.* Although the form contained preprinted boilerplate language providing that the court had considered the motion and "tak[en] into account the policy statement set forth at U.S.S.G. § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," the district court did not provide any explanation on the form order – including in the space for "additional comments" on the second page (filed under seal) – as to why it only was reducing Mr.

Chavez-Meza's sentence to 114 months, and not to 108 months. Sealed J.A. 106-108.

Appellate Review

On appeal to the Tenth Circuit, Mr. Chavez-Meza asserted that the district court had abused its discretion when it failed to provide any reason for declining to reduce his sentence proportionally to 108 months. Relying on that court's unpublished decision of *United States* v. *Nelson*, 303 F. App'x 641 (10th Cir. 2008), and Judge Ebel's concurring opinion in *United States* v. *Dorrough*, 84 F.3d 1309 (10th Cir. 1996), as well as several cases in other circuits, Mr. Chavez-Meza maintained that it was impossible to determine which factors the district court had considered and whether it relied on impermissible factors. J.A. 58. While recognizing that some courts have held it unnecessary for a district court to state its reasons when they are readily apparent from the record, Mr. Chavez-Meza distinguished those cases. Defendant-Appellant's Opening Brief at 9-11, *Chavez-Meza* v. *United States* (No. 16-2062) (10th Cir. June 16, 2016).

The Tenth Circuit affirmed. J.A. 49-62. The court first looked to 18 U.S.C. § 3553(c), which, *inter alia*, requires district courts to state their reasons for imposing a particular sentence at an original sentencing. Given that § 3582(c)(2) only requires district courts to "consider" the § 3553(a) factors and § 3553(a), unlike § 3553(c), does not impose a "duty of explanation" on district courts, the Tenth Circuit reasoned that § 3553(c) provides the "ceiling" for the level of explanation necessary in sentence-reduction proceedings. *Id.* at 53-54. Reading its earlier precedent as holding that "a sentencing court does not need to explain the reasons behind a within-guidelines sentence" at an original sentencing, the Tenth Circuit thus held "that, absent any indication the court failed

to consider the § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." *Id.* at 56. The Tenth Circuit acknowledged that its approach conflicted with that taken by multiple other circuits. *Id.* at 58.

Looking to the boilerplate form order, the court of appeals saw nothing on its face to indicate that the district court failed to consider the § 3553(a) factors, or otherwise abused its discretion. *Id.* at 57. Since the district court did not adopt Mr. Chavez-Meza's request for a proportional reduction, the court thought it "safe to infer" that the district court had carefully considered the record. *Id.* At bottom, while the Tenth Circuit thought it "might be good practice for the district courts" to explain their reasoning in sentence-reduction proceedings, the court found no abuse of discretion because Congress did not include an "explanatory requirement" for such cases. *Id.* at 60.

SUMMARY OF THE ARGUMENT

The Tenth Circuit ignored the bedrock principle, as set forth in *United States* v. *Taylor*, 487 U.S. 326 (1988), that where a statute requires district courts to consider certain factors, the court must clearly articulate how those factors affected its decision. This principle, which is predicated upon the need for meaningful appellate review, governs here because the sentence-reduction statute at issue, § 3582(c)(2), expressly requires the consideration of both the factors set forth in § 3553(a) (identifying numerous "[f]actors to be considered in imposing a sentence") as well as the applicable policy statements issued by the Sentencing Commission. The district court's lack of articulation here makes such review impossible.

This Court, in *Taylor* and elsewhere, repeatedly has emphasized that meaningful appellate review is necessary to ensure that a district court's exercise of discretion is faithful to Congress's statutory scheme and not the product of fiat, clear error, or the consideration of impermissible factors. For appellate review to be meaningful, then, a district court must provide some reasoned basis for its decision. A court merely stating that it considered the necessary factors, without any corresponding explanation as to how those factors impacted its decision, renders the idea of appellate review an empty formality.

The district court's failure to provide an explanation for denying a full reduction was particularly problematic in the context of Amendment 782. In promulgating Amendment 782, the Commission attempted to substantially reduce prison overcrowding caused by unnecessarily long sentences for drug crimes like Mr. Chavez-Meza's. The Commission predicted that sentences for approximately 46,000 prisoners would be reduced by an average of 18%, reflecting a strong expectation that district courts would grant the full reduction. All things equal, unless considerations of the § 3553(a) factors or public safety concerns required otherwise, courts were expected to take the sentence that they had originally imposed and drop it two full levels. Against this settled policy expectation, *Taylor*'s requirement that district courts articulate reasons for not providing the full reduction is all the more imperative.

The Tenth Circuit's rationale turned on the lack of an express "duty of explanation" in either § 3582(c) or § 3553(a) in comparison to § 3553(c). But Congress's express inclusion of a robust duty of explanation at original sentencings in § 3553(c) serves unique purposes and does nothing to foreclose the need for

meaningful appellate review in other contexts. Nor is the argument sound in any event because Congress's express inclusion of a duty in a different statute does not mean that Congress meant to remove entirely any requirement that a district court articulate a discernable reason for its exercise of sentencing discretion in § 3582(c)(2) proceedings.

The Court's statement in *Dillon* – that § 3582(c)(2) proceedings are of a "limited nature" – does not abrogate the need for articulation in order to effectuate meaningful appellate review. The actual holding in *Dillon* serves only to demonstrate that a district court's exercise of discretion is limited to imposing a reduced sentencing within the amended guideline range where the original sentence fell within the non-amended guideline range. Nothing in *Dillon* abrogates *Taylor* or otherwise suggests that a district court is relieved of its obligation to articulate how it exercised its discretion. While lengthy explanations, like lengthy proceedings, are unnecessary, some articulation is necessary so that appellate courts can ensure that Congress's scheme is given proper effect.

The court of appeals' decision in Mr. Chavez-Meza's case demonstrates that appellate review without the benefit of any articulation of reasons requires speculation by the appellate court and does not facilitate functional or fair review.

First, the Tenth Circuit's decision to "infer" that the district court relied upon Mr. Chavez-Meza's minor disciplinary sanction (for using another inmate's phone number) only raises more questions than it answers. The Bureau of Prisons' precise scale of infractions and appropriate punishments (which Mr. Chavez-Meza duly received) belies the speculation that the district court chose, in effect, to punish Mr. Chavez-Meza with six months of additional impris-

onment. The Tenth Circuit's speculation also fails to account for how the district court weighed the disciplinary sanction against Mr. Chavez-Meza's demonstrated efforts – through certifications and courses – at rehabilitation, and creates exactly the type of potentially unwarranted disparity that courts and the Commission are charged by Congress to avoid

Second, the Tenth Circuit wrongly grounded its decision in its apparent belief that a court, at original sentencing, never needs to explain its reasons for a within-guideline sentence. Such a position disregards this Court's admonition that all sentences are reviewed for abuse of discretion and that a district court must always provide sufficient explanation to satisfy the appellate court that it has a reasoned basis for its decision.

ARGUMENT

I. A DISTRICT COURT MUST BOTH CONSIDER AND EXPLAIN APPLICABLE SENTENCING FACTORS AND POLICY STATEMENTS IN ORDER TO MAKE MEANINGFUL APPELLATE REVIEW POSSIBLE.

A. Congress's Incorporation Of Sentencing Factors In § 3582 Requires District Courts to Articulate Reasons For Their Discretionary Choices.

In deciding this case, the Tenth Circuit ignored this Court's precedents providing that district courts are required to articulate reasons behind their exercise of discretionary authority, especially where, as here, a statute sets forth factors relevant to the exercise of that discretion. In *Taylor* for example, the Court held that, "[w]here . . . Congress has declared that a deci-

sion will be governed by consideration of particular factors, a district court must carefully consider those factors as applied to the particular case, and, whatever its decision, *clearly articulate* their effect in order to permit meaningful appellate review." 487 U.S. at 336 (emphasis added).

Taylor governs this case because § 3582(c)(2) provides that a district court may modify an otherwise-final sentence only "after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

As this Court explained in *Dillon*, a district court considering a sentence-reduction motion pursuant to § 3582(c)(2) must undertake a two-step analysis. A court must first determine under U.S.S.G. § 1B1.10 whether the defendant is eligible for a reduction and, if so, the extent of the reduction allowed. *Dillon*, 560 U.S. at 827. At the second step, the district court determines whether a sentence reduction is warranted in whole or in part under the particular circumstances of the case. In making this determination, the court must consider two sets of factors and may consider a third. It "shall consider" the applicable § 3553(a) factors. U.S.S.G. § 1B1.10 cmt. 1(B)(i). It also "shall consider" the potential impact the reduction would have on public safety. U.S.S.G. § 1B1.10 cmt. 1(B)(ii). And it may, but is not required to, consider the defendant's post-sentencing conduct. U.S.S.G. § 1B1.10 cmt. 1(B)(iii).

Congress, through the Commission, therefore, carefully prescribed how a district court is to exercise its discretion in modifying an otherwise final sentence. At the first step of the inquiry, "[t]he binding policy statement governing § 3582(c)(2) motions plac-

es considerable limits on district court discretion." *Freeman* v. *United States*, 564 U.S. 522, 531 (2011) (plurality opinion). And at the second step, the court's duty to consider multiple factors in determining whether the reduction is warranted gives the court only "circumscribed discretion." *Dillon*, 560 U.S. at 829.

When Congress circumscribes the discretion of a district court by requiring it to consider several factors, it implicitly requires the court to explain which factors it considered and how it weighed those factors. Without some explanation as to how the court exercised its discretion in such circumstances, the appellate tribunal is unable to determine whether congressional intent is effectuated. *Taylor*, 487 U.S. at 336.

B. Articulating Reasons For Exercising Discretion Under § 3582(c) Is Necessary For Meaningful Appellate Review.

All courts of appeals review the second step of a district court's § 3582(c)(2) decision for abuse of discretion.[1] But this "hardly means that [such decisions

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[1] *United States* v. *LaBonte*, 70 F.3d 1396, 1411 (1st Cir. 1995), *rev'd on other grounds*, 520 U.S. 751 (1997); *United States* v. *Borden*, 564 F.3d 100, 104 (2d Cir. 2009); *United States* v. *Mateo*, 560 F.3d 152, 154 (3d Cir. 2009); *United States* v. *Smalls*, 720 F.3d 193, 195 (4th Cir. 2013); *United States* v. *Pardue*, 36 F.3d 429, 430 (5th Cir. 1994) (per curiam); *United States* v. *Webb*, 760 F.3d 513, 517 (6th Cir. 2014); *United States* v. *Hall*, 582 F.3d 816, 817 (7th Cir. 2009); *United States* v. *Hernandez-Marfil*, 825 F.3d 410, 412 (8th Cir. 2016) (per curiam); *United States* v. *Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013); *United States* v. *Piper*, 839 F.3d 1261, 1265 (10th Cir. 2016), *cert. denied*, 137 S. Ct. 2263 (2017); *United States* v. *Webb*, 565 F.3d 789, 792 (11th Cir. 2009) (per curiam); *United States* v. *Kennedy*, 722 F.3d 439, 442 (D.C. Cir. 2013).

are] unfettered by meaningful standards or shielded from thorough appellate review." *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 416 (1975); see *Gall* v. *United States*, 552 U.S. 38, 72 (2007) (Alito, J., dissenting) ("[A]buse-of-discretion review is not toothless; and it is entirely proper for a reviewing court to find an abuse of discretion when important factors . . . are 'slighted.'" (quoting *Taylor*, 487 U.S. at 337)).

"Discretion is not a whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin* v. *Franklin Capital Corp.*, 546 U.S. 132, 139 (2005); see also *United States* v. *Burr*, 25 F. Cas. 30, 35 (C.C. Va. 1807) (No. 14,692D) (Marshall, C.J.) ("[A] motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles."). Appellate review for abuse of discretion, then, exists to ensure that the district court's discretionary choice was not based "on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Ultimately, "[w]hether discretion has been abused depends, of course, on the bounds of the discretion and the principles that guide its exercise." *Taylor*, 487 U.S. at 336.

To be sure, "the district court's judgment of how opposing considerations balance should not lightly be disturbed," *Id.* at 337, but an appellate court must still "ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent [to the decision at hand], thereby failing to act within the limits prescribed by Congress." *Id.* In such a case, a court of appeals may conclude that the district court made a mistake in balancing opposing consid-

erations. See *id.* at 338-42 (holding that district court abused its discretion under the Speedy Trial Act where it failed to consider one relevant factor, gave too little weight to a second factor, and gave too much weight to third factor).

This Court before and after *Taylor* repeatedly has reversed cases for abuse of discretion where the district court failed to articulate sufficiently how it considered the relevant factors when exercising its discretion. For example, in *Northcross* v. *Board of Education*, 412 U.S. 427 (1973) (per curiam), the Court vacated and remanded where the district court did not explain how it exercised its discretion in denying a fee award under the Emergency School Aid Act of 1972. *Id.* at 428-29. And in *Perdue* v. *Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), the Court determined that a district court had abused its discretion in enhancing a fee award made pursuant to 42 U.S.C. § 1988 where it did not provide sufficient justification for its "essentially arbitrary" decision. *Id.* at 557. Because "a reasonably specific explanation" was not provided, adequate appellate review was impossible. *Id.* at 558; see also *Hensley* v. *Eckerhart*, 461 U.S. 424, 438-40 (1983) (reversing fee award where district court failed to articulate one of twelve factors deemed relevant by Congress); cf. *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 257-61 (1981) (reviewing district court's reasoning in dismissing case on grounds of *forum non conveniens*); *Traxler* v. *Multnomah Cty.*, 596 F.3d 1007, 1016 (9th Cir. 2010) ("It is particularly important for the district court to provide a rationale for its decision when effectuating a congressional mandate that the decision reflect certain enumerated factors." (citing *Taylor*, 487 U.S. at 336-37)).

Thus, for appellate courts to ensure that a district court in the context of a § 3582(c)(2) proceeding con-

sidered the relevant factors, did not consider any impermissible factors, and did not clearly err in weighing the relevant factors, a district court must provide *some* reasoned basis on which appellate review can turn. Otherwise, it is impossible for a reviewing court to know how the district court made its decision. Cf. *United States* v. *Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001) (holding that court exercising its equitable discretionary power "cannot ignore the judgment of Congress deliberately expressed in legislation" (internal quotation marks omitted)); *United States* v. *Chi., M., St. P. & P. R. Co.*, 294 U.S. 499, 511 (1935) ("We must know what a decision means before the duty becomes ours to say whether it is right or wrong.").

Several courts of appeals rightly have understood and applied this fundamental principle in the context of a § 3582(c)(2) proceeding. For example, in *United States* v. *Howard*, 644 F.3d 455 (6th Cir. 2011), a case directly on point, the Sixth Circuit remanded because the district court failed to provide any explanation when it reduced a defendant's sentence disproportionately to where it fell within the non-amended guideline range. *Id.* at 460-62; see also *United States* v. *Christie*, 736 F.3d 191, 198 (2d Cir. 2013) ("[W]e lack any understanding of the reasoning underlying the district court's [§ 3582(c)(2)] decision, and accordingly are unable to determine whether that decision was within the bounds of the district court's discretion."); *United States* v. *Marion*, 590 F.3d 475, 478 (7th Cir. 2009) (remanding denial of § 3582(c)(2) motion because it was "impossible . . . to ensure that the district court did not abuse its discretion if the order shows only that the district court exercised its discretion rather than showing *how* it exercised that discretion.").

Even the Tenth Circuit acknowledges that it cannot be enough for a district court to say, in effect: "Trust me, I considered the necessary factors and my decision reflects a reasoned judgment." See *United States* v. *Fisher*, 55 F.3d 481, 487 (10th Cir. 1995) ("Judicial action is not an exercise in *ipse dixit* – the bare assertion of an individual resting not on expressed reason, but merely on the authority vested in an office."). A court's mere statement that it "considered" the relevant factors, then, without any explanation as to *how* it considered those factors renders the entire concept of appellate review meaningless, i.e., "an empty formality." *Gall*, 552 U.S. at 68 (Alito, J., dissenting).

C. Requiring Articulation In The Context Of A § 3582(c)(2) Motion Is Particularly Important Given The Purposes Of Amendment 782.

On April 30, 2014, the Commission submitted Amendment 782 to Congress. The amendment reduced by two levels the offense levels assigned to drug quantities. Amendment 782 became effective on November 1, 2014. The Commission made amendment 782 retroactive, but delayed its effective date for one year in order to allow courts and agencies in the criminal justice system time to prepare. U.S.S.G. app. C, amend. 788, supp. at 86.

Amendment 782 reflected the Commission's determination "that setting the base offense levels slightly above the mandatory minimum penalties is no longer necessary to achieve its stated purpose."[2] U.S.S.G.

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[2] The Commission had originally set the base offense levels for drug offenses to reflect "guideline ranges slightly higher than the mandatory minimum levels to permit some downward adjustments for defendants who plead guilty or otherwise cooperate with authorities." Patti B. Saris, *A Generational Shift for*

app C, amend. 782, supp. at 71 (reason for amendment 782). "The amendment was also motivated by the significant overcapacity and costs of the Federal Bureau of Prisons." *Id.* at 72; see also 28 U.S.C. § 994(g) ("The sentencing guidelines . . . shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission."). In promulgating Amendment 782, "[t]he Commission carefully weighed public safety concerns and, based on past experience, existing statutory and guideline enhancements, and expert testimony, concluded that the amendment should not jeopardize public safety." U.S.S.G. app. C, amend. 782, supp. at 73. The Commission estimated that 46,000 prisoners would be affected and, based upon its expectation that eligible prisoners ordinarily would receive the full reduction, that the average sentence would be reduced by 18%. U.S.S.G. app. C, amend. 788, supp. at 86 (reason for amendment 788); Office of Res. & Data, U.S. Sentencing Comm'n, Mem. 7, 16 (May 27, 2014), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Anaysis.pdf.

Accordingly, when a district court declines, without explanation, to grant a full reduction, there is no basis for an appellate court to infer from the silent record that such a decision is consistent with the applicable § 3553(a) factors and the Commission's policy statement.

Federal Drug Sentences, 52 Am. Crim. L. Rev. 1, 6 (2015); *see* 21 U.S.C. §§ 841(b)(1)(A) and (b)(1)(B).

II. A DISTRICT COURT'S DUTY TO ARTICULATE ITS REASONING IS NOT ABROGATED BY THE LACK OF A CROSS-REFERENCE TO § 3553(c) OR THE "LIMITED NATURE" OF § 3582(c)(2) PROCEEDINGS.

A. The Duty To Articulate Is Not Abrogated By The Absence Of A Cross-Reference To § 3553(c).

The opinion below is grounded in the following syllogism: (1) § 3582(c)(2) requires district courts to consider the § 3553(a) factors; (2) § 3553(a), in turn, requires district courts to consider certain factors, but, unlike § 3553(c) does not impose a "duty of explanation"; (3) district courts, therefore have no obligation to provide any explanation as to how they exercised their discretion in a ruling on a § 3582(c)(2) motion. J.A. 53-54. This syllogism is flawed because Congress's decision not to include a cross-reference to § 3553(c) was in no way an affirmative decision to relieve district courts of their fundamental obligation to explain their discretionary choices. Put differently, it does not follow that by not explicitly referencing in § 3582(c)(2) the "duty of explanation" found at § 3553(c) that Congress intended for district courts to have unbounded discretion requiring no articulation.

At bottom, the Tenth Circuit's syllogism fails to appreciate that whenever Congress constrains district courts' discretionary choices and allows for review, the fount of the "duty to explain" lies not in explicit congressional demand, but in the fundamental need for meaningful appellate review. While Congress may impose greater procedural protections when it chooses, this does not mean that it negates the need for meaningful appellate review in other contexts. See *Burns* v. *United States*, 501 U.S. 129, 136 (1991) ("In

some cases, Congress intends silence to rule out a particular statutory application, while in others Congress' silence signifies merely an expectation that nothing more need be said in order to effectuate the relevant legislative objective.").

Section 3582(c)(2) requires district courts to "consider" the § 3553(a) factors "to the extent that they are applicable" in deciding by how much to reduce a sentence pursuant to a retroactive Guideline amendment. Section 3553(a), in turn, directs courts to "consider" a variety of factors. While it is true that § 3553(a) "nowhere imposes on the court a duty to address those factors on the record," J.A. 53, this hardly means that it is "incongruous" to expect district courts to explain in some fashion their discretionary choices sufficient to effectuate meaningful appellate review.

Congress, of course, may impose greater duties on district courts than would otherwise normally be required. This is precisely what Congress did in enacting § 3553(c) as part of the SRA to further numerous, intertwined, goals in connection with its wholesale reform of federal sentencing.

Prior to enactment of the SRA, district courts generally had no obligation to state their reasons for imposing any particular sentence. See *Dorszynski* v. *United States*, 418 U.S. 424, 440-42 (1974). This rule was grounded in the idea that, so long as a judge had unbounded discretion to sentence a defendant within a statutory range, the sentence was unreviewable on appeal. Knowing the reasons for a judge's sentence, thus, would serve no purpose. See *id.* at 441-42. But cf. *Kent* v. *United States*, 383 U.S. 541, 554 (1966) ("[T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony – without hearing, without effective assis-

tance of counsel, without a statement of reasons."). This rule, however, was not without its detractors. In his concurrence in *Dorszynski*, Justice Marshall understood that providing a statement of reasons at sentencing advances numerous salutary policies besides that of simply effectuating appellate review. These policies include, among others, assisting "correctional authorities in their handling of the prisoner after sentence," and "enhanc[ing] the legitimacy of the sentencing process as perceived by the general public." 418 U.S. at 455, 456 (Marshall, J., concurring in the judgment).

Around the same time, the Court held in numerous cases that a statement of reasons is necessary, not to effectuate appellate review, but simply to comply with due process. See *Kerry* v. *Din*, 135 S. Ct. 2128, 2144 (2015) (Breyer, J., dissenting) ("We have often held that this kind of statement, permitting an individual to understand *why* the Government acted as it did, is a fundamental element of due process." (citing cases)). It is no wonder, then, that several courts and commentators in the era before the SRA voiced concern with the fact that district courts did not need to provide any reasons as to their sentencing decisions.[3]

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[3] Judge Marvin Frankel of the U.S. District Court for the Southern District of New York, a principal champion of the SRA, s*ee* S. Rep. No. 98-225, at 37 (1983), was one of the leading critics. Marvin E. Frankel, *Criminal Sentences: Law Without Order* 40-41 (Hill & Wang 1972) ("The duty to give an account of the decision is to promote thought by the decider, to compel him to cover the relevant points, to help him eschew irrelevancies—and, finally, to make him show that these necessities have been served."); Marvin E. Frankel, *Lawlessness in Sentencing*, 41 U. Cin. L. Rev. 1, 28 (1972) (explaining that having judges explain sentencing decisions was "important for its own sake" aside from aiding appellate review). Long before the SRA, Judge Frankel proposed a "Commission for Sentencing." *Id.* at 50-54.

See, *e.g.*, *United States* v. *Cruz*, 523 F.2d 473, 476 (9th Cir. 1975) (Kennedy, J.) ("The administration of justice and the purposes of sentencing are best served when the sentencing judge states openly the factors he considers in imposing judgment.") (citing Justice Marshall's concurrence in *Dorszynski*); *United States* v. *Velazquez*, 482 F.2d 139, 142 (2d Cir. 1973) ("The judge's evaluation of the defendant may also provide some guidance to the correctional authorities in their handling of the prisoner following sentencing. Finally, publicizing the reasoned basis of a sentence may enhance its legitimacy as perceived by the general public and, hopefully, by the defendant."); cf. J.A. 54 ("Original sentencing proceedings invoke important constitutional rights . . . ."); *United States* v. *Salerno*, 481 U.S. 739, 751-52 (1987) (holding Bail Reform Act survived facial procedural due process challenge because it included a provision for a written statement of reasons).

With enactment of the SRA, Congress effectuated a sea change in federal sentencing law. By incorporating in the SRA the requirement that a judge, at the time of sentencing and in open court, provide reasons for imposing such a sentence, Congress sought to address the concerns identified above. In short, § 3553(c), as part of a multi-faceted wholesale reform to federal sentencing, was intended to serve a multitude of salutary and functional purposes. See S. Rep. No. 98-225, at 60 ("The statement of reasons can be used by each participant in the Federal criminal justice system charged with reviewing or implementing a sentence.").

Thus simply because § 3582(c)(2) refers to § 3553(a), and not to § 3553(c) and its concomitant "duty of explanation," J.A. 53, does not mean, as the Tenth Circuit believes, that a district court is ab-

solved of all responsibility to provide "a reasonably specific explanation" for its actions. *Perdue*, 559 U.S. at 558. Indeed, "[c]ourts have a general duty to explain their reasoning. . . . [N]othing in *Dillon* suggests that [appellate courts] should abrogate district courts' general responsibility to provide some individualized legal reasoning." *United States* v. *Peters*, 843 F.3d 572, 582 (4th Cir. 2016) (Gregory, C.J., dissenting), *cert. denied*, 137 S. Ct. 2267 (2017).

A district court's so-called "duty of explanation" thus arises not from any statutory command, but from the longstanding principle that district courts must provide sufficient explanation for their discretionary decisions in order to allow for meaningful appellate review – particularly where Congress has specifically identified factors that district courts are to consider. Indeed, the Court in *Taylor* required a sufficient explanation for the district court's decision even though the Speedy Trial Act has no statutory provision akin to § 3553(c). See 487 U.S. at 336-37. Similarly, *Perdue* required district courts to sufficiently explain a fee award, even though no such provision is found in 42 U.S.C. § 1988. 559 U.S. at 558; see also *Northcross*, 412 U.S. at 428-29 (vacating and remanding where court did not explain how it exercised its discretion in denying fee award under Emergency School Aid Act of 1972). The simple reason these cases were remanded was because, like here, the lower courts insufficiently explained *how* they exercised their discretion. Absent such explanation, meaningful appellate review is impossible.[4]

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[4] A similar situation is found in the context of a district court denying a defendant's motion for early termination of supervised release pursuant to 18 U.S.C. § 3583(e). Like § 3582(c)(2), § 3583(e) does not refer to § 3553(c) or otherwise impose a "duty of explanation." Yet as the D.C. Circuit correctly understands,

B. The "Limited Nature" Of § 3582(c)(2) Proceedings Does Not Abrogate The Need For Meaningful Appellate Review.

In opposing certiorari, the Solicitor General relied upon language found in *Dillon* to support the position that district courts are relieved of their obligation to articulate the rationale underlying their discretionary choices in ruling on a § 3582(c)(2) motion. See Brief in Opposition at 14-15, *Chavez-Meza* v. *United States* (No. 17-5639) (U.S. Nov. 17, 2017); see also *United States* v. *Smalls*, 720 F.3d 193, 198 (4th Cir. 2013). But this misreads *Dillon*, as nothing in that case can be read for the proposition that district courts have unlimited and unreviewable discretion when exercising power Congress granted to them in § 3582(c)(2).

In *Dillon*, the issue was whether, after *United States* v. *Booker*, 543 U.S. 220 (2005), district courts had the discretion to reduce a term of imprisonment below the minimum of the amended guideline range when the original sentence, itself, did not fall below the guideline range. *Dillon*, 560 U.S. at 819. In holding that *Booker* did not apply to § 3582(c)(2), the Court described sentence-reduction proceedings as "limited" in nature and "not constitutionally compelled." *Id.* at 827, 828. Seizing on this language, some have held that district courts do not need, like they would at an original sentencing, to provide any

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absent explanation or where "clear and compelling reasons to deny relief leap out from the record," appellate courts "cannot just reflexively presume that the learned judge appropriately exercised his discretion and considered all of the relevant factors, because that would risk turning abuse of discretion review into merely a rubber stamp." *United States* v. *Mathis-Gardner*, 783 F.3d 1286, 1288-89 (D.C. Cir. 2015) (internal quotation marks omitted).

explanation for a ruling on a sentence-reduction motion. See *Smalls*, 720 F.3d at 198.

But *Dillon* did nothing more than affirm Congress's power to constrain judicial discretion. See 560 U.S. at 829 (explaining how § 3582(c)(2) proceedings "give judges . . . circumscribed discretion"). *Dillon* did not alter the fact that district courts must consider certain factors when deciding whether, and by how much, to reduce a sentence pursuant to a retroactive guideline amendment. See U.S.S.G. § 1B1.10 cmt. 1(B)(i)-(ii). Indeed, *Dillon* affirmed that Congress, through the Commission, has ultimate authority to "determin[e] in what circumstances and by what amount the sentences of prisoners affected by Guidelines amendments may be reduced." 560 U.S. at 830 (internal quotation marks omitted); see also *id.* at 825 (explaining that § 3582(c)(2) "give[s] courts the power to reduce an otherwise final sentence *in circumstances* specified by the Commission" (internal quotation marks omitted and emphasis added)). See also *Taylor*, 487 U.S. at 336.

In short, nothing in *Dillon* relieved district courts of their obligation to provide sufficient explanation of their discretionary choices so as to allow for meaningful appellate review. If anything, the case instead affirmed that when Congress imbues a district court with discretionary power, appellate review exists to ensure that the district court acted within bounds established by Congress. Requiring district courts to explain their decision in a § 3582(c)(2) proceeding is, in effect, no different than requiring them to explain their original sentencing decision. While § 3582(c)(2) may "not authorize a sentencing or resentencing proceeding," *Dillon*, 560 U.S. at 825, the end result of a § 3582(c)(2) proceeding is that a sentence is still imposed. See *id.* at 827 (explaining that "[o]nly if the

sentencing court originally imposed a term of imprisonment below the Guidelines range does § 1B1.10 authorize a court proceeding under § 3582(c)(2) to impose a term comparably below the amended range" (internal quotation marks omitted)).

As a plurality of this Court acknowledged in *Freeman*, all sentences – including sentences reduced pursuant to § 3582(c)(2) – are reviewed for abuse of discretion. 564 U.S. at 532 (citing *Gall*, 552 U.S. at 49); see also *United States* v. *Lafayette*, 585 F.3d 435, 439 (D.C. Cir. 2009) ("Because section 3582(c)(2) unambiguously grants discretionary authority to the district court . . . we follow the familiar standard for review of sentencing decisions . . . ."). A district court ruling on a § 3582(c)(2) motion, then, "should set forth enough to satisfy the appellate court that he has considered the parties' arguments *and* has a reasoned basis for exercising his own legal decisionmaking authority." *Rita* v. *United States*, 551 U.S. 338, 356 (2007) (emphasis added) (citing *Taylor*, 487 U.S. at 336-37); see also *Gall*, 552 U.S. at 50 ("After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review . . . ."). While lengthy explanation ordinarily will not be necessary, "[t]he touchstone of reasonableness is whether the record as a whole reflects rational and meaningful consideration of the factors . . . ." *United States* v. *Grier*, 475 F.3d 556, 571 (3d Cir. 2007) (en banc).

Finally it is precisely because of the "limitations" of these proceedings that some explanation for denying a full reduction is all the more necessary. Unlike original sentencing proceedings, defendants do not have the right to a hearing or counsel in § 3582(c)(2) proceedings. See *United States* v. *Webb*, 565 F.3d 789, 794 (11th Cir. 2009); Fed. R. Crim. P. 43(b)(4). And,

unlike at original sentencing proceedings, the Commission's policy statements are binding on district courts in the § 3582(c)(2) context, reflecting the "substantial role Congress gave the Commission with respect to sentence-modification proceedings." *Dillon*, 560 U.S. at 826. Given the fewer procedural checks available in § 3582(c)(2) proceedings, combined with the circumscribed nature of judicial discretion in such proceedings, an explanation for denying a full reduction is the only means to ensure that the district court did not render an arbitrary decision.

III. THE COURT OF APPEALS ERRED BY SUBSTITUTING ITS OWN SPECULATION FOR A MEANINGFUL REVIEW OF THE DISTRICT COURT'S ORDER.

A. The Tenth Circuit Had To Speculate About Which Factors Were Dispositive In Mr. Chavez-Meza's Sentence Modification.

Meaningful appellate review under an abuse-of-discretion standard requires that the court of appeals not have to speculate about which factors a sentencing judge considered and how it weighed those factors in arriving at its modification decision. *Taylor*, 487 U.S. at 336-37.

In this case, it is not at all evident how the district court exercised its discretion in reducing Mr. Chavez-Meza's sentence. The reduced sentence of 114 months is not proportional to where Mr. Chavez-Meza's original sentence fell within the guideline range. The district court, consistent with the government's request, originally sentenced Mr. Chavez-Meza to 135 months, which represented the low-end of the guideline range. A proportional sentence would have resulted in a reduced sentence of 108 months, not 114 months.

Apparently relying, in part, on *United States* v. *Zayas-Ortiz*, 808 F.3d 520 (1st Cir. 2015), the Tenth Circuit below perfunctorily stated that it thought it "safe to infer" that the district court relied on the "materials" submitted by the parties (which included information about one minor incident of misconduct while in prison) to decide that it would not proportionally reduce Mr. Chavez-Meza's sentence. J.A. 57. Yet, unlike the Tenth Circuit, the court in *Zayas-Ortiz* relied not on its own review of the record to "infer" what it thought might be pertinent, but on a party's specific position supported by specific facts in the record.[5] 808 F.3d at 524.

Rather than conducting any meaningful review of the district court's decision in this case, the Tenth Circuit instead simply rationalized *post hoc* the dis-

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[5] The Tenth Circuit also cited to *Smalls*, 720 F.3d 193, and *United States* v. *Brown*, 497 F. App'x 196 (3d Cir. 2012), as cases holding "that no elaborate explanation is necessary in § 3582 sentence-reduction proceedings." J.A. 57. Similar to *Zayas-Ortiz*, however, *Brown* is inapposite and does not support the Tenth Circuit's holding that *no* explanation is necessary so long as the district court signed a form order including the provision that it had considered the relevant factors. In *Brown*, "[b]oth the original and the reduced sentences were in the middle of the applicable Guidelines ranges." 497 F. App'x at 197. Thus, because the reduced sentence "was otherwise consistent with the original sentence, which it had explained in the original sentencing hearing," it was "evident in the record" how the district court analyzed the relevant factors. *Id.* at 198. While *Smalls* did hold "that, in the absence of evidence a court neglected to consider relevant factors, the court does not err in failing to provide a full explanation for its § 3582(c)(2) decision," 720 F.3d at 196, it, too, is inapposite because it also involved a proportional sentence reduction. *Id.* at 195. That said, the Fourth Circuit has summarily extended *Smalls* to situations, like here, that involve a disproportionate reduction. *See United States* v. *Locklair*, 668 F. App'x 477, 477-78 (4th Cir. 2016) (per curiam).

trict court's decision. As the Court in *Taylor* understood, however, there are several problems with the Tenth Circuit's approach, "not the least of which is that the district court did not articulate" the reason that the appellate court "inferred." 487 U.S. at 337.

Ultimately, the court of appeals' decision to look to the record and "infer" why the district court did what it did erroneously substitutes an appellate court's speculation for a *meaningful* review of the district court's decision. See *id.* ("Because the District Court did not fully explicate its reasons . . ., we are left to speculate in response to some of the parties' arguments pro and con."); *United States* v. *Zanghi*, 209 F.3d 1201, 1204 (10th Cir. 2000) ("[W]here there is no record of the judge's decisionmaking process, our review loses its appellate character and becomes instead a post hoc assumption of the district court's responsibilities."); cf. *Liti* v. *C.I.R.*, 289 F.3d 1103, 1105 (9th Cir. 2002) ("Although we could review the record and speculate on which reasons the court below found persuasive, doing so would merely substitute our reasons for those of the Tax Court.").

While, theoretically, it is *possible* the district court thought the one disciplinary sanction significant enough to warrant, in effect, an extra six months in prison, it equally is possible that the district court relied on an entirely different factor, or set of factors, and did not even consider the disciplinary sanction. See U.S.S.G. § 1B1.10 cmt. 1(B)(iii) (providing that a district court "may" take into account the defendant's post-sentencing conduct when determining the extent of a reduction).

The Tenth Circuit's speculation raises more questions than it answers. For example, if the district court's decision not to reduce Mr. Chavez-Meza's sentence proportionally was predicated on the one inci-

dent of misconduct, then the Court somehow dismissed the weight of Mr. Chavez-Meza's documented good conduct – which included the completion of several hours of educational courses, enrollment in a GED program, being assigned work duties, and his attempts to enroll in a drug treatment program. Further, did the district court consider the fact that the Bureau of Prisons considers the misconduct in which Mr. Chavez-Meza engaged, i.e., "phone abuse" with a severity code of 397, to be a relatively minor transgression akin to being unsanitary or untidy (severity code 330), failing to stand during count (severity code 320), or smoking in an unauthorized area (severity code 332)? See Fed. Bureau of Prisons, U.S. Dep't of Justice, Inmate Discipline Program tbl. 1 at 51-52 (July 8, 2011), https://www.bop.gov/policy/progstat/5270_009.pdf.

Perhaps the district court had a blanket policy of denying full reductions to any defendant who had any type of reported discipline while in prison, no matter the severity. Yet application of such a policy to Mr. Chavez-Meza, which effectively imprisons him for an additional six months after the Bureau of Prisons already sanctioned him with the loss of phone privileges for 30 days and the loss of work privileges for 180 days (but did not see fit to forfeit any of his good time), would surely constitute an abuse of discretion. See *id.* tbl. 1 at 52-53; see also 18 U.S.C. § 4042(a)(3) (providing Bureau of Prisons with authority to discipline inmates).

Moreover, the district court's original sentence of Mr. Chavez-Meza was grounded solely in the Guidelines, i.e., by the weight and type of drug underlying Mr. Chavez-Meza's convictions, and the Government specifically requested a sentence at the bottom of the guidelines ranges. Since the Commission saw fit to

retroactively reduce the punishment for the crimes for which Mr. Chavez-Meza was convicted, wouldn't an effective six-month term of imprisonment for one relatively minor transgression while incarcerated undermine the SRA's goals of uniformity in sentencing? See *Freeman*, 564 U.S. at 533 ("Section 3582(c)(2) contributes to that goal by ensuring that district courts may adjust sentences imposed pursuant to a range that the Commission concludes are too severe, out of step with the seriousness of the crime and the sentencing ranges of analogous offenses, and inconsistent with the Act's purposes."); *Dillon*, 560 U.S. at 828 (discussing how § 3582(c)(2) is "intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines."); 28 U.S.C. § 991(b)(1)(B) (providing that purpose of the Commission is to, *inter alia*, "avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct"); cf. *Kimbrough* v. *United States*, 552 U.S. 85, 109-110 (2007) (discussing disparity between within-guideline range sentences for crack and powder cocaine offenses); *United States* v. *Reyes-Hernandez*, 624 F.3d 405, 421-22 (7th Cir. 2010) (applying *Kimbrough* and holding that district courts may consider whether the absence of fast-track programs in immigration cases create unwarranted sentencing disparities).

The issues above go to the heart of whether the district court abused its discretion – questions that Mr. Chavez-Meza could have asserted on appeal had the district court actually reasoned as the court below speculated that it did. The fact is, neither Mr. Chavez-Meza, nor the Tenth Circuit, nor this Court knows why the district court reduced Mr. Chavez-Meza's sentence disproportionately to where his orig-

inal sentence fell within the guideline range. It thus is impossible on review to determine whether it "ignored or slighted a factor that Congress . . . deemed pertinent." *Taylor*, 487 U.S. at 337.

B. The Duty To Provide Enough Explanation To Enable Meaningful Appellate Review Under An Abuse Of Discretion Standard Is Not Abrogated When Defendants Receive A Within-Guidelines Sentence Modification.

Finally, the opinion below grounded its decision in the unsupported statement that "a sentencing court does not need to explain the reasons behind a within-guidelines sentence." J.A. 59. But this cannot be so. As the Court made clear in *Gall*, "[r]egardless of whether the sentence imposed is inside or outside the Guidelines range, the appellate court must review the sentence under an abuse-of-discretion standard." 552 U.S. at 51. At bottom, this "standard directs appellate courts to evaluate what motivated the district judge's individualized sentencing decision." *Rita*, 551 U.S. at 364 (Stevens, J., concurring). Although a within-guidelines sentence "will not necessarily require lengthy explanation," "[t]he sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Id.* at 356 (majority opinion) (citing *Taylor*, 487 U.S. at 336-37); see also, *e.g.*, *United States* v. *Washington*, 739 F.3d 1080, 1082 (7th Cir. 2014) (remanding for explanation of sentence at low end of guideline range because sentencing courts are "required to provide *some* explanation for the sentence imposed beyond a rote and summary invocation of the § 3553(a) factors"); *United States* v. *Carey*, 589 F.3d 187, 195 (5th Cir. 2009) ("Within-guidelines sen-

tences require an explanation that allows for meaningful appellate review and the perception of fair sentencing.").

The court of appeals' overly-broad claim that a district court does not need to explain why it chose a particular sentence within a guideline range appears to have been derived from its reading of the earlier case of *United States* v. *Ruiz-Terrazas*, 477 F.3d 1196 (10th Cir. 2007), which relied heavily on § 3553(c) for its analysis. See J.A. 53, 55 ("'When imposing a sentence within the properly calculated Guidelines range, a district court must provide as Section 3553(c) indicates by its plain language, only a general statement noting the appropriate guideline range and how it was calculated'" (quoting *Ruiz-Terrazas*, 477 F.3d at 1202)). Contra *United States* v. *Sanchez-Juarez*, 446 F.3d 1109, 1117 (10th Cir. 2006) ("We are . . . persuaded that our pre-*Booker* requirement that district courts provide sufficient reasons to allow meaningful appellate review of their discretionary sentencing decisions continues to apply in the post-*Booker* context."). However, to the extent that *Ruiz-Terrazas* can be read, as the court below apparently believed, for the proposition that a district court never needs to provide reasons for sentencing a defendant to a within-guideline range sentence, that case predated both *Rita* and *Gall*, and is no longer good law. See *Ruiz-Terrazas*, 477 F.3d at 1203 (recognizing that *Rita* was pending before the Court).

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below.

Respectfully submitted,

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APPENDIX

STATUTORY & GUIDELINE APPENDIX

18 U.S.C. § 3553 – Imposition of a Sentence

(a) Factors To Be Considered in Imposing a Sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.[1]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

* * * *

(c) Statement of Reasons for Imposing a Sentence.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public rec-

ord of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,,[3] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

* * * *

18 U.S.C. § 3582 – Imposition of a sentence of imprisonment

(a) Factors To Be Considered in Imposing a Term of Imprisonment.—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of Finality of Judgment.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

> (1) modified pursuant to the provisions of subsection (c);
>
> (2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or
>
> (3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

* * * *

28 U.S.C. § 991 – United States Sentencing Commission; establishment and purposes

* * * *

(b) The purposes of the United States Sentencing Commission are to—

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal con-

duct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

28 U.S.C. § 994 – Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11) [1] of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agree-

ment entered into pursuant to rule 11(e)(1); and

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

* * * *

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

* * * *

U.S.S.G. § 1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)

(a) Authority.—

(1) In General.—In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed

in subsection (d) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

(2) Exclusions.—A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if—

(A) none of the amendments listed in subsection (d) is applicable to the defendant; or

(B) an amendment listed in subsection (d) does not have the effect of lowering the defendant's applicable guideline range.

(3) Limitation.—Consistent with subsection (b), proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant.

(b) Determination of Reduction in Term of Imprisonment.—

(1) In General.—In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant

was sentenced and shall leave all other guideline application decisions unaffected.

(2) Limitation and Prohibition on Extent of Reduction.—

(A) Limitation.—Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) Exception for Substantial Assistance.—If the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate.

(C) Prohibition.—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

(c) Cases Involving Mandatory Minimum Sentences and Substantial Assistance.—If the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation

of §5G1.1 (Sentencing on a Single Count of Conviction) and §5G1.2 (Sentencing on Multiple Counts of Conviction).

(d) Covered Amendments.—Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, 706 as amended by 711, 715, 750 (parts A and C only), and 782 (subject to subsection (e)(1)).

(e) Special Instruction.—

(1) The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later.

Commentary

Application Notes:

1. Application of Subsection (a).—

(A) Eligibility.—Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (d) that lowers the applicable guideline range (i.e., the guideline range that corresponds to the offense level and criminal history category determined pursuant to §1B1.1(a), which is determined before consideration of any departure provision in the Guidelines Manual or any variance). Accordingly, a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement if: (i) none of the amendments listed in subsection (d) is applicable to the defendant; or (ii) an amendment listed in subsection (d) is applicable to the defendant

but the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).

(B) Factors for Consideration.—

(i) In General.—Consistent with 18 U.S.C. § 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. § 3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(ii) Public Safety Consideration.—The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(iii) Post-Sentencing Conduct.—The court may consider post-sentencing conduct of the defendant that occurred after imposition of the term of imprisonment in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

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