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

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

The government's position in this case rests on premises that are not just flawed, but that would gravely undermine the Court's jurisprudence. First, the rule expressed in *United States* v. *Taylor*, 487 U.S. 326 (1988), that when Congress requires courts to consider particular factors in exercising their discretion, those courts must also explain how they weighed the factors, reflects a far broader principle than the government's crabbed reading. As evidenced by the Court's reliance on *Taylor* in the context of original sentencing, this duty of articulation applies whenever Congress directs courts to consider certain factors—not just to situations involving "binary" choices or "departure[s] from the norm." Resp't Br. 28, 30. Moreover, contrary to the government's strawman, Mr. Chavez-Meza has never argued that this rule requires district courts to provide "extensive," "detailed," or "formal" explanations. *Id.* at 11, 13, 14, 24, 28, 30, 31, 33. What is required is simply "enough to satisfy the appellate court that [the judge] 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). Not requiring any explanation would allow district courts to exercise unfettered and unreviewable discretion. Second, the interpretive canon "expressio unius est exclusio alterius" is inapplicable given the textual incongruities between the relevant statutes. Application of the doctrine here would also lead to absurd results in other post-sentencing proceedings. Third, a disproportionate sentence reduction demands explanation because it indicates that some new factor or consideration, not taken into account at the original sentencing proceeding, led the district court to deviate from its original

assessment relative to the judgment of the Sentencing Commission. Absent some explanation for the deviation, review would be an empty formality because the appellate court would be left to speculate as to what that factor or consideration was. Finally, a district court's silent or ambiguous order does not give rise to a presumption that it correctly balanced the relevant factors. When the basis of the district court's decision is unclear, as it is here, the case should be remanded.

I. DISTRICT COURTS MUST ARTICULATE REASONS WHEN EXERCISING DISCRETION GRANTED BY CONGRESS.

A. The Duty To Consider Certain Factors Necessarily Entails The Duty Of Articulation.

The government cannot avoid the Court's holding in *Taylor* that where Congress directs a district court to consider certain factors, the court must, "*whatever* its decision, *clearly articulate* their effect in order to permit meaningful appellate review." 487 U.S. at 336 (emphases added). Such review is necessary to ensure that the district court "act[ed] within the limits prescribed by Congress." *Id.* at 337. Only when district courts adhere to the twin duties of consideration and articulation, then, may appellate review for abuse of discretion be considered "meaningful."[1]

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[1] Even had Congress in § 3582(c)(2) not directed district courts to the § 3553(a) factors or U.S.S.G. § 1B1.10, a district court would still be required to articulate some reasoning in order to effectuate meaningful appellate review. See *Taylor*, 487 U.S. at 336 ("Had Congress merely committed the choice of remedy to the discretion of district courts, without specifying factors to be considered, a district court would be expected to consider 'all relevant public and private interest factors,' and to balance

The government contends that *Taylor* does not apply because "[i]mporting Section 3553(c) . . . would nullify Congress's decision to establish an explanatory requirement for original sentencing proceedings, while declining to do so for more streamlined sentence reduction determinations." Resp't Br. 25. But the government misreads Mr. Chavez-Meza's position as he has never argued for any such "importation."[2]

Indeed, "importing" § 3553(c) into § 3582(c)(2) would make no sense. Congress does not just merely require sentencing courts at an original sentencing hearing "to explain on the record the reasons for the sentence imposed," Resp't Br. 18, but it demands that they do so "in open court." § 3553(c). Section 3582(c)(2), in contrast, "does not authorize a sentencing or resentencing proceeding," *Dillon* v. *United States*, 560 U.S. 817, 825 (2010), and the vast majority of § 3582(c)(2) motions are decided without a hearing. It is illogical, then, to think that Congress's decision not to import the heightened procedural requirements found in § 3553(c) meant anything other

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those factors reasonably." (quoting *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 257 (1981)).

[2] The government incorrectly asserts that Mr. Chavez-Meza "identifie[d] a key flaw in his own position" by noting that requiring articulation in a § 3582(c)(2) proceeding is, in effect, akin to requiring an explanation in original sentencing. Resp't Br. 25. Mr. Chavez-Meza's brief (in the very next sentence) goes on to explain that, while the two proceedings are fundamentally different in nature, the finality and gravity of the end result is the same. This "end result," Pet'r Br. 24, is no different than, say, the dismissal of an indictment with or without prejudice at issue in *Taylor*. The key point is simply that where Congress identifies factors that must be considered, district courts must "clearly articulate their effect in order to permit meaningful appellate review." *Taylor*, 487 U.S. at 336.

than Congress understood that § 3553(c) applied only at original sentencing proceedings.

The government's position that all sentence reductions falling anywhere within an amended-guideline range are unreviewable (because they necessarily fall within congressional limits), Resp't Br. 27-28, fundamentally misreads *Taylor*. The limitations at issue in *Taylor* were not limits on the ultimate, substantive, outcome, e.g., dismissal of an indictment with or without prejudice, but a framework of factors created by Congress to guide a district court's discretion. 487 U.S. at 337 ("Only [by clearly articulating its reasoning] can an appellate court ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent to the choice of remedy, thereby failing to act within the limits prescribed by Congress."); see Henry J. Friendly, *Indiscretion About Discretion*, 31 Emory L.J. 747, 770 (1982) ("Once it has been deemed appropriate to limit the range of discretion, whether through the announcement of a principle of preference or the specification of factors, it becomes necessary that the trial court articulate the basis for its decision."). In the context of § 3582(c)(2), these "limitations" are both "the factors set forth in section 3553(a) to the extent that they are applicable" and the "applicable policy statements." § 3582(c)(2).

The government's attempts to distinguish *Taylor* on the grounds that this case "does not raise the same concerns as a district court's binary decision," or because it "does not involve a departure from the norm that must be justified," Resp't Br. 28, 30, are equally ineffective. Nothing in *Taylor* suggested that the need for a reviewing court to ensure that a district court did not "ignore[] or slight[] a factor that Congress has deemed pertinent to the choice of remedy," 487 U.S.

at 337, hinged on "binary" or "incremental[]" choices. Resp't Br. 28. This Court's reliance on *Taylor* in the sentencing context reveals the fallacy of the government's position at any rate. See *Rita*, 551 U.S. at 356; *Gall* v. *United States*, 552 U.S. 38, 68 (2007) (Alito, J., dissenting).

Similarly, there was no "norm" in *Taylor* that needed to be "justified" on review. *Taylor* acknowledged that "Congress did not intend any particular type of dismissal to serve as the presumptive remedy for a Speedy Trial Act violation." 487 U.S. at 334. "[T]he decision to dismiss with or without prejudice was left to the guided discretion of the district court, and . . . neither remedy was given priority." *Id.* at 335. Even if the government were correct in this regard, this case—where Mr. Chavez-Meza's reduced sentence represented an increase of over 22% in relation to where his original sentence fell within the guideline range—*does* present "a departure from the norm." See *United States* v. *Burrell*, 622 F.3d 961, 965 (8th Cir. 2010) ("Because [defendant]'s initial and amended sentences are not proportional, we cannot presume that the reasons given for imposing a sentence near the middle of the guidelines range at his initial sentencing apply with equal force to the amended sentence at the top of the amended guidelines range.").

B. The Need For Meaningful Appellate Review Demands Explanation.

The government further misconstrues *Taylor* and other cases as holding that articulation is only required in cases involving "case-specific concerns," or where lower courts "depart[ed] from an established baseline." Resp't Br. 28. But nothing in the Court's precedent supports these arguments.

The Court in *Taylor* reversed because "[t]he District Court failed to consider all the factors relevant to" its discretionary choice. 487 U.S. at 344. Similarly, the Court's decision to reverse in *Perdue* v. *Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), was rooted in the understanding that "[i]t is essential that the judge provide a reasonably specific explanation for *all* aspects of a fee determination, including any award of an enhancement. Unless such an explanation is given, adequate appellate review is not feasible . . . ." *Id.* at 558 (emphasis added). And in *Northcross* v. *Board of Education*, 412 U.S. 427 (1973) (per curiam), the Court remanded because it was impossible to review the propriety of the fee ruling given that the appellate court "did not . . . state reasons for the denial." *Id.* at 427; *accord Hensley* v. *Eckerhart*, 461 U.S. 424, 438 (1983); see also *United States* v. *Marion*, 590 F.3d 475, 478 (7th Cir. 2009) ("[I]t is impossible for us 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. Some minimal explanation is required."). Certainly, none of these cases can be read for the principle that the government asks the Court to adopt, *i.e.*, that a district court's discretionary choice will be upheld so long as the court utters magic words providing that it considered the relevant factors, but does not at all articulate how those factors impacted its choice.

The government ultimately does not dispute that a district court's sentence-reduction decision is reviewed for abuse of discretion and that, to effectuate appellate review, there must be a "meaningful basis" on which such review can turn. Resp't Br. 31. Yet the government posits that such a meaningful basis is found whenever "the district court . . . (1) grant[s] a

Section 3582(c)(2) motion; (2) impose[s] a sentence within the revised guidelines range; and (3) confirm[s] that it considered the appropriate Section 3553(a) factors." *Id.* Adopting the government's position would mean that every district court's unreasoned sentence-reduction decision issued on an AO-247 Form would be completely unreviewable so long as the court imposed a reduced sentence anywhere within the amended-guideline range.

The effect of the government's proposed rule would be to preclude appellate review of the majority of sentence-reduction decisions. U.S. Sentencing Comm'n, 2014 Drug Guidelines Amendment Retroactivity Data Report tbl. 6 (Jan. 2018), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20180201-Drug-Retro-Analysis.pdf (showing that 64% of sentence-reduction motions granted pursuant to Amendment 782 were for within-guideline-range sentences). In the context of this case, this means that had the district court, without explanation, reduced Mr. Chavez-Meza's sentence by only one month (or even if it "granted" Mr. Chavez-Meza's motion but left his sentence the same), the court of appeals would be required to hold that the district court did not abuse its discretion.

The government offers no cases from this Court in support of such a radical reformation of the meaning of "meaningful appellate review." And for good reason—the Court in *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), rejected the idea that "a district court has virtually unfettered discretion" to act whenever Congress imbues it with discretionary power. *Id.* at 414. "[W]hen Congress invokes [a court's] conscience to further transcendent legislative purposes, what is required is the principled applica-

tion of standards consistent with those purposes." *Id.* at 417 (internal quotation marks omitted). Absent articulation of *how* a district court considered and weighed the relevant factors, a reviewing court has no basis upon which to make that determination.

C. The Government Misconstrues The Court's Precedent.

The government, following the Tenth Circuit, errs in relying upon a presumption announced in *Walton* v. *Arizona*, 497 U.S. 639 (1990), *overruled by Ring* v. *Arizona*, 536 U.S. 584 (2002), that "[t]rial judges are presumed to know the law and to apply it in making their decisions." *Id.* at 653; see Resp't Br. 38; J.A. 56. The Court made that statement in the context of considering, on federal habeas review, whether a state trial judge in sentencing a person to death pursuant to a potentially vague aggravating factor, should be presumed to know that a state appellate court had construed the factor to fall within constitutional limits. The Court has relied on that presumption only in this unique context. See*, e.g.*, *Lambrix* v. *Singletary*, 520 U.S. 518, 532 n.4 (1997); *Arave* v. *Creech*, 507 U.S. 463, 471 (1993); *Sochor* v. *Florida*, 504 U.S. 527, 538 (1992).

Extending that principle and applying it to every case involving review for abuse of discretion on direct appeal would eradicate the idea of meaningful appellate review. The only case cited by the government for the proposition that judicial silence results in a presumption that the judge did not abuse his or her discretion is *Sprint/United Management Co.* v. *Mendelsohn*, 552 U.S. 379 (2008). But that case is inapposite. In *Mendelsohn*, a unanimous Court held that the court of appeals erred when it determined that the district court applied an incorrect legal standard where the district court's minute order was ambigu-

ous. *Id.* at 386. The Court reversed, but not on the ground that the court of appeals should have presumed that the district court applied the *correct* standard. Instead, the Court vacated and remanded to the district court with instructions to "clarify the basis for its evidentiary ruling." *Id.* at 388.

The government also relies on *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384 (1990), for the proposition that abuse of discretion occurs where it is evident that the district court considered an improper factor or refused to consider a proper one, i.e., where it based its ruling on an erroneous assessment of the law. Resp't Br. 34. According to the government, it is incumbent on defendants such as Mr. Chavez-Meza to point to something in the record evidencing that the district court made such an error. But the government simply ignores the totality of the Court's holding. The full pertinent sentence reads: "A district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law *or* on a clearly erroneous assessment of the evidence." *Cooter & Gell*, 496 U.S. at 405 (emphasis added). Of course, only by knowing *how* a district court assessed the evidence in the first place may a reviewing court determine whether that assessment was erroneous. See *id.* (upholding because the district court had "applied the correct legal standard *and* offered substantial justification for its finding" (internal quotation marks omitted) (emphasis added)).

By quoting only the first half of the *Cooter & Gell* equation and turning a blind eye to the other, the government seeks to radically disrupt what has remained a constant in the Court's jurisprudence. The better rule—and the only one that accords with this Court's precedent—is simply to require a district

court in a § 3582(c)(2) proceeding to provide some explanation for its decision.

Such an explanation need not be lengthy and would not burden district courts. Contrary to the government's apparent understanding, Mr. Chavez-Meza has never argued for a rule requiring district courts to provide "extensive," "detailed," or "formal" explanations, Resp't Br. 11, 13, 14, 24, 28, 30, 31, 33, of their sentence-reduction decisions. As in every case where a district court makes a discretionary ruling, "[t]he appropriateness of brevity or length, conciseness or detail, when to write, what to say, depends upon circumstances." *Rita*, 551 U.S. at 356. What is required of the judge, however, is an explanation sufficient "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.* (emphasis added).

When a judge merely assures the parties that he followed the law in considering certain factors, but provides no explanation as to how those factors affected its decision, it is impossible for any party to assess the decision. In the face of such judicial silence, only in the most Kafkaesque world would it make sense to put the onus on an aggrieved party to identify how, beyond the fact of inarticulation, the judge erred.

D. Sentence-Reduction Decisions Are Fully Reviewable On Appeal.

Relying on *United States* v. *Bowers*, 615 F.3d 715 (6th Cir. 2010), the government wrongly asserts that courts need not explain their § 3582(c)(2) decisions because appellate courts lack jurisdiction to review them for "substantive reasonableness." Resp't Br. 31-32. As an initial matter, the premise of this argument

is faulty as all other courts to have considered that question directly have rejected it.[3] *United States* v. *Rodriguez*, 855 F.3d 526, 529-32 (3d Cir. 2017); *United States* v. *Jones*, 846 F.3d 366, 369-70 (D.C. Cir. 2017); *United States* v. *Washington*, 759 F.3d 1175, 1180-81 (10th Cir. 2014); *United States* v. *Dunn*, 728 F.3d 1151, 1155-58 (9th Cir. 2013).

Even if it were correct, *Bowers* does nothing to impact this case. To the extent the distinction between "procedural" and "substantive" review of a sentence holds in the § 3582(c)(2) context, Mr. Chavez-Meza's claimed error—that the district court abused its discretion by failing to provide any reason for its decision—is procedural. See *Gall*, 552 U.S. at 51. Even after *Bowers*, the Sixth Circuit recognizes such challenges and reverses for the same reason Mr. Chavez-Meza advances. *E.g.*, *United States* v. *Howard*, 644 F.3d 455, 461 (6th Cir. 2011) (remanding § 3582(c)(2) order partially granting reduction because it was impossible "to ensure that the district court did not abuse its discretion because the order shows only that the district court exercised its discretion rather than showing *how* it exercised that discretion" (internal quotation marks and brackets omitted)).

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[3] The issue of an appellate court's jurisdiction over a district court's § 3582(c)(2) decision was not pressed or passed on below, or raised in response to the petition for certiorari. Only in exceptional circumstances will this Court entertain such questions. *California* v. *Taylor*, 353 U.S. 553, 556 n.2 (1957); *Duignan* v. *United States*, 274 U.S. 195, 200 (1927). Tellingly, the government does not assert the existence of any such exceptional circumstance.

II. THE GOVERNMENT'S *EXPRESSIO UNIUS* ARGUMENT IS INAPPLICABLE AND WOULD LEAD TO ABSURD RESULTS.

Relying on the *expressio unius* canon of statutory construction, the government reasons that Congress's express decision to include heightened explanatory requirements in § 3553(c) necessarily implies that Congress intended that district courts need not provide explanations in ruling on § 3582(c)(2) motions. Resp't Br. 18, 25. But the government fails to heed the warning that the canon "must be applied with great caution, since its application depends so much on context." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012). The Court has "held repeatedly, the canon . . . does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (internal quotation marks omitted); see also *Chevron U.S.A. Inc.* v. *Echazabal*, 536 U.S. 73, 81 (2002). Even then, the doctrine "is only a guide, whose fallibility can be shown by contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion of its common relatives." *United States* v. *Vonn*, 535 U.S. 55, 65 (2002).

The government's *expressio unius* argument runs afoul of its own description of the relevant statutes elsewhere in its brief. In its description of the "limited" nature of § 3582(c)(2) proceedings, for example, it points out the substantial differences between original sentencing proceedings under § 3553 and modification proceedings under § 3582(c)(2). Resp't Br. 15. As addressed above, § 3553(c)'s explanatory require-

ment does not simply require courts to explain their reasons. Among other things, it requires them to do so "in open court." It would make no sense to "import" this provision into § 3582(c)(2) because sentence-reduction proceedings are almost always resolved without a hearing. Given this incongruity, Congress's decision not to incorporate or refer to § 3553(c) in § 3582(c)(2) does not give rise to an inference that Congress meant to eliminate any explanatory requirement for sentence-reduction decisions.

Aside from these textual incongruities, the government's proposed "*expressio unius* implication," Resp't Br. 25, would create severe interpretive problems for other post-sentencing provisions in the Sentencing Reform Act. If, as the government contends, the lack of "incorporation" of § 3553(c) in § 3582(c)(2) means that Congress did not intend for district courts to articulate their reasoning, this same logic would apply to § 3583—the provision pertaining to post-sentencing supervised release decisions. Like § 3582(c)(2), § 3583(e) directs district courts to consider certain § 3553(a) factors when deciding whether to terminate, extend, modify, or revoke a term of supervised release. Neither § 3582(c)(2) nor § 3583(e) contains a cross-reference to § 3553(c) or an express explanatory requirement.[4] Under the government's theory, a district court would have unfettered discretion to modify, revoke, or terminate a defendant's term of supervised release. The decision would remain unreviewable so long as the judge provided a "certification," Resp't Br. 30, that he considered the relevant factors.

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[4] While § 3583(e) refers to the Federal Rules of Criminal Procedure, *i.e.*, Fed. R. Crim. P. 32.1, that rule does not contain any express explanatory requirement or reference to § 3553(c).

That would create myriad problems. For example, a court, without giving *any* reasons, could revoke a defendant's supervised release and remand the defendant to prison. Similarly, a district court could avoid imposing any special conditions of supervised release at original sentencing and, then, without explanation, impose onerous special conditions post-sentencing under § 3583(e)(2). Finally, if a district court were to grant a violent offender an early termination of his or her supervised release, the government would rightfully expect the court to explain its decision. But under the government's theory, the district court's decision would be unreviewable.

These examples only serve to show that the Court does not apply the *expressio unius* canon to "infer congressional intent to override . . . background rule[s]" embedded within American jurisprudence. *Marx* v. *Gen. Rev. Corp.*, 568 U.S. 371, 382 (2013). To the contrary, the Court recognizes "that Congress legislates against the backdrop of certain unexpressed presumptions." *Bond* v. *United States*, 134 S. Ct. 2077, 2088 (2014) (internal quotation marks omitted). Indeed, "[t]he notion that some things 'go without saying' applies to legislation as it does to everyday life." *Id.*; see *Burns* v. *United States*, 501 U.S. 129, 136 (1991). As the above examples illustrate, it would be absurd to suggest that Congress intended, by negative implication, to relieve district courts of their basic duty to provide meaningful explanations of their decisions in post-sentencing proceedings.

In this regard, Mr. Chavez-Meza agrees with the government that "Congress was . . . relying on default norms of professional judicial judgment . . . [and on] background principles of judicial discretion" when enacting § 3582(c)(2) and directing courts to consider certain factors. Resp't Br. 23. Congress undoubtedly

was aware at the time of the bedrock principle that when Congress imbues courts with discretionary power, "such discretionary choices are not left to a court's 'inclination, but to its judgment; and its judgment is to be guided by sound legal principles.'" *Albemarle Paper Co.*, 422 U.S. at 416 (quoting *United States* v. *Burr*, 25 F. Cas. 30 (C.C. Va 1807) (No. 14692D) (Marshall, C.J.)). Given this jurisprudential backdrop, Congress, after directing district courts in sentence-reduction proceedings to consider specific factors, would have been exceedingly explicit had it truly intended to give them unfettered and unreviewable discretion.

III. DISPROPORTIONATE SENTENCE REDUCTIONS WILL ALWAYS DEMAND SOME EXPLANATION.

The government's assertion that a district court has no obligation to articulate any explanation whenever the reduced sentence falls at any point within the amended guideline range, Resp't Br. 31, is wrong. According to the government, the district court's reasoning in such a circumstance "will likely be implicit" because it necessarily accords with the Sentencing Commission's view of an appropriate sentence. *Id.* at 33. A district court, however, must always "make an individualized assessment based on the facts presented." *Gall*, 552 U.S. at 50. And district courts must "adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." *Id.* Indeed, the "abuse-of-discretion standard directs appellate courts to evaluate what motivated the district judge's individualized sentencing decision." *Rita*, 551 U.S. at 364 (Stevens, J., concurring). There is no basis for concluding that this principle does not apply in the sentence-reduction context where the standard of review is the

same. See *Freeman* v. *United States*, 564 U.S. 522, 532 (2011) (plurality opinion) (citing *Gall*).

In the context of an original sentencing, the Commission's expertise, resources, and analysis make it "fair to assume that the Guidelines, insofar as practicable, reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives." *Rita*, 551 U.S. at 350. Thus, when a district court, exercising its discretion, chooses to sentence a defendant at a point within a range established by the Guidelines, appellate courts are allowed to presume that the sentence is substantively reasonable. This is because the sentence "reflects both the Commission's and the sentencing court's judgment as to what is an appropriate sentence for a given offender." *Id.* at 351. In effect, the Commission and the sentencing judge are performing the same analytical task—the former at wholesale and the latter at retail. *Id.* at 348.

The Commission will occasionally retroactively amend a guideline after concluding that the wholesale range it originally had settled on should be reduced. At this point, the original retail point is discordant with the new wholesale range. Congress foresaw this possibility and enacted § 3582(c)(2), which allows district courts to reduce the original retail point so the sentence is again in line with the Commission's determination. *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").

The district court's duty to explain is understandably lessened when the reduced sentence is at the same point in the amended-guideline range relative to where the initial sentence fell within the original guideline range. Only in such a circumstance—and absent any noteworthy new information presented

since the original sentencing—might an appellate court reasonably conclude that the district court's assessment of the § 3553(a) factors in relation to the Commission's assessment of those same factors had not changed. *Burrell*, 622 F.3d at 965; cf. *United States* v. *Watkins*, 625 F.3d 277, 281 (6th Cir. 2010) (affirming denial of § 3582(c)(2) motion where defendant "did not present any new evidence of post-offense rehabilitation or other relevant factors not addressed in previous motions"); U.S.S.G. § 1B1.10(b)(2)(B) (allowing for proportional reductions in situations where defendant was initially sentenced below guideline range in cases of substantial assistance).

However, in cases such as this one—where the reduced retail point is disproportionate to where it originally fell within the wholesale range—any presumption of reasonableness does not hold. Indeed, employing its own logic, the government would have no recourse in a case where a district court: (1) initially sentences a defendant to the top of (or even above) the applicable guideline range; (2) reduces the sentence to the bottom of an amended-guideline range; but (3) does not provide any explanation as to why it made such a dramatic reduction.[5] The district court necessarily must have been swayed by a particular factor, or combination of factors, such that it thought it appropriate to deviate from its original assessment. While a district court's expressed reasoning in reaching that decision may or may not survive abuse-of-discretion review, such a review simply cannot be had unless the district court articulates how it considered the relevant factors.

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[5] In the context of this case, such a reduction would constitute five years, *i.e.*, 168 months to 108 months.

IV. THE COURT OF APPEALS SHOULD HAVE REMANDED.

The government's assertion that, in the context of an original sentencing, a district court need only "confirm its application of the Section 3553(a) factors and select a sentence within the correctly calculated guidelines range," Resp't Br. 42, is equally incorrect. Citing to *Taylor*, the Court in *Rita* held that a district court at sentencing must "set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for making his own legal decisionmaking authority." 551 U.S. at 356 (citing *Taylor*, 487 U.S. at 336-37). The Court affirmed in *Gall* that, whatever the sentence, the judge "must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." 552 U.S. at 50. While "context and the record" developed in open court at a full sentencing hearing may serve to flesh out a district court's Spartan reasoning, *Rita*, 551 U.S. at 358-59, this does not mean that reviewing courts rubber stamp within-guideline sentences when such context and record are lacking. See*, e.g.*, *United States* v. *Washington*, 739 F.3d 1080 (7th Cir. 2014); *United States* v. *Thomas*, 498 F.3d 336, 340-41 (6th Cir. 2007).

The court of appeals reasoned in this case that it could "infer" that the district court had "carefully considered" the record *because* the reduced sentence was disproportionate to where the original sentence fell within the guideline range. J.A. 57. This rationale does not hold because it could be used to support any disproportionate sentence reduction for any reason—proper or improper. The better understanding is that only when a reduced sentence is proportional to where the original sentence fell within the guideline

range (and where nothing new and noteworthy has happened) might it be said that "context and the record" could give meaning to a district court's silent § 3582(c)(2) decision.

More importantly, even assuming that a disproportionate reduction gives rise to an inference that the district court "carefully consider[ed]" the record says nothing about how it actually applied the § 3553(a) factors, or their effect on the judge's decision. For that, at its core, is what is being reviewed for abuse of discretion on appeal. See *Taylor*, 487 U.S. at 336. To this extent, the government's proposed explanation on remand, Resp't Br. 40, is equally inadequate.

The court of appeals offered that Mr. Chavez-Meza's "incident of misconduct while in prison," J.A. 57, might have had something to do with the district court's decision. Having found something in the record that might explain the disproportionate reduction, the government, relying on its misinterpretation of *Walton* and *Mendelsohn*, would have this Court say it is fair to presume the district court correctly weighed this factor against all others. See Resp't Br. 38. But just as the Court held in *Mendelsohn*, "the Court of Appeals should not have engaged in that inquiry." 552 U.S. at 383. Rather than make any presumption about the correctness, or incorrectness, of the district court's balancing of the relevant factors, "the Court of Appeals should have remanded the case to the District Court for clarification." *Id.* at 384; see also *id.* at 387 ("Rather than assess the relevance of the evidence itself and conduct its own balancing . . ., the Court of Appeals should have allowed the District Court to make these determinations in the first instance, explicitly and on the record.").

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded to the district court with instructions to articulate its reasons for reducing Petitioner Adaucto Chavez-Meza's sentence to 114 months.

Respectfully submitted,

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