NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

WILFREDO RODRIGUEZ,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Where a federal criminal defendant raises a colorable sentencing argument, must the district court acknowledge and respond to it?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Wilfredo Rodriguez, No. 03-20759-Cr-Cooke (August 15, 2022)

United States Court of Appeals (11th Cir.):

United States v. Wilfredo Rodriguez, No. 22-12883 (May 24, 2023)

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Wilfredo Rodriguez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 22-12883 in that court on May 24, 2023, which affirmed the denial of Petitioner's 18 U.S.C. § 3582(c) motion for sentence reduction.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit (App. A-1), is unreported but available at 2023 WL 3620954. The district court's order denying Petitioner's motion for sentence reduction (App. A-2) is unreported.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals was entered on May 24, 2023.

STATUTORY PROVISIONS INVOLVED

Title 18, U.S.C. § 3553(a)

(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 vocation 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.

(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.

18 U.S.C. § 3553(a).

Title 18, U.S.C. § 3582(c)

(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, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, 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; . . .

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

18 U.S.C. § 3582(c).

STATEMENT OF THE CASE

1. In July 2004, a jury in the Southern District of Florida convicted Mr. Rodriguez of six counts arising out of a reverse-sting "stash house" case: conspiracy to possess with intent to distribute five kilograms or more of cocaine, 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846 (Count 1); conspiracy to commit Hobbs Act robbery, 18 U.S.C. § 1951(a) (Count 2); conspiracy to use or carry a firearm during the offenses listed in Counts 1, 2, and 4, 18 U.S.C. § 924(o); attempted possession with intent to distribute five kilograms or more of cocaine, 18 U.S.C. §§ 846, 841(b)(1)(A) & 2 (Count 4); using or carrying a firearm during the offenses set forth in Counts 1, 2, and 4, 18 U.S.C. § 924(c) (Count 5); and, possession of a firearm by a convicted felon, 18 U.S.C. § 922(g) (Count 6).

2. The district court originally imposed concurrent life sentences on Counts 1 through 4 and 6, and a consecutive life sentence on Count 5, pursuant to 18 U.S.C. § 3559. However, in 2007, after finding Mr. Rodriguez's trial counsel provided ineffective assistance of counsel for failing to object to a defective § 3559 notice, the district court granted 28 U.S.C. § 2255 relief and reduced Mr. Rodriguez's term of imprisonment to 420 months.

3. On December 9, 2020, at the height of the COVID-19 epidemic, Mr. Rodriguez filed a motion seeking modification of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A). Section 3582(c)(1)(A)(i) provides that upon motion by a defendant who has fully exhausted administrative remedies, a district court may "reduce the

term of imprisonment . . . after considering the factors set forth in 18 U.S.C. § 3553(a) to the extent that they are applicable if it finds that . . . extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . . ." § 3582(c)(1)(A)(i).

4. Mr. Rodriguez's § 3582(c) motion alleged that he demonstrated "extraordinary and compelling reasons" for a reduction because he suffered from chronic Hepatitis C, hypertension, cirrhosis of the liver, and a seizure disorder, which greatly increased his risk of serious illness or death from COVID-19. He asked the district court to reduce Mr. Rodriguez's custodial sentence to time served. Mr. Rodriguez's § 3582(c) motion conceded that his disciplinary record had been "less than stellar" after the district court initially imposed a life sentence in 2005. He argued, however, that after the district court reduced his sentence in 2009 to 420 months – and thereby provided him with the possibility of release within his lifetime – he fully grasped the opportunities afforded him in order to prepare for that release. The motion presented evidence that he had successfully completed numerous classes on a variety of subjects, and that his work as a Quality Control Inspector through UNICOR was exemplary, and laid out a comprehensive release plan.

5. The government conceded that Mr. Rodriguez had established extraordinary and compelling reasons to justify his release, but argued that the release of Mr. Rodriguez was inconsistent with the sentencing factors set forth in 18

U.S.C. § 3553(a). Specifically, the government argued that Mr. Rodriguez's underlying conviction was for a violent offense, and that he had an extensive prior criminal history that also included violent conduct. However, the government did not dispute that since his 2009 resentencing to a 420-month term of imprisonment, Mr. Rodriguez had undertaken the extensive rehabilitative efforts documented in his motion, including his stellar work for UNICOR. The government further conceded that since Mr. Rodriguez's 2009 resentencing, he had been cited for only non-violent "minor" disciplinary infractions, the most serious of which was the possession of a cellular telephone nine years earlier. It argued, however, that Mr. Rodriguez's conduct in prison was problematic prior to 2009, and asserted that only incarceration in a high security facility has controlled his behavior.

6. In February 2021, Mr. Rodriguez supplemented his motion, noting that he had contracted COVID-19 and been hospitalized due to the serious illness he suffered as a result of that infection. In addition, Mr. Rodriguez presented the district court with medical records indicating that he recently had been diagnosed with a heart murmur, which placed him at even greater risk for complications following a COVID-19 infection, and that he suffered debilitating heart pain and shortness of breath after testing positive for the virus. Mr. Rodriguez noted that he was at risk of reinfection from the COVID-19 virus, and now had yet another medical condition that made him susceptible to serious complications from the virus, as well as the government's previous concession that his preexisting medical

conditions are an extraordinary and compelling reason for compassionate release.

7. Sixteen months later, on August 15, 2022, the district court denied the motion without a hearing. App. A-2. First, it rejected the government's concession that Mr. Rodriguez established "extraordinary and compelling reasons" for release in light of his array of serious medical conditions and the COVID-19 pandemic, stating that it "must disagree" because "'the extensive availability of vaccines clearly rebuts that dated argument." *Id.* at 2. Second, it determined that the factors in 18 U.S.C. § 3553(a) "do not support Defendant's early release." *Id.* at 3. The district court did not acknowledge or address in any meaningful way the mitigating evidence Mr. Rodriguez presented that his conduct since his 2009 resentencing had been non-violent, his disciplinary infractions minor, and his work for UNICOR exemplary. *See id.*, *passim*. Rather, it explained that Mr. Rodriguez's offense was violent, that he had "16 prior convictions, many involving violent conduct," his pre-2009 disciplinary record was problematic. *Id.* at 2-3.

8. Mr. Rodriguez appealed to the Eleventh Circuit, raising two arguments. First, he asserted that the district court erred in rejecting the government's concession that he demonstrated extraordinary and compelling reasons for a reduction. Second, he contended the district court improperly weighed the 18 U.S.C. § 3553(a) factors when it considered only his pre-2009 behavior and ignored his substantial mitigating behavior since the reduction of his sentence in 2009. Mr. Rodriguez noted that at the time the district court denied his

motion, he had been in federal custody for 19 years, and yet the district court failed to mention, must less consider, any of his actions for the previous 12 years. Moreover, Mr. Rodriguez noted that those 12 years comprised more than one-fifth of his entire life. And yet the when it weighed the § 3553(a) factors, the district court made no mention of that substantial portion of his life, nor the uncontested evidence of Mr. Rodriguez's mitigating behavior during that time. Mr. Rodriguez argued that the district court's silence as to this argument was error, and its denial of his motion for reduction of sentence an abuse of discretion.

9. The Eleventh Circuit affirmed, holding that the district court did not abuse its discretion when it denied Mr. Rodriguez's motion for sentence reduction. App. A-1 at 7.

a. The court of appeals concluded that "the District Court did not err in holding that the § 3553(a) factors did not support Rodriguez's compassionate release." *Id*. at 7. It determined that the district court adequately explained the factors it relied upon, "including the violent nature and circumstances of Rodriguez's offense, his violent history both in and out of custody, and the need to reflect the seriousness of his offense, afford adequate deterrence, and protect the public." *Id*. The court of appeals deemed immaterial the district court's "failure to discuss [Mr. Rodriguez's] mitigating evidence – such as [his] enrollment in courses in the past twelve years, his improved discipline history since 2009, his work in UNICOR, and his stellar work observations." *Id*. The district court's "failure to discuss [t]his

mitigating evidence," it concluded, "is not evidence that it failed to consider or ignored such evidence." *Id.*

b. In light of its conclusion that the district court did not err with respect to its consideration of the § 3353(a) factors, the Eleventh Circuit determined it need not also consider whether Mr. Rodriguez demonstrated an "extraordinary and compelling reason" for a sentence reduction, and affirmed the district court's denial of Mr. Rodriguez's motion. *Id.*

REASONS FOR GRANTING THE WRIT

I. The circuits disagree as to whether a district court must acknowledge and respond to a colorable sentencing argument by the defendant.

District courts lack the inherent authority to modify a term of imprisonment, but may do so within the provisions of 18 U.S.C. § 3582(c). 18 U.S.C. § 3582(c). Section 3582(c)(1)(A)(i) provides that upon motion by a defendant who has fully exhausted administrative remedies and demonstrates an "extraordinary and compelling reason" for a sentence reduction, a district court may "reduce the term of imprisonment . . . after considering the factors set forth in 18 U.S.C. § 3553(a) to the extent that they are applicable." § 3582(c)(1)(A)(i).

Section 3553(a) "specifies the factors courts are to consider in imposing a sentence." *Dean v. United States*, 581 U.S. 62, 67 (2017). Those factors include: (1) the offense's nature and circumstances and the defendant's history and characteristics; the need to (2) reflect the offense's seriousness; (3) afford adequate deterrence; (4) protect the public; (5) provide the defendant with educational or vocational training or medical care; to reflect (6) the kinds of sentences that are available; (7) the advisory guideline range; (8) the pertinent U.S. Sentencing Commission policy statements; and the need to (9) avoid unwarranted sentencing disparities, and (10) provide victims with restitution. 18 U.S.C. §§ 3553(a)(1)-(7).

"The list of [§ 3553(a)] factors is preceded by what is known as the parsimony principle, a broad command that instructs courts to 'impose a sentence sufficient, but not greater than necessary, to comply with' the four identified purposes of sentencing: just punishment, deterrence, protection of the public, and rehabilitation." *Dean*, 581 U.S. at 67 (quoting § 3553(a)). Section 3553(a) thus directs a district court "to take into account 'the nature and circumstances of the offense and the history and characteristics of the defendant,' as well as 'the need for the sentence imposed' to serve the four overarching aims of sentencing." *Id* at 67 (quoting 18 U.S.C. §§ 3553(a)(1), (2)(A)-(D)).

Although an appellate court reviews the district court's weighing of the § 3553(a) factors for an abuse of discretion, *Gall v. United States*, 552 U.S. 38, 51 (2007), the record as a whole must make clear that the district 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).

In the Third, Fourth, and Seventh Circuits, if a defendant raises a colorable sentencing argument, the district court cannot ignore it, but must instead acknowledge and respond to it. *See United States v. Begin*, 696 F.3d 405, 411 (3d Cir. 2012) (holding district court "must acknowledge and respond to any properly presented sentencing argument which has colorable legal merit and a factual basis;" "failure to give 'meaningful consideration' to any such argument renders the sentence procedurally unreasonable which, when appealed, generally requires a

remand for resentencing."); *United States v. Vidal*, 705 F.3d 742, 744 (7th Cir. 2013) ("A sentencing judge must address a defendant's principal arguments in mitigation."); *United States v. Villegas-Miranda*, 579 F.3d 798, 802 (7th Cir. 2009) ("A judge who fails to mention a ground of recognized legal merit . . . is likely to have committed an error or oversight. Even if the sentencing court stated convincing reasons for the sentence it imposed . . . silence in response to a defendant's principal arguments [is not] harmless error because we can never be sure of what effect it had, or could have had, on the court's decision.") (quotations and parenthesis omitted); *United States v. Montes-Pineda*, 445 F.3d 375, 380 (4th Cir. 2006) ("[W]e believe that a district court's explanation should provide some indication (1) that the court considered the § 3553(a) factors with respect to the particular defendant; and (2) that it has also considered the potentially meritorious arguments raised by both parties about sentencing."); *United States v. Cunningham*, 429 F.3d 673, 679 (7th Cir. 2005) ("We cannot have much confidence in the judge's considered attention to the [§ 3553(a)] factors in this case, when he passed over in silence the principal argument made by the defendant even though the argument was not so weak as not to merit discussion.").

In sharp contrast, Eleventh Circuit does not require district courts to acknowledge and respond to colorable sentencing arguments raised by a defendant. There, the district court is not required to "respond in detail to every argument presented by the defendant," nor "explain why it rejected non-frivolous arguments

for a different sentence." *United States v. Amadeo*, 487 F.3d 823, 833 (11th Cir. 2007). Rather, because a district court in the Eleventh Circuit "need only acknowledge that it considered the § 3553(a) factors, and need not discuss each of th[o]se factors in either the sentencing hearing or in the sentencing order," even if a district court's order makes no mention of mitigating evidence presented by a defendant, the Eleventh Circuit has held that it "cannot say that the court's failure to discuss this 'mitigating' evidence means that the court erroneously 'ignored' or failed to consider this evidence in determining [the defendant's] sentence." *Amadeo*, 487 F.3d at 832 (internal quotations and citations omitted).

The Eleventh Circuit relied on *Amadeo*'s reasoning below to reject Mr. Rodriguez's argument that the district court abused its discretion when it failed to acknowledge his mitigating evidence. *See* App. A-1 at 5 ("We have held that, although the district court 'made no mention of evidence that arguably mitigated in [defendant's] favor under § 3553(a), we [could not] say that the court's failure to discuss this mitigating evidence means that the court erroneously ignored or failed to consider this evidence in determining [his] sentence.") (quoting *Amadeo*, 487 F.3d at 833). The Eleventh Circuit explained, "the District Court's failure to discuss [Mr. Rodriguez's] mitigating evidence – such as [his] enrollment in courses in the past twelve years, his improved discipline history since 2009, his work in UNICOR, and his stellar work observations – is not evidence that it failed to consider or ignored such evidence." *Id.* at 6. Nowhere in its decision did the court of appeals give any

indication that Mr. Rodriguez's arguments in mitigation were frivolous or otherwise non-colorable. *See id.*, *passim*.

Had Mr. Rodriguez filed his motion for sentence reduction in the Third, Fourth, or Seventh Circuits, the district court would have been required to acknowledge and address Mr. Rodriguez's colorable arguments in mitigation when it balanced the § 3553(a) factors as part of its consideration of that motion, and its failure to do so would be reversible error and therefore an abuse of discretion. However, because he instead filed his motion in the Eleventh Circuit, the district court was not required to mention, much less address, Mr. Rodriguez's key argument for a reduced sentence.

Accordingly, there is a long-standing split in the circuits on the question presented.

II. The question presented is important.

Resolution of the question presented is important. A district court must weigh the 18 U.S.C. § 3553(a) factors every time it considers a motion for sentence reduction under § 3582(c). In 2022, there were more than 3,600 motions for sentence reduction decided by the federal courts. U.S. Sentencing Commission, *Compassionate Release Report: Fiscal Years 2020 to 2022*, Table 1 (entitled "Motions for Compassionate Release by Month of Court Decision") at 4, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20221219-Compassionate-Release.pdf (last

viewed Aug. 14, 2023). A decision from this Court will provide needed guidance for both district and appellate courts evaluating these § 3582(c) motions.

III. This case is a good vehicle for the Court to decide the question presented.

This case presents a clean vehicle to resolve the narrow question presented. Mr. Rodriguez clearly raised the district court's failure to acknowledge and address his mitigation evidence as an issue in his appeal before the Eleventh Circuit, and it is the only issue reached by the court of appeals.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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