No. 17-5639

In the Supreme Court of the United States

ADAUCTO CHAVEZ-MEZA, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the court of appeals correctly affirmed an order granting in part petitioner's motion for a discretionary postjudgment sentence reduction under 18 U.S.C. 3582(c)(2), where it found the record sufficient to show that the district court had permissibly exercised its discretion after considering the relevant factors.

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OPINIONS BELOW

The opinion of the court of appeals (J.A. 49-60) is reported at 854 F.3d 655. The order of the district court (J.A. 106-108) is unreported.

JURISDICTION

The judgment of the court of appeals (J.A. 61-62) was entered on April 14, 2017. On July 10, 2017, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including August 14, 2017, and the petition was filed on that date. The petition for a writ of certiorari was granted on January 12, 2018. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND SENTENCING GUIDELINES PROVISIONS INVOLVED

Pertinent statutes and United States Sentencing Guidelines provisions are reprinted in an appendix to this brief. App., *infra*, 1a-15a.

STATEMENT

Following a guilty plea in the United States District Court for the District of New Mexico, petitioner was convicted of conspiracy to possess methamphetamine with intent to distribute it, in violation of 21 U.S.C. 846, and possession of methamphetamine with intent to distribute it, in violation of 21 U.S.C. 841(b)(1)(A). J.A. 29-30. The district court sentenced him to 135 months of imprisonment, to be followed by five years of supervised release. J.A. 31-32. Following retroactive amendments to the Sentencing Guidelines, petitioner requested a postjudgment reduction of his sentence under 18 U.S.C. 3582(c)(2) to 108 months of imprisonment. J.A. 38-40, 43. The district court granted the motion in part and reduced petitioner's sentence to 114 months of imprisonment. J.A. 45-46; see J.A. 42-43. The court of appeals affirmed. J.A. 49-60.

1. For more than a year, petitioner and two co-conspirators distributed methamphetamine in Albuquerque, New Mexico, in conjunction with the Sinaloa Drug Cartel in Phoenix, Arizona. J.A. 74-75, 77. Petitioner and his co-conspirators typically obtained methamphetamine from a Sinaloa distributor in Phoenix, transported it to Albuquerque, and sold it there. J.A. 74-75. On several occasions, however, they transported methamphetamine to other parts of the western and midwestern United States. J.A. 75.

In 2012, petitioner and his co-conspirators were arrested in a sting operation, during which they had attempted to sell approximately four pounds of methamphetamine to an undercover Federal Bureau of Investigation employee for $58,000. J.A. 71-73, 79. Forensic testing of the drugs seized in the sting revealed a net

weight of approximately 1700 grams of methamphetamine. J.A. 73.

Petitioner was charged with possessing 500 or more grams of a substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. 841(b)(1)(A)(viii), and with conspiring to do so, in violation of 21 U.S.C. 846. J.A. 14-15. He pleaded guilty to both charges without a plea agreement. J.A. 29-30, 87.

2. The district court sentenced petitioner to 135 months of imprisonment, to be followed by five years of supervised release. J.A. 31-32.

a. In 18 U.S.C. 3553, Congress established a basic framework for a federal court to follow when imposing a criminal sentence. A sentencing court's "overarching duty" is to impose a "'sentence sufficient, but not greater than necessary' to comply with the sentencing purposes set forth in [18 U.S.C.] 3553(a)(2)." *Pepper* v. *United States*, 562 U.S. 476, 491 (2011) (quoting 18 U.S.C. 3553(a)). In carrying out that responsibility, the court is to consult a variety of factors, including the Sentencing Guidelines promulgated by the United States Sentencing Commission (Commission). *Id.* at 490. Since *United States* v. *Booker*, 543 U.S. 220 (2005), the Guidelines have been advisory, not mandatory, in that context: "although a sentencing court must 'give respectful consideration to the Guidelines, *Booker* permits the court to tailor the sentence in light of other statutory concerns as well.'" *Pepper*, 562 U.S. at 490 (quoting *Kimbrough* v. *United States*, 552 U.S. 85, 101 (2007)).

Section 3553(c) separately requires the sentencing court, "at the time of sentencing, [to] state in open court the reasons for its imposition of the particular sentence." 18 U.S.C. 3553(c). For a sentence within an advisory

guidelines range that exceeds 24 months, the court must further state "the reason for imposing a sentence at a particular point within the range." 18 U.S.C. 3553(c)(1). For a sentence "outside the [guidelines] range," the court must state—and must record in writing "with specificity in a statement of reasons form"—"the specific reason for the imposition of a sentence different from" the recommended guidelines range. 18 U.S.C. 3553(c)(2). The court is required to provide a copy of its statement of reasons to the Sentencing Commission, to the Probation Office, and (if the defendant is sentenced to a term of imprisonment) to the Bureau of Prisons. 18 U.S.C. 3553(c).

b. In petitioner's case, the district court calculated an advisory guidelines range of 135 to 168 months of imprisonment, based on a total offense level of 33 and a criminal history category of I. J.A. 25, 87. Petitioner requested a variance below the guidelines range in light of his history and family circumstances, J.A. 21-23, while the government contended that a within-Guidelines sentence was appropriate in light of the severity of the offense, J.A. 20-21.

The district court imposed a sentence of 135 months of imprisonment, at the bottom of the advisory guidelines range. J.A. 31. The court explained that it had "consulted the sentencing factors of 18 U.S.C. 3553(a)(1) through (7)." J.A. 25. It noted that one "reason the guideline sentence is high in this case, even the low end of 135 months, is because of the [drug] quantity." *Ibid.* The court observed that petitioner had "distributed 1.7 kilograms of actual methamphetamine," which was "a significant quantity." *Ibid.* The court further noted that "one of the other reasons that the pen-

alty is severe in this case, is because of methamphetamine." *Ibid.* The judge explained that he had "been doing this a long time, and from what [he] gather[ed] and what [he had] seen, methamphetamine, it destroys individual lives, it destroys families, it can destroy communities." *Ibid.*

Petitioner filed a notice of appeal but then voluntarily dismissed his appeal. D. Ct. Doc. 127, at 1 (July 22, 2013); D. Ct. Doc. 166-1, at 1 (Jan. 21, 2014); see J.A. 4-5.

3. The district court subsequently reduced petitioner's sentence to 114 months of imprisonment, pursuant to 18 U.S.C. 3582(c)(2). J.A. 45-46; see J.A. 42-43.

a. A court generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. 3582(c); see *Dillon* v. *United States*, 560 U.S. 817, 819 (2010). Section 3582(c)(2), however, creates a "narrow exception[]" to that rule, *Dillon*, 560 U.S. at 827, under which a district court "may reduce" a defendant's sentence if the defendant was "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*)," 18 U.S.C. 3582(c)(2). In such a case, Section 3582(c)(2) permits—but does not compel—a court to "reduce the term of imprisonment" after "considering" the statutory sentencing factors set out in Section 3553(a), "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." *Ibid.*

The relevant policy statement, Sentencing Guidelines § 1B1.10, instructs that a court should substitute the revised guidelines range for the original guidelines range, while "leav[ing] all other guideline application decisions unaffected." *Id.* § 1B1.10(b)(1); see *Dillon*,

560 U.S. at 821. The court "may then grant a reduction within the amended Guidelines range if it determines that one is warranted 'after considering the factors set forth in section 3553(a) to the extent that they are applicable.'" *Dillon*, 560 U.S. at 822 (citation omitted). And "in limited circumstances," the court may reduce a sentence below the amended range. *Ibid.*; see Sentencing Guidelines § 1B1.10(a)(1). The commentary to the relevant policy statement emphasizes that "the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment." Sentencing Guidelines § 1B1.10, comment. (n.3); see *Stinson* v. *United States*, 508 U.S. 36, 42-43 (1993) (noting significance of the commentary).

Although it allows for a modification to an existing sentence within specified parameters, Section 3582(c)(2) "does not authorize a sentencing or resentencing proceeding." *Dillon*, 560 U.S. at 825. Sentencing Guidelines § 1B1.10, for example, cautions that "proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant," *id.* § 1B1.10(a)(3), and a defendant has no entitlement to be present in court for any such proceedings, see Fed. R. Crim. P. 43(a)(3) and (b)(4). A court's consideration of a Section 3582(c)(2) sentence reduction is also not subject to any provision analogous to Section 3553(c), which requires an explanation of a sentence at the time it is originally imposed.

b. In 2014, the Sentencing Commission issued Amendment 782 to the Sentencing Guidelines. See Sentencing Guidelines App. C Supp., Amend. 782 (Nov. 1, 2014) (Amend. 782). Amendment 782 revised Sentencing Guidelines §§ 2D1.1 and 2D1.11, which provide

drug-quantity tables for controlled substances, including methamphetamine, and their precursors. Amend. 782. The amendment effectively reduced by two levels the base offense level for defendants like petitioner. *Ibid.* The Commission also determined that Amendment 782 should apply retroactively. Sentencing Guidelines App. C Supp., Amend. 788 (Nov. 1, 2014); see Sentencing Guidelines § 1B1.10(d). With that retroactive two-level adjustment, petitioner's advisory guidelines range would be 108 to 135 months of imprisonment. J.A. 64.

In 2015, petitioner filed a motion under 18 U.S.C. 3582(c)(2) to reduce his sentence in light of Amendment 782. J.A. 38-40. In response, the Probation Office submitted a memorandum to the district court regarding the application of Amendment 782 to petitioner's case. J.A. 63-65. The memorandum noted that, according to a Bureau of Prisons disciplinary report, petitioner had been sanctioned for improperly using another inmate's phone number, and had as a result lost work privileges for 180 days and phone privileges for 30 days. J.A. 64-65. That violation, assigned a severity code of 397, J.A. 64, qualifies as a moderate-severity-level prohibited act. See Fed. Bureau of Prisons, U.S. Dep't of Justice, *Inmate Discipline Program* 49, 52 (July 8, 2011), www.bop.gov/policy/progstat/5270_009.pdf. The memorandum also noted that petitioner had completed a drug-abuse program, was attempting to enroll in a nonresidential drug-abuse program, and had completed various education courses. J.A. 65.

The government and petitioner subsequently stipulated that petitioner was eligible for a reduced sentence within the revised guidelines range of 108 to 135 months of imprisonment. J.A. 42. The stipulation noted, as had the Probation Office's memorandum, that petitioner

had been sanctioned while incarcerated, but the government agreed that the misconduct was "not disqualifying in considering the 18 U.S.C. § 3553(a) sentencing factors." J.A. 43. The government did not take a position on the appropriate sentence within the revised guidelines range. See *ibid.* Petitioner, however, requested a sentence of 108 months, at the bottom of the revised range. *Ibid.* He noted that, in imposing his original sentence, the district court had explained that the drug quantity was a significant factor and had found a sentence at the "low end of the guideline range" appropriate. *Ibid.* Petitioner also stressed his completion of various educational courses while incarcerated. *Ibid.*

The district court issued an order "[g]rant[ing]" petitioner's motion in part and reducing his term of imprisonment from 135 months to 114 months. J.A. 106-108 (capitalization omitted). The court entered its order on a form issued by the Administrative Office of the United States Courts, Form AO-247. *Ibid.* In completing the form, the court set forth the calculation of petitioner's revised guidelines range and confirmed that "[t]he reduced sentence is within the amended guideline range." J.A. 108. The court also certified that it had "considered [petitioner's] motion" and had "tak[en] into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable." J.A. 106-107. Petitioner did not seek reconsideration or clarification of the court's order.

4. The court of appeals affirmed. J.A. 49-60.

The court of appeals rejected petitioner's contention that the district court had erred "by failing to adequately explain how it applied the § 3553(a) factors in imposing a 114-month sentence." J.A. 50. The court of

appeals observed that although Section 3582(c)(2) requires district courts "'to *consider* the factors in 18 U.S.C. § 3553(a),'" it "'does not mention § 3353(c),'" which imposes an "explanatory requirement" on district courts when they apply those factors in the context of an original sentencing. J.A. 53 (citation omitted). The court of appeals emphasized the textual differences between Section 3553(a), which "nowhere imposes on the court a duty to address [the Section 3553(a)] factors on the record," and Section 3553(c), which "speaks expressly to the nature of the district court's duty to explain itself on the record." *Ibid.* And the court determined that "[i]t would be incongruous * * * to read a duty of explanation into subsection (a) when the exact matter has already been considered and addressed by Congress in subsection (c)." J.A. 53-54.

The court of appeals added that, in any event, "the requirements imposed on a [district] court at a sentence-reduction proceeding cannot be greater than those imposed at an original sentencing proceeding." J.A. 54; see *ibid.* ("The original sentencing procedures required by § 3553(c) must therefore supply the ceiling for sentence-reduction procedures."). The court observed that even the "original sentencing proceedings" to which Section 3553(c) applies "do not require extensive explanations for sentences within the guidelines range," but instead require "'only a general statement noting the appropriate guideline range and how it was calculated'"—a requirement "'amply fulfill[ed]'" by a "court's 'citation of the presentence report's calculation method and recitation of the suggested imprisonment range.'" J.A. 55 (brackets and citations omitted). The court accordingly reasoned that "the same 'general statement noting the appropriate guideline range and how it was

calculated' in applying § 3553(a)" at an original sentencing "also suffices in sentence-reduction proceedings." J.A. 56. Thus, "a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." *Ibid.*

Applying those principles here, the court of appeals determined that "[n]othing indicates in this case" that "the district court failed to consider the § 3553(a) factors or otherwise abused its discretion." J.A. 57. The court of appeals observed that "[t]he first page" of the order "signed by the [district] judge"—on a form generated by the Administrative Office of the United States Courts—"indicate[d] that [the district court] ha[d] 'taken into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a).'" *Ibid.* (brackets and citation omitted). The court of appeals further observed that "[t]he (sealed) second page" of the order "correctly indicates the amended guidelines range." *Ibid.* The court thus found it "safe to infer from the [district] court's rejection of the low-end-of-the-range sentence that it carefully considered the materials (which included an incident of misconduct while in prison) presented to it by the parties." *Ibid.*

The court of appeals acknowledged "the need for a district court to create a meaningful basis for appellate review and to promote the perception of fairness." J.A. 60 (quoting *United States* v. *Verdin-Garcia*, 824 F.3d 1218, 1222 (10th Cir. 2016), cert. denied, 137 S. Ct. 2263 (2017)). But given the absence of a statutory requirement for an explanation and the background principle that appellate courts "'presume, absent some indication in the record suggesting otherwise, that trial judges

* * * know the law and apply it in making their decisions,'" the court was "persuaded that § 3582 does not require more explanation than was provided here." J.A. 56, 58 (quoting *United States* v. *Ruiz-Terrazas*, 477 F.3d 1196, 1201 (10th Cir.) (Gorsuch, J.), cert. denied, 552 U.S. 850 (2007)).[1]

SUMMARY OF ARGUMENT

The court of appeals correctly affirmed the district court's postjudgment reduction of petitioner's sentence under 18 U.S.C. 3582(c)(2). A Section 3582(c)(2) sentence reduction is not "a plenary resentencing proceeding," but is instead a "congressional act of lenity" that allows an eligible defendant's sentence to be lowered in light of a retroactive amendment to the Sentencing Guidelines. *Dillon* v. *United States*, 560 U.S. 817, 826, 828 (2010). The district court here made clear that it considered the applicable factors when it exercised its discretion to reduce petitioner's sentence to a level expressly authorized by the Sentencing Commission. Petitioner identifies nothing that required the court to make a more extensive statement.

A. When a district court grants a sentence-reduction motion and indicates that in so doing it considered the sentencing factors that Congress outlined in 18 U.S.C. 3553(a), the statute does not require the court to further explain why it did not reduce the defendant's sentence even more. The district court's only statutory obligation, after determining that a defendant is eligible for a reduced sentence, is to "consider[]" any Section 3553(a)

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[1] The court of appeals reserved judgment on whether a more extensive explanation might be required when a defendant is eligible for and requests a reduction below his amended guidelines range, J.A. 55 n.1, or when a district court rejects a sentence-reduction motion altogether, J.A. 56 n.2.

factors that it deems "applicable." 18 U.S.C. 3582(c)(2). To the extent the court determines that those factors weigh in favor of a reduced sentence that is within, but not at the bottom of, the amended guidelines range, the court has no duty to include a particularized discussion of the Section 3553(a) factors in its sentence-reduction order.

Congress expressly required a district court at an *original* sentencing proceeding to explain on the record "the reasons for its imposition of the particular sentence," 18 U.S.C. 3553(c), but omitted such a requirement from sentence-reduction determinations under Section 3582(c)(2). That strongly indicates that the statutory directive to "consider[]" applicable Section 3553(a) factors in evaluating a sentence reduction does not mandate on-the-record explanation. As the court of appeals reasoned, "[i]t would be incongruous * * * to read a duty of explanation into [Section 3553(a)] when the exact matter has already been considered and addressed by Congress in [Section 3553(c)]." J.A. 53-54. The requirement to explain a sentence was a new innovation at the time Sections 3553(c) and 3582(c)(2) were enacted, and Congress's reasons for imposing it in original sentencing proceedings did not carry over to Section 3582(c)(2) determinations, which are far more limited in scope and have substantially fewer procedural requirements.

B. Petitioner nevertheless asks this Court to impose on Section 3582(c)(2) determinations an explanatory requirement comparable to Section 3553(c). His request is based not on any statutory text or constitutional imperative but on an asserted need for such a requirement as a prerequisite to meaningful appellate review. Neither petitioner's reliance on *United States* v. *Taylor*,

487 U.S. 326 (1988), nor any of his other arguments, supports the judicial creation of such an extratextual mandate.

First, Congress has the power to define the degree of explanation required, and in the Section 3582(c)(2) context—unlike in the other contexts to which petitioner analogizes—it has indicated that it intended to forgo an on-the-record explanatory requirement. Second, this Court, in *Taylor* and elsewhere, has emphasized the need for sufficient explanation only when a district court departs from an established legal framework or a justified result. That concern does not apply here, where the district court selected a sentence within the revised guidelines range. Third, the level of explanation necessary to enable meaningful appellate review varies with the appropriate scope of such review. In the Section 3582(c)(2) context, appellate courts engage in only limited review of a district court's grant of a within-Guidelines sentence reduction. And they are fully equipped to perform such review without a detailed explanation requirement of the sort that petitioner would impose.

C. The court of appeals in this case properly applied those principles in affirming the district court's judgment. As the court of appeals explained, "[n]othing indicates in this case [that] the district court failed to consider the § 3553(a) factors or otherwise abused its discretion" in reducing petitioner's sentence to 114 months, rather than to the lowest possible level of 108 months. J.A. 57. To the contrary, the district court expressly affirmed that it had "considered" petitioner's arguments and had "tak[en] into account" both the Section 3553(a) factors and the relevant policy statement from the Sentencing Commission. J.A. 106-107. And,

as is necessarily the case with all procedurally proper Section 3582(c)(2) sentence reductions, the final sentence accords with the judgment of the Sentencing Commission that the sentence imposed is generally appropriate in such a case.

The district court's judgment would still warrant affirmance even if this Court were to adopt petitioner's proposal to transpose the explanatory requirements for original sentencing proceedings set forth in *Rita* v. *United States*, 551 U.S. 338 (2007), to the sentence-reduction context. *Rita* recognizes that district courts do not typically need to provide extended explanations for within-Guidelines sentences like the one imposed here. See *id.* at 356-357. And if the district court's selection of a 114-month sentence would have survived review under *Rita*, it is sufficient even under the approach petitioner advocates.

ARGUMENT

DISTRICT COURTS NEED NOT PROVIDE AN EXTENSIVE EXPLANATION FOR A SECTION 3582(c)(2) SENTENCE REDUCTION WITHIN A REVISED GUIDELINES RANGE

The "narrow exception" to sentence finality in 18 U.S.C. 3582(c)(2) "does not authorize a sentencing or resentencing proceeding." *Dillon* v. *United States*, 560 U.S. 817, 825, 827 (2010). It instead allows, but does not require, a district court to make a circumscribed modification to an "otherwise final sentence." *Id.* at 825. Consistent with the provision's qualified nature, sentence-reduction determinations under Section 3582(c)(2) are not subject to the full panoply of procedures applicable at an original sentencing. In particular, they are not subject to 18 U.S.C. 3553(c)'s requirement that the sentencing court "state in open court the reasons for its imposition of the particular sentence."

The Court should decline petitioner's invitation to engraft such an on-the-record explanatory requirement onto Section 3582(c)(2) and to reverse the court of appeals' judgment in circumstances where it found the record sufficient for purposes of appellate review.

A. The Limited Procedures For Section 3582(c)(2) Sentence Reductions Do Not Require A Specific Explanation Of A Reduced Within-Guidelines Sentence

A district court's consideration of a sentence reduction under 18 U.S.C. 3582(c)(2) is governed by different statutory provisions, serves different purposes, and involves different procedures than the original imposition of a sentence. The distinctions between the two frameworks make clear that no particular form of explanation is required when the district court exercises its discretion to reduce a defendant's sentence to a level within a retroactively amended guidelines range.

1. Courts generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. 3582(c); see Fed. R. Crim. P. 35, advisory committee's notes (1991 Amendments) (explaining that a sentencing court lacks authority "to reconsider the application or interpretation of the sentencing guidelines" or "simply to change its mind about the appropriateness of the sentence"). Section 3582(c)(2), however, "establishes an exception to the general rule of finality." *Dillon*, 560 U.S. at 824. It provides a mechanism for district courts to reduce a term of imprisonment in light of subsequent retroactive changes to the advisory Sentencing Guidelines. *Id.* at 825. That procedure for modifying otherwise-final sentences is not "constitutionally compelled," but is instead a "congressional act of lenity" that gives imprisoned defendants "the benefit of later enacted adjustments" to the Guidelines. *Id.* at 828.

Section 3582(c)(2) affords district courts "circumscribed discretion" to reduce a sentence if certain requirements are met. *Dillon*, 560 U.S. at 829. A sentence reduction is permissible only where (1) the Sentencing Commission has amended the Guidelines; (2) the Commission has determined that the amendment applies retroactively; and (3) the amendment has the effect of lowering the sentencing range on which a particular defendant's sentence was "based." 18 U.S.C. 3582(c)(2); see Sentencing Guidelines § 1B1.10(a)(2). If all three conditions are met, the district court "may"—not must—"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 such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. 3582(c)(2).

Applying Section 3582(c)(2) requires a "two-step inquiry." *Dillon*, 560 U.S. at 826. First, the district court must determine whether the defendant is eligible for a reduction at all, *i.e.*, whether a retroactive Guidelines amendment applies to the defendant's sentence, and whether a reduction of that sentence is consistent with Sentencing Guidelines § 1B1.10. *Dillon*, 560 U.S. at 827. Second, if the defendant is eligible for a sentence reduction, the district court must consider the applicable sentencing factors in 18 U.S.C. 3553(a) and "determine whether, in [the court's] discretion, the reduction authorized * * * is warranted in whole or in part under the particular circumstances of the case." *Dillon*, 560 U.S. at 827.

2. Congress enacted Section 3582(c)(2) as part of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, ch. II, § 212(a)(2), 98 Stat. 1999. In the same

section of that Act, Congress also established a framework for original sentencing proceedings, codified at 18 U.S.C. 3553. See Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, ch. II, § 212(a)(2), 98 Stat. 1989. Although the statutory requirements for original sentencings include a specific explanation requirement, the statutory requirements for consideration of a sentence reduction under Section 3582(c)(2) do not.

Section 3553 prescribes two features of original sentencing proceedings that are relevant here. First, Section 3553(a) sets forth the "factors to be considered in imposing a sentence," including "the nature and circumstances of the offense and the history and characteristics of the defendant," the various justifications for punishment, and the relevant Sentencing Guidelines range. 18 U.S.C. 3553(a) (capitalization omitted). Second, Section 3553(c) requires a "statement of reasons for imposing a sentence." 18 U.S.C. 3553(c) (capitalization omitted). More specifically, it requires that a "court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence." *Ibid.* If that sentence falls within the advisory guidelines range and that range exceeds 24 months, the court must further state "the reason for imposing a sentence at a particular point within the range." 18 U.S.C. 3553(c)(1).

In Section 3582(c)(2), Congress did not import Section 3553's sentencing procedures wholesale. Instead, Congress provided that, after a retroactive Guidelines amendment, "the court may reduce the term of imprisonment" for an eligible defendant "after *considering the factors set forth in section 3553(a)* to the extent that they are applicable," if the reduction is consistent with Commission policy statements. 18 U.S.C. 3582(c)(2)

(emphasis added). Although Section 3582(c)(2) incorporates the consideration requirement from Section 3553(a), it does not similarly incorporate the explanation requirement from Section 3553(c). Thus, unlike in original sentencing proceedings—where Section 3553(c) requires a district court to "state in open court the reasons for its imposition of the particular sentence" and, for certain sentences, to specify "the reason for imposing a sentence at a particular point within the [Guidelines] range," 18 U.S.C. 3553(c)—Congress did not require courts to specifically explain their discretionary sentence-reduction determinations. A district court's only statutory obligation, after determining that a defendant is eligible for a reduced sentence, is to "consider[]" any applicable Section 3553(a) factors. 18 U.S.C. 3582(c)(2).

Where Congress incorporates one procedural requirement and not another, courts should give meaning to that choice. "This Court adheres to the general principle that Congress' use of explicit language in one provision cautions against inferring the same limitation in another provision." *State Farm Fire & Cas. Co.* v. *United States ex rel. Rigsby*, 137 S. Ct. 436, 442 (2016) (citation and internal quotation marks omitted); see generally Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) (explaining canon of "*expressio unius est exclusio alterius*," or "[t]he expression of one thing implies the exclusion of others"). As the court of appeals explained, see J.A. 53-54, the fact that Congress expressly required a district court in Section 3553(c) to explain on the record the reasons for the sentence imposed, but omitted such

a requirement from Section 3582(c)(2), strongly indicates that Section 3582(c)(2) does not similarly mandate an on-the-record explanation.

3. That textual inference is reinforced by the legal backdrop against which the Sentencing Reform Act was enacted. As petitioner recognizes (Br. 19), before the Sentencing Reform Act, "district courts generally had no obligation to state their reasons for imposing any particular sentence." See, *e.g.*, *Dorszynski* v. *United States*, 418 U.S. 424, 440-442 (1974). The relevant Senate Report accordingly explained that Section 3553(c) imposed "a *new* requirement that the court give the reasons for the imposition of the sentence at the time of sentencing." S. Rep. No. 225, 98th Cong., 1st Sess. 79 (1983) (emphasis added) (Senate Report). Had Congress intended to carry over to sentence-reduction determinations what petitioner himself describes (Br. 21) as a "sea change in federal sentencing law," it would have said so explicitly.

That is particularly so because the reasons for the change in the context of original sentencing proceedings do not clearly translate to the distinct context of postjudgment sentence modifications. In original sentencing proceedings, unlike in Section 3582(c)(2) determinations, the court can set a defendant's sentence at a level that does not accord with the Sentencing Guidelines. Even before *United States* v. *Booker*, 543 U.S. 220 (2005), rendered the Guidelines effectively advisory in original sentencings, it was possible for a court to impose a sentence outside the prescribed guidelines range in exceptional cases, see Sentencing Guidelines § 5K2.0 (2002); see also Sentencing Guidelines § 4A1.3 (2000) (criminal history departures), and until the passage of the PROTECT Act, Pub. L. No. 108-21, 117 Stat. 650, in

2003, courts exercised considerable discretion in deciding whether to do so. See, *e.g.*, *Mistretta* v. *United States*, 488 U.S. 361, 367 (1989) (noting that, although the Sentencing Reform Act makes the Guidelines binding on sentencing courts, "it preserves for the judge the discretion to depart from the guideline applicable to a particular case"). A sentence reduction under Section 3582(c)(2), however, necessarily comports with the Sentencing Guidelines. It can be triggered only by a retroactive amendment to a guidelines range on which the defendant's sentence is "based," and it must be "consistent with applicable policy statements issued by the Sentencing Commission," 18 U.S.C. 3582(c)(2), which remain binding in the sentence-reduction context even after *Booker*, see *Dillon*, 560 U.S. at 821.

The explanation requirement of Section 3553(c) is most directly focused on outside-Guidelines sentences. The requirement is the most stringent, see 18 U.S.C. 3553(c)(2), and serves the most purpose, see Senate Report 79-80, in that circumstance. Only in that circumstance did Congress specifically prescribe that "fail[ure] to provide the written statement of reasons" in itself constitutes reversible error on appeal. 18 U.S.C. 3742(e)(3)(A). Although the Sentencing Reform Act has always provided for appeals "irrespective of whether the trial judge sentences within or outside the Guidelines range," *Booker*, 543 U.S. at 260, it has included particularized provisions identifying outside-range sentences (or sentences for which no range has been prescribed) as automatically eligible for appeal, see, *e.g.*, 18 U.S.C. 3742(a)(3)-(4) and (b)(3)-(4). Congress accordingly viewed a statement of reasons as "especially important" for non-Guidelines sentences, because it would "play an important role in the evaluation of the

reasonableness of the sentence" on appeal. Senate Report 80; cf. *Gall* v. *United States*, 552 U.S. 38, 50 (2007) (explaining that a "more significant justification" is required to support a greater variance from the guidelines range). And Congress's other grounds for requiring such a statement—"inform[ing] the defendant and the public of the reasons for the sentence," "provid[ing] information to criminal justice researchers evaluating the effectiveness of various sentencing practices," and "assist[ing] the Sentencing Commission in its continuous reexamination of its guidelines and policy statements," Senate Report 80—are likewise most pertinent when the court's view of the appropriate sentence diverges from the Commission's.

Congress recognized, however, that the need for a particularized sentencing explanation is less acute, even in the context of an original sentencing, when the defendant's sentence accords with the Sentencing Commission's own judgment. "[W]hen a judge decides simply to apply the Guidelines to a particular case, doing so will not necessarily require lengthy explanation," because "[c]ircumstances may well make clear that the judge rests his decision upon the Commission's own reasoning that the Guidelines sentence is a proper sentence * * * in the typical case, and that the judge has found that the case before him is typical." *Rita* v. *United States*, 551 U.S. 338, 356-357 (2007). Unless a defendant challenges the Guidelines themselves "or argues for departure, the judge normally need say no more" than is necessary to indicate his or her determination that a Guidelines sentence is appropriate. *Id.* at 357; see *id.* at 345, 358 (recounting sentencing court's explanation that the guidelines range was "appropriate" and "the public needs to be protected") (citations omitted). Section

3553(c)(1) accordingly requires the court to state "the reason for imposing a sentence at a particular point within" a guidelines range only when "that range exceeds 24 months." 18 U.S.C. 3553(c)(1). Such a range encompasses a wide enough variety of sentences that a refined explanation of the sentence may be particularly helpful to the defendant in understanding the sentence, to an appellate court in reviewing it, to the Commission in obtaining feedback on the application of the range, or to the entities charged with carrying out the sentence. See *Rita*, 551 U.S. at 357-358.

The limited reasons for providing a particularized explanation of a within-Guidelines sentence at an original sentencing carry even less weight in the context of a sentence-reduction determination under Section 3582(c)(2). In a Section 3582(c)(2) determination, the district court has already imposed the original sentence and given the explanation for that sentence that Section 3553(c) required. Its grant of a reduction presumably reflects its agreement with the Commission's determination that a lower sentence is generally warranted for a certain class of offense and offender. Cf. *Rita*, 551 U.S. at 356-357. Any concern with providing feedback to the Commission, to officials at the prison where the defendant is housed, or to other sentencing observers, is at its nadir when the court is simply applying a retroactive judgment the Commission has already made to a specific defendant who is already serving a previously imposed sentence. Even if the court does not reduce the sentence to the greatest extent possible, the court will already be on record as to its views of the defendant's case for purposes of the original sentence; the limited and focused nature of the court's deliberations under Section 3582(c)(2) will typically make apparent

any additional factors (such as post-sentencing conduct) that the judge considered; and the reduced sentence will necessarily be one that the Commission itself has deemed appropriate for such a defendant.

The absence of a specific requirement for a particularized explanation in every Section 3582(c)(2) case thus reflects a reasonable congressional determination that one would not typically be necessary. "The appropriateness of brevity or length, conciseness or detail, when to write, what to say, depends upon circumstances. Sometimes a judicial opinion responds to every argument; sometimes it does not; sometimes a judge simply writes the word 'granted' or 'denied' on the face of a motion while relying upon context and the parties' prior arguments to make the reasons clear. The law leaves much, in this respect, to the judge's own professional judgment." *Rita*, 551 U.S. at 356. Although considerations particular to the new regime of the Sentencing Reform Act called for more specific explanation requirements in the context of original sentencings, Congress was evidently comfortable relying on default norms of professional judicial judgment in the more circumscribed context of sentence reductions.

4. Congress's reliance on background principles of judicial discretion, rather than statutory explanation requirements, for Section 3582(c)(2) determinations is of a piece with the less rigid nature of such determinations overall.

Consistent with the limited scope of Section 3582(c)(2) determinations and their function as an act of legislative grace, fewer and less onerous structural and procedural requirements apply than in original sentencing proceedings. See *Dillon*, 560 U.S. at 827-828. For example,

although Federal Rule of Criminal Procedure 43 requires a sentencing hearing at which the defendant is present, it expressly exempts any Section 3582(c)(2) proceedings from that requirement. See Fed. R. Crim. P. 43(a)(3) and (b)(4). Nor does any right to counsel apply during any Section 3582(c)(2) proceedings. See, *e.g.*, *United States* v. *Webb*, 565 F.3d 789, 794 (11th Cir. 2009) (per curiam) (collecting court of appeals decisions). And the policy statement applicable to Section 3582(c)(2) determinations confirms that "proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant." Sentencing Guidelines § 1B1.10(a)(3).

The "fundamental differences between sentencing and sentence-modification proceedings" underscore that Congress did not create an entitlement to another full round of sentencing proceedings. *Dillon*, 560 U.S. at 830; see *id.* at 825 (noting that, "[b]y its terms, § 3582(c)(2) does not authorize a sentencing or resentencing proceeding"). Congress provided only a discrete grant of authority to a district court to determine, without a hearing or other significant procedural requirements, whether to exercise lenity. It would make little sense to impose a formal explanatory requirement when Congress elected to ratchet down the formality of any proceedings.

B. Petitioner's Proposed Explanation Requirement Lacks Foundation

Petitioner provides no sound basis for imposing an extratextual explanatory requirement on district courts in making Section 3582(c)(2) determinations. He recognizes that sentence-reduction procedures are "not constitutionally compelled," Pet. Br. 23 (citation omitted), and acknowledges that his proposed approach also does

not arise "from any statutory command," *id.* at 22. Nothing supports the adoption of his rule as a matter of judicial invention.

1. The incorporation of Section 3553(a) considerations into Section 3582(c)(2) does not imply the existence of an explanation requirement

To the extent petitioner attempts to ground his position in existing law, he relies (Br. 7) on an asserted principle "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." But even if such a principle existed, Section 3582(c)(2)'s incorporation of the Section 3553(a) factors, without incorporating Section 3553(c)'s explanation requirement, would not implicate it.

a. Petitioner identifies a key flaw in his own position when he contends (Br. 24) that "[r]equiring 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." Importing Section 3553(c) into the sentence-reduction context 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.

The courts of appeals that have imposed an explanatory requirement in the Section 3582(c)(2) context have uniformly overlooked the strong *expressio unius* implication in Congress's incorporation of Section 3553(a) but not Section 3553(c). In each of the decisions on which petitioner relies (Br. 15), the court failed even to mention Section 3553(c). See *United States* v. *Christie*, 736 F.3d 191 (2d Cir. 2013); *United States* v. *Howard*,

644 F.3d 455 (6th Cir. 2011); *United States* v. *Marion*, 590 F.3d 475 (7th Cir. 2009). By contrast, when courts of appeals have grappled with the textual differences between the statutory provisions governing original sentencing proceedings and sentence-reduction determinations, they have rejected the contention that a district court's decision should be vacated for failure to provide a sufficient on-the-record explanation for the sentence reduction ordered. See J.A. 53-54; *United States* v. *Smalls*, 720 F.3d 193, 198 (4th Cir. 2013); *United States* v. *Evans*, 587 F.3d 667, 672-674 (5th Cir. 2009), cert. denied, 561 U.S. 1011 (2010).

b. Petitioner's view (Br. 13-15, 22) that *Taylor*'s consideration of the Speedy Trial Act's remedial provision, 18 U.S.C. 3162(a)(2), controls the interpretation of the Sentencing Reform Act is accordingly mistaken. He does not dispute that Congress has the power to prescribe the degree of explanation required when a sentencing court reduces an otherwise-final sentence. See *Mistretta*, 488 U.S. at 364 ("Congress, of course, 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.") (citation omitted). Because the inquiry is ultimately one of legislative intent, Congress's choice of statutory scheme matters. And the statutory scheme here differs markedly from the statutory scheme in *Taylor*.

The Speedy Trial Act provision in *Taylor* stated that district courts "shall consider" several listed factors "[i]n determining whether to dismiss the case with or without prejudice." 18 U.S.C. 3162(a)(2). This Court reasoned that "Congress ha[d] declared that a decision will be governed by consideration of particular factors"

and had thus required district courts to "clearly articulate [those factors'] effect in order to permit meaningful appellate review." *Taylor*, 487 U.S. at 336-337. The Court deemed such an articulation necessary to determine whether the district court had "fail[ed] to act within the limits prescribed by Congress." *Id.* at 337. In other words, it believed that more explanation would effectuate congressional intent.

The "limits prescribed by Congress," *Taylor*, 487 U.S. at 337, in Section 3582(c)(2) differ from the limits prescribed by Congress in the Speedy Trial Act in fundamental ways. As a threshold matter, the Speedy Trial Act scheme considered in *Taylor* did not involve any analogue to Section 3553(c)'s explicit requirement to provide a statement of "the reasons for [the] imposition of the particular sentence." Here, in contrast, the omission of Section 3553(c) from Section 3582(c)(2)'s instruction that sentencing courts "consider[]" the Section 3553(a) factors "to the extent that they are applicable," 18 U.S.C. 3582(c)(2), illustrates that Congress did not intend to incorporate an explanatory requirement and overcomes any default principle that *Taylor* might reflect.

But even setting that dispositive textual difference aside, an on-the-record explanation is, at least in most cases, not necessary for a court of appeals to determine whether the district court has "fail[ed] to act within the limits prescribed by Congress" when granting a sentence reduction under Section 3582(c)(2) to a level within the lowered guidelines range. *Taylor*, 487 U.S. at 337. Such a reduction (presuming the defendant is eligible) necessarily fits within the "limits" that Congress has empowered the Commission to prescribe. See

Dillon, 560 U.S. at 828. And the district court's constrained discretion under Section 3553(a) to select a specific term within an approved range—which encompasses a number of reasonable outcomes that vary only incrementally—does not raise the same concerns as a district court's binary decision about whether to dismiss an indictment under the Speedy Trial Act.

c. *Taylor* and the other decisions on which petitioner relies did not adopt a one-size-fits-all rule requiring appellate courts to remand whenever district courts do not extensively discuss their reasoning under a statute that mandates the consideration of multiple factors. Petitioner errs in asserting (Br. 22) that "[t]he simple reason" this Court remanded in those cases is that "lower courts insufficiently explained *how* they exercised their discretion." Instead, the Court has deemed a district court's explanation insufficient only when case-specific concerns indicate that a district court abused its discretion by weighing factors improperly or by departing from an established baseline.

In *Taylor*, for example, the Court concluded that the *result itself* was unreasonable in the absence of additional explanation. See 487 U.S. at 343-344. The district court there had barred reprosecution of a defendant whose own flight from justice had been partly responsible for the expiration of his Speedy Trial Act clock. See *id.* at 328-330. This Court deemed the defendant's culpability "certainly relevant" to the determination whether to dismiss with prejudice, yet it had not been taken into account by the district court. *Id.* at 340; see *id.* at 338-339 (noting that the district court criticized "the government's lackadaisical behavior" but "gave no indication of the foundation for its conclusion"); *id.* at 340 (noting that the district court failed to consider the

defendant's "culpable conduct and, in particular, his responsibility for the failure to meet the timely trial schedule in the first instance"). The Court therefore concluded that the district court's ultimate decision—and not just the extent of its reasoning—constituted an abuse of discretion. See *id.* at 343-344.

The various fee-award decisions cited by petitioner likewise did not involve a mere failure of explanation, but instead a departure from the governing substantive standard. See Pet. Br. 14 (citing *Northcross* v. *Board of Educ.*, 412 U.S. 427 (1973) (per curiam); *Perdue* v. *Kenny A. ex rel. Winn*, 559 U.S. 542 (2010); and *Hensley* v. *Eckerhart*, 461 U.S. 424 (1983)). In both *Northcross* and *Kenny A.*, the district court had deviated from a statutory presumption in favor of awarding attorney's fees to the prevailing party—in *Northcross* by awarding no fees at all, 412 U.S. at 427-428, and in *Kenny A.* by increasing the market-value "lodestar" amount by 75% without sufficiently rebutting the "strong presumption that the lodestar figure is reasonable," 559 U.S. at 554, 557. And in *Hensley*, the district court had granted a fee award to plaintiffs who prevailed on only some of their claims, while "refus[ing] to eliminate from the award hours spent on unsuccessful claims," by focusing solely on whether the plaintiffs had "obtained significant relief," without "properly consider[ing] the relationship between the extent of [the plaintiffs'] success and the amount of the fee award." 461 U.S. at 428, 438, 440; see *id.* at 434-437. In all three fee-award cases, then, this Court determined that a district court had abused its discretion by departing from the proper statutory framework without providing an adequate justification.

A case like this, in contrast, does not involve a departure from the norm that must be justified—it involves the reduction of a sentence to a level within a range specified by the Sentencing Commission. A district court that reduces a sentence to a point within the revised guidelines range adheres to a default rule, rather than departing from it. Unlike in *Taylor* or the fee-award cases, such a reduction does not suggest that the district court may have considered an impermissible factor. See *Taylor*, 487 U.S. at 343 (noting that the district court "appears to have decided to dismiss with prejudice in this case in order to send a strong message to the Government that unexcused delays will not be tolerated," which misapprehends the Speedy Trial Act's remedial provision). Also unlike in *Taylor* or the other cases, a district court's certification on Form AO-287 can confirm that the court has considered the Section 3553(a) factors that it deems "applicable." 18 U.S.C. 3582(c)(2); see J.A. 106-107.

2. Appellate courts do not need additional explanation to provide meaningful review of within-Guidelines sentence reductions

Petitioner's position largely boils down to the assertion (Br. 8) that abuse-of-discretion review of Section 3582(c)(2) sentence reductions would be "an empty formality" in the absence of his proposed explanation requirement. But meaningful appellate review does not reflexively require a remand whenever a district court does not provide an extensive explanation of its reasoning. This Court has never suggested, for example, that abuse-of-discretion review of a district court's decision under Federal Rule of Evidence 403, see, *e.g.*, *United States* v. *Abel*, 469 U.S. 45, 54-55 (1984), is impossible unless the court articulates all the factors that led it to

determine that the particular evidence was not unduly prejudicial. Rather, the nature of the determination informs the level of detail needed for meaningful review. Cf. *Taylor*, 487 U.S. at 336 ("Whether discretion has been abused depends, of course, on the bounds of that discretion and the principles that guide its exercise."). And the court of appeals here appropriately found a "meaningful basis for appellate review." J.A. 60 (citation omitted), where the district court had (1) granted a Section 3582(c)(2) motion; (2) imposed a sentence within the revised guidelines range; and (3) confirmed that it considered the appropriate Section 3553(a) factors.

a. Petitioner does not dispute that Congress has the power to define the scope of appellate review in the Section 3582(c)(2) context. See *Booker*, 543 U.S. at 260-262. And such review is circumscribed in multiple ways, such that a detailed explanation of the reduced sentence is not a necessary prerequisite to accomplishing the task.

First, a defendant has already received one full round of process, see *Brecht* v. *Abrahamson*, 507 U.S. 619, 633 (1993), and the sentence-reduction procedures themselves are not constitutionally required, see *Dillon*, 560 U.S. at 828. Accordingly, the set of potential constitutional concerns that an appellate court might need to consider is much smaller in the Section 3582(c)(2) context than in the context of an original sentencing. See *ibid.*

Second, although original sentencing decisions are subject to appellate review for substantive reasonableness, see *Gall*, 552 U.S. at 51, discretionary decisions whether to reduce a sentence under Section 3582(c)(2) are not. See *United States* v. *Bowers*, 615 F.3d 715, 720-728 (6th Cir. 2010). The Sentencing Reform Act created a specific provision, 18 U.S.C. 3742, governing appellate

courts' "[r]eview of a sentence." Section 3742 is thus "the exclusive avenue" for an appeal challenging a district court's decision to retain or reduce a sentence under Section 3582(c)(2). *Bowers*, 615 F.3d at 719 (citation omitted); see, *e.g.*, *Hinck* v. *United States*, 550 U.S. 501, 506 (2007) (reiterating "the well-established principle" that "'a precisely drawn, detailed statute pre-empts more general remedies'") (quoting *EC Term of Years Trust* v. *United States*, 550 U.S. 429, 433 (2007)). And the only ground on which Section 3742 permits review of a sentence reduced to a level that comports with the Sentencing Guidelines is if it "was imposed in violation of law." 18 U.S.C. 3742(a)(1).

Such review does not encompass substantive challenges to a district court's exercise of discretion in the context of a sentence reduction. Although this Court has established a broader standard of appellate review for "unreasonableness" in the original sentencing context, see *Booker*, 543 U.S. at 259-261, it has not done so in the Section 3582(c)(2) context, to which *Booker*'s reasoning does not apply, see *Dillon*, 560 U.S. at 828-830. As a result, appellate courts lack jurisdiction to consider challenges to the substantive reasonableness of a sentence-reduction decision.[2]

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[2] Several courts of appeals have exercised jurisdiction over substantive-reasonableness challenges to a district court's discretionary denial of a Section 3582(c)(2) motion. See *United States* v. *Rodriguez*, 855 F.3d 526, 530-532 (3d Cir. 2017); *United States* v. *Jones*, 846 F.3d 366, 370 (D.C. Cir. 2017); *United States* v. *Dunn*, 728 F.3d 1151, 1156-1158 (9th Cir. 2013). But those courts have generally done so by extending this Court's decision in *Booker*, and *Dillon* clarified that neither *Booker*'s constitutional holding nor its remedial holding applies to Section 3582(c)(2). See *Dillon*, 560 U.S. at 828-830.

Third, any review of a particular reduced sentence would be highly deferential, even assuming that such review encompasses substantive reasonableness. A district court that reduces a sentence under Section 3582(c)(2) is using a mechanism that is designed "to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines." *Dillon*, 560 U.S. at 828. Even more so than in an original sentencing, it would be appropriate for an appellate court to "recognize[] the real-world circumstance that when the judge's discretionary decision accords with the Commission's view of the appropriate application of § 3553(a) in the mine run of cases, it is probable that the sentence is reasonable." *Rita*, 551 U.S. at 350-351; see *Gall*, 552 U.S. at 51 (explaining that appellate courts may apply a presumption of reasonableness to within-Guidelines sentences). The "sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic §3553(a) objectives, the one, at retail, the other at wholesale," *Rita*, 551 U.S. at 348, and the Commission's ability to place binding constraints on Section 3582(c)(2) reductions, see *Dillon*, 560 U.S. at 824-830, means that any such reduction will inherently accord with the Commission's own determination of an appropriate sentence for a particular type of offense and offender.

b. A detailed explanation of the district court's reasons for a particular sentence reduction is especially unnecessary to enable appellate review where, as here, the district court selects a sentence within the revised guidelines range. When a district court reduces a sentence in accord with the Commission's own authorized reduction, its reasoning will likely be implicit in ways that it might not be in less structured contexts. That is

why, even for original sentences subject to Section 3553(c)'s explanatory requirement, this Court has never required a precise articulation of how the district court considered each of the relevant statutory sentencing factors, particularly when the district court selects a within-Guidelines sentence. See *Rita*, 551 U.S. at 356-358; pp. 21-22, *supra*.

If the record in an individual case suggests that a district court considered an inappropriate factor, or refused to consider an appropriate one, that could constitute an abuse of discretion. See *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990) (explaining that "[a] district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law"). But, as in the context of an original sentencing, the possibility of such an impermissible consideration does not justify requiring every court in every case to provide the precise reasons for the particular sentence within the range permitted by the Sentencing Guidelines. An appellate court's starting presumption must be that district courts "know the law and * * * apply it in making their decisions." *Walton* v. *Arizona,* 497 U.S. 639, 653 (1990), overruled on other grounds by *Ring* v. *Arizona,* 536 U.S. 584 (2002). The likelihood that a district court took improper—or even novel—considerations into account is especially remote in the highly constrained context of a Section 3582(c)(2) determination. And Form AO-247, which the district court used here, generally buttresses the presumption of judicial regularity, as district courts must confirm that they "t[ook] into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable." J.A. 107.

c. Petitioner contends (Br. i, 26-28) that a more specific explanation should always be required when a reduced sentence is not "proportional"—*i.e.*, when the district court does not reduce a defendant's sentence to a position within the revised guidelines range that corresponds mathematically to the original sentence's position within the original guidelines range. In those circumstances, petitioner contends (Br. 17), a district court must explain why it declined to grant "a full reduction." But nothing in Section 3582(c)(2) or the relevant Sentencing Guidelines suggests any such proportionality principle, or that an appellate court should presume any impropriety from a "non-proportional" reduction.

Section 3582(c)(2) neither distinguishes "proportional" from "non-proportional" sentence reductions nor imposes any special explanatory requirement in the latter circumstance. Some portions of the Sentencing Reform Act differentiate between within-Guidelines and outside-Guidelines sentences for purposes of either explanation, see 18 U.S.C. 3553(c)(1)-(2), or appellate review, see 18 U.S.C. 3742(a)(3) and (b)(3). But neither in Section 3582(c)(2) nor elsewhere does the Act contain any distinction of the sort that petitioner proposes.

Nor did the Sentencing Commission establish a preference for proportional reductions in the relevant policy statement, Sentencing Guidelines § 1B1.10. Rather, the Commission focused on a district court's ability to reduce a sentence to a point within the revised guidelines range, but no lower. See *id.* § 1B1.10(b)(2). "Subject to th[o]se limitations," the Commission explained, "the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section." *Id.* § 1B1.10, comment. (n.3).

Petitioner suggests (Br. 16-17) that the drug-guidelines amendment on which his Section 3582(c)(2) motion was premised, Amendment 782, itself establishes proportional sentence reductions as the default. But the Commission's guidance on retroactive sentence reductions is embodied only in the policy statement "applicable" to such reductions—namely, Sentencing Guidelines § 1B1.10, see *Dillon*, 560 U.S. at 821—not in individual substantive amendments. That stands to reason, as it would be difficult for district courts to apply one set of procedures to Section 3582(c)(2) reductions involving one amendment, but a different set of procedures to reductions involving other amendments. See Sentencing Guidelines § 1B1.10(d) (listing 27 amendments that have been deemed retroactive).

In any event, Amendment 782 does not reflect any particular expectation of proportional sentence reductions. Petitioner correctly observes (Br. 16) that the Commission revised the drug-quantity tables after determining "that setting the base offense levels slightly above the mandatory minimum penalties is no longer necessary to achieve its stated purpose." Amend. 782. But that merely explains why the Commission amended the guidelines range in the first place; it does not indicate any preference about where in the amended range a reduced sentence should fall.

Even more attenuated is petitioner's assertion (Br. 17) that the Commission's predictions about the average sentence reduction under Amendment 782 reveal "its expectation that eligible prisoners ordinarily would receive" a "proportional" sentence at the same relative position within the revised guidelines range. Although the Commission's model adopted such an assumption to project release dates, the model does not suggest the

normative rule that petitioner would impose on the courts. See Memorandum from Office of Research & Data & Office of Gen. Counsel, U.S. Sent. Comm'n, to Chair Saris, Comm'rs, & Kenneth Cohen, *Analysis of the Impact of the 2014 Drug Guidelines Amendment If Made Retroactive*, App. (Tbl. 8) (May 27, 2014), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Analysis.pdf. The Commission repeatedly stated that it was simply projecting "the full reduction *possible* in each case," not the reduction *appropriate* in each case. *Id.* at 7 (emphasis added); see also *id.* at 14, 15, 20. And the Commission emphasized that it "was required to make some assumptions" in order to develop a model at all, and that "[t]hese assumptions may not hold in every case." *Id.* at 17.

C. The Court Of Appeals Correctly Affirmed The District Court In This Case

The court of appeals correctly determined that the district court did not abuse its discretion when it reduced petitioner's 135-month sentence to 114 months, rather than the 108 months that petitioner had requested. See J.A. 43, 107.

1. Petitioner's procedural challenge to the district court's sentence reduction is quite narrow. He acknowledges (Br. 5) that the district court deemed him eligible for a reduced sentence and partially granted his motion for a sentence reduction. And he does not contend that the 114-month sentence that the court imposed is itself problematic. For example, he does not dispute that the court correctly calculated the revised guidelines range. See J.A. 42, 108. Nor does he assert that the court necessarily considered some impermissible factor outside

Section 3553(a) in determining the appropriate sentence reduction. Instead, he contends (Br. 26-32) only that the court did not say enough to explain its discretionary reduction to a sentence within—but not at the very bottom of—the revised guidelines range.

The court of appeals, however, properly "presume[d]" that the district court knew and correctly applied the governing legal principles. J.A. 56 (citation omitted); see *Walton*, 497 U.S. at 653 (instructing appellate courts to "presume[]" that district courts "know the law and * * * apply it in making their decisions," unless the record suggests otherwise). Such deference to a lower court's discretionary determination is a "hallmark of abuse-of-discretion review." *Sprint/United Mgmt. Co.* v. *Mendelsohn*, 552 U.S. 379, 384 (2008) (quoting *General Elec. Co.* v. *Joiner*, 522 U.S. 136, 143 (1997)). And "particularly when the applicable standard of review is deferential," an "appellate court should not presume that a district court intended an incorrect legal result when the [district court's] order is equally susceptible of a correct reading." *Id.* at 386.

Petitioner's challenge to the district court's order would flip that presumption. He does not identify anything in the record suggesting that the district court gave weight to an impermissible consideration. Indeed, he acknowledges (Br. 28) that that the court could have based its sentence on legitimate factors, such as his post-sentencing conduct. See Sentencing Guidelines § 1B1.10, comment. (n.1(B)(iii)). He asserts (Br. 28) only that, in his view, "it equally is possible that the district court relied on" factors that he suggests may have been illegitimate. As an example, petitioner hypothesizes (Br. 29) that the court might have applied "a blanket policy of denying full reductions to any defendant

who had any type of reported discipline while in prison." But even assuming it were impermissible for a district court to apply a generalized view about the appropriate sentencing consequences for particular prison infractions, no evidence in the record suggests that the court did so here, or performed anything other than a balancing of the appropriate Section 3553(a) and Sentencing Guidelines § 1B1.10 factors.[3]

The court of appeals thus appropriately rejected petitioner's speculation. See J.A. 57 ("Nothing indicates in this case [that] the district court failed to consider the § 3553(a) factors or otherwise abused its discretion."). As the court of appeals observed, J.A. 57, the district court expressly indicated on Form AO-247 that it had "considered [petitioner's] motion" and had "tak[en] into account" both "the sentencing factors set forth in 18 U.S.C. § 3553(a)" and the relevant "policy statement set forth at USSG §1B1.10," J.A. 106-107. The district court also "correctly indicate[d] the amended guidelines range." J.A. 57. And although the district court did not elaborate on how it weighed the Section 3553(a) factors, the court of appeals determined that, on this record, "it is safe to infer from the [district] court's rejection of the low-end-of-the-range sentence that it carefully considered the materials * * * presented to it by the parties."

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[3] Petitioner incorrectly characterizes (Br. 30) a sentence six months above the bottom of the revised guidelines range as "an effective six-month term of imprisonment" that must be justified as such. See *id.* at 29 (asserting that the revised sentence "effectively imprisons him for an additional six months"). Petitioner received a 135-month sentence that was sufficiently justified, and any subsequent reduction to that sentence is an act of legislative grace—not an independent sentence. See *Dillon*, 560 U.S. at 825, 828.

Ibid. Those materials "included an incident of misconduct while in prison," *ibid.*, which the Probation Office had discussed in its memorandum addressing petitioner's Section 3582(c)(2) motion, J.A. 64-65, and which the parties had mentioned in their joint stipulation to petitioner's eligibility, J.A. 43.

At bottom, the district court necessarily determined that petitioner's crimes—involving a significant quantity of a drug that "destroys individual lives," J.A. 25, and an association with a major drug cartel, J.A. 75, 91—and record merited an absolute term of 114 months of imprisonment. The court of appeals did not need to "speculate about which factors" the district court considered, as petitioner asserts (Br. 26), because the district court made clear, and context showed, that it considered the Section 3553(a) factors, along with the policies in Sentencing Guidelines § 1B1.10 (including the provision for consideration of post-sentencing conduct, *id.* § 1B1.10, comment. (n.1(B)(iii)). Little would have been gained from a remand requiring the district court to add a summary sentence stating, for example, that "114 months is appropriate, considering petitioner's crimes and post-sentencing conduct." That conclusion was already implicit in the sentence reduction that the court granted.

2. Even if the Court were to adopt petitioner's theory (Br. 24) that the requirement to explain a sentence-reduction decision is "no different" from the requirement to explain an original sentencing decision, it should still affirm. Relying on the standard for original-sentencing explanations in *Rita*, *supra*, petitioner proposes that a "district court ruling on a § 3582(c)(2) motion" must "'set forth enough to satisfy the appellate court that [it] has considered the parties' arguments

and has a reasoned basis for exercising [its] own legal decisionmaking authority.'" Pet. Br. 25 (emphasis omitted) (quoting *Rita*, 551 U.S. at 356). As the court of appeals determined, J.A. 55-56, the district court's decision here satisfied that standard.

The district court correctly calculated that the guidelines range, with Amendment 782, was 108 to 135 months. J.A. 108. It then imposed a 114-month sentence in the bottom quartile of that range. J.A. 107. Under *Rita*, when a district court "decides simply to apply the Guidelines to a particular case, doing so will not necessarily require lengthy explanation." 551 U.S. at 356-357. The district judge presumably determined that "the case before him [wa]s typical" and that a sentence toward, but not at, the bottom of the guidelines range was appropriate for petitioner's crimes. *Id.* at 357. And that determination was substantively reasonable, as the court confronted a defendant who, for more than a year, distributed large quantities of methamphetamine for substantial sums of money across the country, and did so in connection with a major drug cartel. See J.A. 71-75.

This case does not implicate *Rita*'s admonition that a district court must typically provide more explanation where "a party contests the Guidelines sentence generally under § 3553(a) * * * or argues for departure." 551 U.S. at 357. No significant legal or factual disputes arose. The parties agreed that the revised guidelines range applied. See J.A. 42. And under the binding Sentencing Commission policy statement, the district court lacked the authority to reduce petitioner's term below 108 months. See Sentencing Guidelines § 1B1.10(b)(2)(A). The parties also agreed that any post-sentencing misconduct did not entirely disqualify

petitioner from a sentence within the revised guidelines range. See J.A. 43.

Petitioner's challenge to his reduced sentence centers on the contention that the district court was required to explain why he did not receive a reduction to the bottom of the amended guidelines range (108 months), when the original sentence was at the bottom of the original range (135 months). But nothing requires a district court to sentence at the bottom of a range, even if it views a particular offender as typical. The Commission's provision of ranges, rather than fixed sentences, inherently allows for some degree of variation in individual sentencings even among judges who agree that a particular range is appropriate for a particular type of offense and offender. And where two ranges are *different* (here, 135-168 months vs. 108-135 months), nothing would require a district court to view a typical case—or a typical offender—as deserving of a sentence at a corresponding point in both ranges. The district court here, for example, made clear at petitioner's original sentence that it viewed his crimes as involving considerable amounts of a destructive drug. J.A. 25. Even absent any post-sentencing misconduct, it was not obligated to conclude that the correct reduced sentence was 108 months rather than 114 months.

In these particular circumstances, the district court "need say no more" under *Rita* than to confirm its application of the Section 3553(a) factors and select a sentence within the correctly calculated guidelines range. 551 U.S. at 357; see *id.* at 345. It did so. J.A. 107. And if that explanation would have satisfied the *Rita* standard in an original sentencing proceeding, it satisfies the extratextual explanatory requirement that petitioner

advocates for sentence reductions under Section 3582(c)(2).

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted.

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MARCH 2018

APPENDIX

1. 18 U.S.C. 3553 provides:

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.

(b) APPLICATION OF GUIDELINES IN IMPOSING A SENTENCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines appli-

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[1] So in original. The period should probably be a semicolon.

cable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(2) CHILD CRIMES AND SEXUAL OFFENSES.—

(A)[2] Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

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[2] So in original. No subparagraph (B) has been enacted.

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(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 record 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.

(d) PRESENTENCE PROCEDURE FOR AN ORDER OF NOTICE.—Prior to imposing an order of notice pursuant

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[3] So in original.

to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(f) LIMITATION ON APPLICABILITY OF STATUTORY MINIMUMS IN CERTAIN CASES.—Notwithstanding any other provision of law, in the case of an offense under

section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or

that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

2. 18 U.S.C. 3582 provides:

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.

(d) INCLUSION OF AN ORDER TO LIMIT CRIMINAL ASSOCIATION OF ORGANIZED CRIME AND DRUG OFFENDERS.—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

3. Section 1B1.10 of the United States Sentencing Guidelines provides:

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.