

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

ADAUCTO CHAVEZ-MEZA,)
)
) Petitioner,)
)
) v.) No. 17-5639
)
) UNITED STATES,)
)
) Respondent.)
)

Pages: 1 through 66

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ADAUCTO CHAVEZ-MEZA,)
 Petitioner,)
 v.) No. 17-5639
 UNITED STATES,)
 Respondent.)

- - - - -

Washington, D.C.

Monday, April 23, 2018

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:00 p.m.

APPEARANCES:

TODD A. COBERLY, ESQ., Santa Fe, New Mexico; appointed by the Court, on behalf of the Petitioner.

ROD J. ROSENSTEIN, Deputy Attorney General, Department of Justice, Washington, D.C.; on behalf of the Respondent.

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1 PROCEEDINGS

2 (1:00 p.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument next today in Case 17-5639,
5 Chavez-Meza versus United States.

6 Mr. Coberly.

7 ORAL ARGUMENT OF TODD A. COBERLY

8 ON BEHALF OF THE PETITIONER

9 MR. COBERLY: Mr. Chief Justice, and
10 may it please the Court:

11 Judicial discretion is not a whim. It
12 is to be guided by sound legal principles and
13 subject to meaningful appellate review.

14 And if appellate review for abuse of
15 discretion is to mean anything, it is axiomatic
16 that there must be a reason for the district
17 court's decision apparent in the record. This
18 is particularly true where Congress has
19 channeled the exercise of a district court's
20 discretion by directing the district court to
21 consider certain factors when making a
22 discretionary choice.

23 As the Court understood in Taylor, a
24 district court in such circumstances must
25 clearly articulate not only that it

1 considered -- in fact, considered the relevant
2 factors but how those factors impacted its
3 decision.

4 CHIEF JUSTICE ROBERTS: I -- I suppose
5 you're not arguing that that's true in every
6 case. For example, if the record or the
7 proceedings indicated exactly what the people
8 were talking about, they were debating a
9 particular point and that would explain it,
10 that would be enough, right?

11 MR. COBERLY: Mr. Chief Justice, we do
12 believe that it would be enough. There's --
13 oftentimes, as the Court recognized in Rita,
14 how much explanation a district court judge
15 needs to give depends so much on circumstances
16 and context. And I --

17 JUSTICE GINSBURG: What is the
18 standard of review that the court of appeals
19 uses for sentence -- for sentences?

20 MR. COBERLY: Justice Ginsburg, it --
21 it's -- it's reasonableness, which this Court
22 understands in the original sentencing context
23 to mean --

24 JUSTICE GINSBURG: I thought that what
25 -- doesn't the statute say, 3742, imposed in

1 violation of law?

2 MR. COBERLY: It --

3 JUSTICE GINSBURG: The question is
4 whether the sentence is imposed in violation of
5 law?

6 MR. COBERLY: Yes, Your Honor. And as
7 the Court has understood in -- from Booker
8 through Rita through Gall, ultimately, what
9 that means is was the -- was the sentence
10 reasonable? And there's two components: The
11 procedural reasonableness and substantive
12 reasonableness.

13 And, ultimately, this Court has
14 understood that what -- what reasonableness
15 means is, did the district court abuse its
16 discretion?

17 JUSTICE GINSBURG: But how could that
18 be if the -- the district court sentenced
19 within -- within the guidelines? It wasn't the
20 same range, and it wasn't the same point within
21 the guidelines as the original sentence, but it
22 was still within the guidelines. So how could
23 a within-the-guidelines sentence be imposed in
24 violation of law?

25 MR. COBERLY: Well, I think that's the

1 government's position, which is, well, in a
2 sentence reduction, when it's reduced and it
3 falls within the guidelines, the government's
4 position, as I understand it, is essentially
5 that that decision is unreviewable. And we
6 disagree with that -- that proposition.

7 No matter what, as the Court has made
8 clear in Gall, within-guideline sentences,
9 outside-guideline sentences, the district court
10 has -- has an obligation to explain the reason
11 for the sentence. And that holds, we believe,
12 in the -- in the sentence reduction context of
13 3582(c)(2).

14 JUSTICE GINSBURG: How much of an
15 explanation would -- would be required? Let's
16 say -- and take this very case. What -- what
17 -- what explanation would have sufficed?

18 MR. COBERLY: Your Honor, we believe
19 what would have sufficed -- I don't want to
20 prejudge the case and tell the district court
21 -- I don't want to presume what the district
22 court was thinking, because that's the whole
23 point, is we simply don't know.

24 And so what we're asking is -- is for
25 the Court to apply the rule it has already

1 applied in Rita and Gall. And that's -- it's
2 simply sufficient explanation to allow for
3 meaningful appellate review --

4 JUSTICE KENNEDY: Suppose a case, not
5 this case, suppose a case where the judge
6 sentenced to the middle of the guideline -- or
7 the old guideline range; then the new guideline
8 range comes out and he does the middle of that.
9 Explanation required?

10 MR. COBERLY: In a -- in a typical
11 case, Your Honor, I think in that situation,
12 that would be what we're calling a proportional
13 reduction. All things considered, that would
14 be -- it could be inferred from the record why
15 the judge did what he did.

16 However, I think there are certain
17 circumstances in that particular situation
18 where the judge might need to provide more
19 explanation, and that would be where either
20 party, either the -- the defendant or the
21 government, had made non-frivolous arguments as
22 to why there needed to be something different.

23 But in the -- in the typical, in the
24 run-of-the-mill, a mine-run case, I do believe
25 that that would be sufficient.

1 JUSTICE KENNEDY: And there are tens
2 of thousands of these hearings a year?

3 MR. COBERLY: Well --

4 JUSTICE KENNEDY: Of course, it
5 depends on when the guidelines are changed,
6 but --

7 MR. COBERLY: Exactly, Your Honor.
8 And -- and I believe the Sentencing Commission
9 estimated that there were -- that this
10 particular amendment, 782, affected over 46,000
11 prisoners.

12 JUSTICE KENNEDY: Does that -- should
13 that be a factor in our decision; i.e., the
14 obvious workload on the federal courts?

15 MR. COBERLY: Well, Your Honor, I
16 think it --

17 JUSTICE KENNEDY: Or is that something
18 we don't consider?

19 MR. COBERLY: Well, I think it's
20 certainly something you -- you can consider and
21 I would ask the Court to consider this. We're
22 not asking for anything really that the
23 district court is not already -- should be
24 doing, and that is considering the --
25 considering the sentence reduction in light of

1 the 3553(a) factors, and Section 1B1.10 of the
2 guidelines, and then coming to a reasoned
3 decision as -- as to why it's -- it's imposing
4 a particular reduced sentence.

5 All we're asking for is simply the
6 district court to jot down a few words in most
7 instances as to how that reasoning is. So we
8 don't --

9 JUSTICE ALITO: I don't quite
10 understand in practical terms -- excuse me --
11 what that would mean. So what if the court
12 goes through each of the 3553(a) factors and
13 says, well, you know, as to (a), it's a serious
14 offense and it's serious enough to warrant a
15 sentence of 114 months; and we need to have
16 adequate deterrence, and I think 114 months is
17 the amount that you need for adequate
18 deterrence and so forth? Would that be enough?

19 MR. COBERLY: So -- so much depends on
20 context, Justice Alito. And in that particular
21 case, I don't think it would be enough without
22 -- without more information in the record that
23 that -- that that explanation by the district
24 court would be tied to a particular fact within
25 the record.

1 JUSTICE KENNEDY: Let me just tell
2 you, given the workload numbers you've just
3 cited and your answer to Justice Alito, I'm
4 becoming less convinced of your case.

5 MR. COBERLY: Justice Kennedy, we --
6 our concern is that a simple check -- let's
7 say, for instance, the AO-247 form, which we --
8 which we think is perfectly fine, had a -- had
9 a -- had a checklist of the 353(a) factors and
10 all that was required was a judge to check a
11 box that he considered -- he or she considered
12 those factors. We don't think that would be
13 enough.

14 There needs to be just something
15 minimal in the record.

16 JUSTICE SOTOMAYOR: I'm sorry, I just
17 don't understand what "minimal" means. If
18 you're answering Justice Alito the way you did,
19 which is I can't imagine needing anything more
20 than a judge saying I'm going to grant a
21 reduction, but given the seriousness of this
22 crime and how -- and what you did, I think
23 whatever number he picks, why that would become
24 unreasonable or subject to more explanation.

25 MR. COBERLY: And that's why I think,

1 I mean, just a few words can matter, Justice
2 Sotomayor.

3 JUSTICE SOTOMAYOR: But you said to
4 Justice Alito no.

5 MR. COBERLY: Well --

6 JUSTICE SOTOMAYOR: I'm asking -- that
7 -- that's shocking to me, to be frank with you,
8 because that answer would mean that the judge
9 not only has to say the crime was serious, what
10 you did was serious, but I think 108 is not
11 enough because it's the bottom of the guideline
12 range; I don't think the guideline range should
13 control.

14 I mean, what more of an explanation
15 does a judge have to do than to say it was a
16 serious crime, 114 is the right amount?

17 MR. COBERLY: I think just some
18 indication that the judge actually had
19 considered that particular crime. And so
20 simply -- all I'm saying is simply just saying
21 I don't want to say that -- I don't want to
22 create a rule that a district court judge in
23 any instance --

24 JUSTICE SOTOMAYOR: I'm afraid that --
25 you keep answering -- you're creating a rule

1 that makes it impossible for district court
2 judges to do anything but what you want.

3 MR. COBERLY: And I certainly -- I
4 certainly don't want that, Justice Sotomayor.

5 JUSTICE SOTOMAYOR: Well, but that's
6 where it's coming. Let's -- let's start at
7 here. We know the district court at the
8 original sentence said, I'm troubled by this
9 crime and the degree of your participation in
10 it. It's a serious crime. You were a very
11 active participant in it.

12 He still gave him essentially the low
13 end of the guideline. But why is it
14 unreasonable for us to infer that in the
15 resentencing he picked 114 because he remained
16 concerned about the seriousness of this crime
17 and your defendant's participation in it?

18 MR. COBERLY: Your Honor, if -- if the
19 district court judge in this particular case
20 had said something to that effect of I've
21 looked at this case again, and considering the
22 seriousness of the drug trafficking, and tied
23 it specifically -- just said a word that --
24 that made it clear that that was tied
25 specifically to that case, and I remain

1 convinced that 114 months is reasonable, I
2 think, in that situation, that would be plenty.

3 JUSTICE SOTOMAYOR: Since the
4 guidelines are advisory, what would make it
5 improper for the judge to say, I don't care
6 what the guidelines say, I think trafficking of
7 this type is serious, and I think that 114
8 months is the right amount for -- for the
9 seriousness of the crime and the deterrence.
10 How could you appeal that?

11 MR. COBERLY: I don't -- we would have
12 a tough time appealing that, Your Honor. I
13 think that's well within the right of the
14 district court.

15 JUSTICE SOTOMAYOR: I guess my -- I --
16 I have a great deal of understanding that
17 having the judge say something makes sentencing
18 appear to the public as being less than
19 arbitrary. And there is a value in explanation
20 that -- that -- that the justice system should
21 consider.

22 The question is how much and why
23 checking off a box is not enough, because I
24 take the judge at his or her word that when
25 they check off the box, they've done what

1 3553(a), I think it is, requires. But is there
2 a difference between checking off a box and not
3 checking off a box?

4 MR. COBERLY: I think there is a
5 difference, Your Honor. And it's the fact of
6 an articulation that -- one can be convinced,
7 one understands that the district court judge
8 actually thought about this case and considered
9 it, and simply checking a box I don't think
10 does enough. We -- we say it is -- it is --

11 CHIEF JUSTICE ROBERTS: Go ahead,
12 please.

13 MR. COBERLY: It is not -- we're not
14 asking for much. And contrary to what the
15 government has claimed that we're asking for,
16 which is detailed or extensive explanations, we
17 are -- I want to assure the Court we are not.
18 We're simply asking for just a -- a bare
19 minimal enough to -- to convince an appellate
20 court that there was a reasoned basis for the
21 decision.

22 CHIEF JUSTICE ROBERTS: So if --

23 MR. COBERLY: And, Justice Sotomayor,
24 like you -- like you just said, the need to
25 assure the public that our -- our judiciary is

1 acting on -- on -- with sound legal principles
2 in applying the law and not making arbitrary
3 decisions. It doesn't have to be much.

4 CHIEF JUSTICE ROBERTS: What if he
5 just says same -- same reasons as before?

6 MR. COBERLY: Mr. Chief --

7 CHIEF JUSTICE ROBERTS: Before he's
8 done a fairly, you know, the usual, what's
9 required under 3553, and those are the same --
10 what he's saying, those are the same things
11 that is -- that are motivating him in this new
12 context, same reasons as before?

13 MR. COBERLY: Well, I think, in this
14 particular case, Mr. Chief Justice, if -- if
15 the judge had said that, that would pose a
16 problem because, in -- in this particular case,
17 tied back to the original sentence, it was
18 clear that the district court judge had -- had
19 tied his sentence and adopted the reasoning of
20 the Sentencing Commission.

21 And he sentenced at the bottom of the
22 guidelines. He referred to the reason the
23 guidelines sentence in this case is high is
24 because of the type of drug and the quantity of
25 drug.

1 And if he simply adopted that same
2 reasoning, then one would expect that the --
3 his -- his -- his understanding of how --

4 CHIEF JUSTICE ROBERTS: So you'd be
5 fine? I mean, that gives you -- you say that
6 would give you the grounds you want to present
7 on appeal, just as you've articulated here. So
8 that ought to be fine as far as you're
9 concerned?

10 MR. COBERLY: I -- I think -- right.
11 And we have to -- I have to remember -- we have
12 to remember that we're talking here just about
13 a procedural component, and that is simply an
14 explanation to get us to understand the judge's
15 reasoning. So if there's -- if there's some
16 indication of the judge's reasoning, we would
17 then have something to grasp onto on appeal,
18 and maybe we would argue that on appeal.

19 JUSTICE GINSBURG: One aspect of this
20 case that strikes me as curious, so this is an
21 appeal from the resentencing. Couldn't --
22 could this defendant, instead of going to the
23 court of appeals, said, District Judge, would
24 you please reconsider or clarify why the first
25 time around you put me in the bottom of the

1 range and the second time in the middle? You
2 could -- could have moved for clarification
3 before the district court.

4 MR. COBERLY: Justice Ginsburg, we --
5 there -- there's no -- there's no specific rule
6 in the Rules of Criminal Procedure that allows
7 for that. And so this was a final order and it
8 was -- it was appealable.

9 Now, in practice, would -- could one
10 in theory make such a request? I suppose. But
11 given that there's nothing required in the
12 rule, there's no -- there's no requirement that
13 the district court has to actually reconsider
14 that, other than just saying motion to
15 reconsider denied, and in the context of this
16 case, Mr. Chavez-Meza had filed his motion for
17 a sentence reduction under 3582(c)(2) over a
18 year before the -- the district court judge
19 made his decision.

20 And under the existing law, as -- as
21 it was understood in the Tenth Circuit, we
22 thought it was best to just take an appeal and
23 have it remanded back, which is all we're
24 asking for in this instance, is to have the
25 case remanded back to the district court for

1 consideration of the reduction in light of the
2 3553(a) factors and to provide some explanation
3 for its -- its ultimate decision.

4 Your Honor, our concern -- Your
5 Honors, our concern ultimately is that the
6 government's construction of the statute would
7 allow just this particular case of -- of a
8 class of defendants and class of cases not --
9 not subject to appellate review at all. And
10 there's no principal basis looking at the
11 statute for such a rule.

12 And as the Court understood in Dillon,
13 the purpose of Section 3582(c)(2) was to give
14 prisoners the benefit of the Sentencing
15 Commission's determination that there was a
16 systemic problem with a particular guideline.

17 And precluding appellate review
18 entirely of this type of case would undermine
19 congressional intent.

20 JUSTICE ALITO: Why would this
21 preclude appellate review? Isn't it pretty
22 obvious what -- or couldn't the court of
23 appeals infer that what the district court did
24 was this: The district court originally
25 thought 135 months was the right sentence --

1 that was the original sentence, right, 135?

2 MR. COBERLY: Yes, Justice Alito.

3 JUSTICE ALITO: All right. And so the
4 district court thought: Well, the -- the range
5 was lowered, and so I'm going to go down to
6 114, but taking into account the sentencing
7 factors, I don't think it should go below 114.
8 And I think that's the -- I don't know that you
9 need to spell all that out.

10 And if -- if that's what the court
11 said, would that be sufficient? And, if that
12 would be sufficient, why can't there be
13 appellate review, just as -- based on what was
14 done here?

15 MR. COBERLY: I don't think in that
16 particular case, Justice Alito, that would
17 necessarily be sufficient because it just says
18 in my opinion. It does not -- the -- the
19 decision does not tie that opinion somehow to
20 the 3553(a) factors.

21 JUSTICE ALITO: Well, why doesn't it
22 tie it to the 3553(a) factors? There's nothing
23 -- there isn't an algorithm that tells you how
24 to put those factors together or to quantify
25 each one. It's the judge takes into account

1 the various factors, the seriousness of the
2 offense, deterrence and so forth and says this
3 is the right number.

4 MR. COBERLY: And all we're asking
5 for, Justice Alito, is just a little bit
6 following that, which is why the judge thinks
7 that's the right number, not merely the fact
8 that, yes, I considered the factors and this is
9 the number I come up with, but just something
10 to indicate why, just some --

11 CHIEF JUSTICE ROBERTS: I think you'd
12 be -- I think you'd be better off with the
13 other rule. I mean, if you have something that
14 looks out of the ordinary in the -- in the
15 resentencing and the judge hasn't said
16 anything, I think that gives you a stronger
17 basis for appeal than -- you say, well, all
18 he's got to do is have a couple of words.
19 Well, a couple of words and then you're out of
20 -- out of the appellate court. But if he
21 doesn't say anything, you've got a stronger
22 argument.

23 He hasn't justified it. It's not that
24 there's no basis for appellate review. It's
25 that you have a strong case because nothing's

1 on the record to support what has been done.

2 MR. COBERLY: And that's exactly the
3 position we're in, because there was nothing in
4 the record and we felt like we had a strong
5 case on appeal to say at least give us
6 something. We couldn't -- we were precluded
7 from -- from trying to -- the problem here
8 is --

9 CHIEF JUSTICE ROBERTS: Yeah, but it
10 depends on the -- the range of the departure.
11 In other words, whatever you think is what it
12 should look like or the norm, you mention in
13 your brief an argument about where you thought
14 it should be proportionately, and if it's out
15 of whack, and nothing is said, it seems to me
16 you have a stronger case than what you've
17 suggested is what -- you -- you lose if he puts
18 in just a few words that shows that he
19 considered the pertinent factors.

20 MR. COBERLY: Well, the concern here
21 is -- is ultimately with ensuring the integrity
22 of the process, Your Honor, and making sure
23 that -- that there was some reason that was
24 given.

25 And -- and when -- when there is no

1 reason given, it -- the public and, frankly, my
2 client lacks confidence that that decision was
3 actually made on a sound basis of law as
4 opposed to --

5 JUSTICE BREYER: Well, what is he
6 supposed to say? He did give reasons. He says
7 having considered such motion -- that's your
8 motion -- and taking into account the policy
9 statements set forth at U.S. Sentencing
10 Guideline, dah, dah, 1B1.10, and the sentencing
11 factors set forth in 18 U.S.C. 3553(a), to the
12 extent they're applicable, I reduce the
13 sentence to 114 months.

14 All right? He gave a reason. That's
15 the reason. Now what else is he supposed to
16 say?

17 MR. COBERLY: Well, Your Honor, we --
18 we disagree that that's actually a reason.

19 JUSTICE BREYER: No, no. What else is
20 he supposed to say?

21 MR. COBERLY: What else he -- we
22 believe he is supposed to say is because --
23 because of the particular nature of the crime
24 here that Mr. -- I don't want to tie it to this
25 particular defendant -- but the defendant was

1 involved in drug trafficking, there has been
2 cases where the -- where -- similar to ours,
3 they've been remanded back, the district court
4 provides a simple sentence, such as given this
5 defendant's recidivism and his wrapping up two
6 -- two young innocent women in this crime, I
7 find that this --

8 JUSTICE BREYER: So we have in the
9 record what -- what he did. That isn't a
10 problem. And -- and judges do when they
11 choose -- that's why I've never understood the
12 part of -- what they do is they look at the
13 crime and they look at the defendant and have a
14 range here, and they select the point that they
15 think is appropriate.

16 What else can you say besides that?

17 MR. COBERLY: Something, Your Honor,
18 that -- that ties it as to why they think it's
19 appropriate.

20 JUSTICE BREYER: Well, then I don't
21 know why.

22 JUSTICE KAGAN: Well, isn't --

23 JUSTICE BREYER: They say, I -- I've
24 seen a lot of cases. I -- I -- I see what -- I
25 look at the conduct. I look at the defendant.

1 And this is what strikes me as appropriate.

2 And now what else? I mean, you could
3 not tell -- that's the truth of the matter. So
4 what else can he say besides that that is
5 truthful?

6 MR. COBERLY: How he or she actually
7 considered the 3553 --

8 JUSTICE BREYER: He says, I considered
9 it. How do you consider it? What you do is
10 you read it and you think about it. What else?

11 MR. COBERLY: Something tied to the
12 particular facts of the case.

13 JUSTICE KAGAN: So is what you're
14 saying, Mr. Coberly, essentially that the judge
15 should say any lower sentence would not meet
16 the seriousness of this crime?

17 MR. COBERLY: I mean, I think that
18 would be helpful, Justice Kagan. But I'm not
19 sure that that actually -- those words either
20 would actually get to our point, which is that
21 there needs to be something that the public can
22 be confident that the judge actually considered
23 this particular case.

24 JUSTICE KAGAN: Well, that -- that's
25 this crime. The judge is saying I've looked at

1 this crime, and -- and I don't -- I can't
2 imagine, given the seriousness of this crime,
3 going below 114 months.

4 MR. COBERLY: That would be a close
5 call, Your Honor. And -- and it's just simply
6 something that -- that allows the defendant and
7 allows the public to understand that -- yes.

8 JUSTICE KAGAN: I don't understand why
9 that would be a close call. I mean, what else
10 are you supposed to say other than -- I can
11 understand why you want the judge not just to
12 check a box. I can understand why you want the
13 judge to say, I've looked at the seriousness of
14 this crime; I think it going below 114 months
15 would not be in keeping with the seriousness of
16 this crime.

17 What else do you want a judge to say?

18 MR. COBERLY: Something about the
19 seriousness of the crime tied to the particular
20 facts of that crime to ensure that the judge is
21 actually considering and making a reasoned
22 decision based on --

23 JUSTICE GINSBURG: You -- you seem to
24 be having some kind of a presumption that the
25 reduction should be proportional. So, if the

1 original sentence was at the low end, the
2 reduced sentence should be at the low end.

3 But what statutory provision requires
4 proportionality?

5 MR. COBERLY: Thank you, Justice
6 Ginsburg.

7 Our -- our argument regarding
8 proportionality, we're not arguing -- I want to
9 make clear -- we're not arguing that there
10 should be a proportionality. We're simply
11 recognizing that when -- when there is
12 proportionality and the record is silent, we
13 think that in the mine-run of cases one can --
14 one can rest assured that the district court
15 judge here simply applied the exact same
16 reasoning that it applied at the original
17 sentencing context to the -- the amended
18 guidelines range.

19 So, for instance, you know, if someone
20 was sentenced at the top end of the guidelines,
21 there was no new information that was presented
22 by either party in the sentence reduction
23 motion, and the district court judge in a
24 silent order adjusted the -- the sentence to
25 the top of the amended guidelines range, we

1 think that that would be sufficiently clear in
2 the record, that that's --

3 CHIEF JUSTICE ROBERTS: What about if
4 it was the -- I think a lot of your objection,
5 right, and a lot of the appeal of your
6 objection is the boilerplate language. What if
7 the judge had actually, you know, written it
8 out? I mean, it seems the way you're saying
9 it, the -- the actual language, he says I've
10 taken into account the policy statement, I've
11 taken into account those factors, to the extent
12 they're applicable; this is what I think.

13 I think if you had seen that in an
14 order written out, you know, that based on what
15 you've said, that would seem to be sufficient.
16 I -- it -- it seems to me your objection is --
17 in other words, you don't -- you don't really
18 believe it when it's just a check in a box.
19 You think, well, he really hasn't done that;
20 he's just checking the box.

21 But what would be wrong with the
22 language that he's checked in the absence of
23 the -- the boilerplate aspect?

24 MR. COBERLY: I think the -- I think,
25 Your Honor, that we would have the same

1 problem. It's not with the fact that it's
2 preprinted on a form. It's -- it's -- it's
3 that there was no additional reasoning.

4 And -- and in this case, the AO-247
5 form has a spot on the second page for
6 additional comments. And --

7 JUSTICE BREYER: Like what? You --
8 you've had a lot of experience probably with
9 sentencing cases, much more than I have. All
10 right?

11 So let's take an original sentencing.
12 And the reason there is -- is -- there is
13 discretion within the range is because what
14 judges used to do, and typically do, is they
15 just decide. You know, there's -- there's
16 nothing you can say.

17 All right. So -- but they're supposed
18 to. So what do they say, what kinds of things?

19 MR. COBERLY: They say, Justice
20 Breyer, similar -- I mean, at an original
21 sentencing, there's arguments typically
22 presented by both sides as to a particular
23 sentence. And in tying it to this case, the
24 government actually made an argument as to 135
25 months. And the district court judge said the

1 reason the guideline sentence is high in this
2 case is because of the quantity of drugs, the
3 type of drugs. I consider in my experience
4 that the -- the -- the problem with
5 methamphetamine, and I'm adopting essentially
6 the district court's decision. That's all they
7 say, and that's enough.

8 And if I may reserve the rest of my
9 time.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 MR. COBERLY: Thank you, Your Honor.

13 CHIEF JUSTICE ROBERTS: General
14 Rosenstein.

15 ORAL ARGUMENT OF ROD J. ROSENSTEIN
16 ON BEHALF OF THE RESPONDENT

17 MR. ROSENSTEIN: Thank you, Mr. Chief
18 Justice, and may it please the Court:

19 There are three reasons why this Court
20 should uphold the district court's
21 discretionary decision to grant a sentencing
22 reduction and to impose a new sentence in the
23 bottom quartile of the applicable sentencing
24 guideline range.

25 The first reason is about judicial

1 integrity. When a federal judge issues an
2 order stating that the court considered the
3 relevant statutory factors, appellate courts
4 presume that the district court did precisely
5 what it said.

6 The second reason is the background
7 principle. In the absence of a statutory
8 mandate, federal judges are not required to
9 provide reasons for imposing a sentence within
10 the lawful range.

11 And the third reason is the statutory
12 text. Congress chose not to deviate from the
13 background rule and require a statement of
14 reasons for a sentence reduction motion under
15 Section 3582(c)(2), in contrast to the express
16 requirement in Section 3553(c). And this Court
17 should respect Congress's judgment.

18 CHIEF JUSTICE ROBERTS: What if they
19 --

20 JUSTICE KAGAN: General, can --

21 CHIEF JUSTICE ROBERTS: -- a judge is
22 -- has had, you know, 600 of these
23 resentencings, every time just checks the box,
24 600, he's done nothing but check the box, and
25 the results are a little off; sometimes it's

1 high, sometimes it's low; you can't really tell
2 why?

3 Do you have the same position?

4 MR. ROSENSTEIN: Your Honor, we -- we
5 believe that the premise there that the
6 district court is merely checking a box is a
7 mistake. The form reflects what the district
8 court is required to do by statute. And so
9 there's no reason to presume here that the
10 court is checking a box and not actually doing
11 what's required.

12 CHIEF JUSTICE ROBERTS: Even if it's
13 -- even if he's done it 600 times, never done
14 anything but check the box, you still presume
15 that he's giving the careful consideration in
16 each of those cases?

17 MR. ROSENSTEIN: Well, in no case,
18 Your Honor, is the court merely checking a box.
19 The court is checking a box indicating whether
20 it's granting or denying the motion, but then
21 it's actually required to compute the guideline
22 range and then select a new sentence.

23 And so it's not merely a matter of
24 checking a box. The court is actually making a
25 conscious decision about what sentence to

1 impose within that new guideline range.

2 JUSTICE SOTOMAYOR: General, do you
3 have a different position with respect to a
4 denial of a motion for a reduction? If a judge
5 just says sign this form and -- but denied the
6 reduction, would you hold the same position?

7 MR. ROSENSTEIN: Your Honor, there
8 have been different variations of this form.
9 The form that's used in this case, we believe,
10 would clearly suffice because the form --

11 JUSTICE SOTOMAYOR: No, no, no. Take
12 my fact situation.

13 MR. ROSENSTEIN: Yes.

14 JUSTICE SOTOMAYOR: The judge denied
15 -- basically denies -- after looking at
16 everything, I deny this motion for reduction.

17 MR. ROSENSTEIN: With or without --

18 JUSTICE SOTOMAYOR: Does that permit
19 intelligent appellate review?

20 MR. ROSENSTEIN: Your Honor, if the
21 court had completed the form and checked the
22 box indicating it had denied the motion, the
23 court would have certified by signing that form
24 that the court had gone through the appropriate
25 considerations, that is, they considered the

1 3553(a) factors and considered the policy
2 statement.

3 JUSTICE SOTOMAYOR: So how about if a
4 judge in the original sentence gives the low
5 end of the guideline but in the -- in the
6 revised reduction gives above the original
7 guideline but below the sentence he gave now?
8 Would that require more of an explanation than
9 signing this form?

10 MR. ROSENSTEIN: No, Your Honor, we
11 don't believe it would, because that would be a
12 lawful sentence within the guideline range
13 specified by the Commission and would reflect,
14 as this Court said in Rita, the presumption --
15 pardon me -- that in a typical case the court
16 has determined -- essentially has adopted the
17 reasoning of the Commission and has done what
18 the judge is supposed to do.

19 JUSTICE SOTOMAYOR: The one thing I
20 hate about absolute rules in this area, dislike
21 intensely, is that why shouldn't we trust the
22 court of appeals to determine how much
23 information it needs or doesn't need to give
24 meaningful appellate review?

25 Some courts have said if you refuse to

1 depart completely, you should explain why.
2 Others have said but if you don't and you pick
3 a sentence within the guidelines, we will infer
4 that you've said enough if you signed the form.
5 Others have said you should always give a
6 little bit more.

7 Another category of court of appeals
8 have done what the Tenth Circuit has done, but
9 I think there's only two that have done what
10 the Tenth Circuit has said.

11 Why isn't it always up to the court of
12 appeals to determine how much it needs to
13 determine whether adequate review can be given?

14 MR. ROSENSTEIN: Well, Your Honor, the
15 -- this Court in Gall indicated that with
16 regard at least to departures, courts of
17 appeals may but are not required to impose a
18 presumption of -- of reasonableness.

19 But with regard to the issue of what
20 the court of appeals is required to do, I
21 think, Your Honor, you're correct. The court
22 of appeals looks to the record and makes a
23 determination whether or not based on the
24 entire record --

25 JUSTICE KENNEDY: Look -- looking at

1 this record, do you know why the district judge
2 did what he did?

3 MR. ROSENSTEIN: I believe we --

4 JUSTICE KENNEDY: And -- and do I know
5 it? I'm not sure why the district judge did
6 what he did. I can guess.

7 MR. ROSENSTEIN: Justice Kennedy, I
8 believe we know just as well following the
9 sentence reduction motion as we did following
10 the original sentencing. And, in fact, if the
11 Court looks to the Joint Appendix at page 26,
12 the original sentencing hearing, which I
13 believe is a typical sentencing hearing, the
14 district court said that it had considered the
15 appropriate factors and selected a sentence of
16 135 months.

17 Now the defendant has not indicated he
18 is -- he has not confirmed how much information
19 he thinks he needs. But if you look to that
20 original sentence --

21 JUSTICE KENNEDY: Well, do -- do you
22 think that in that original sentence it was
23 because it was -- the sentence was at a
24 particular place in the guidelines, i.e. the
25 low end?

1 MR. ROSENSTEIN: No, Your Honor, I
2 don't believe so. Remember, keep in mind, of
3 course, we're in a post-Booker context here.
4 The district court is guided in part by the
5 guidelines but is required to consider all the
6 relevant 3553(a) factors, and at the original
7 sentencing, that's precisely what the court
8 said.

9 The court said he had taken into
10 account the history and characteristics of the
11 defendant and the need to impose a sentence
12 sufficient but not greater than necessary to
13 achieve the purposes of sentencing.

14 That is a somewhat conclusory --

15 JUSTICE KENNEDY: But that's -- that's
16 true in every case.

17 MR. ROSENSTEIN: Sure.

18 JUSTICE KENNEDY: But why this number?
19 Why wasn't -- why wasn't this -- if -- if he'd
20 been at the low end of the new revised
21 guideline range, that would have been okay,
22 wouldn't it?

23 MR. ROSENSTEIN: Yes, Your Honor.

24 JUSTICE KENNEDY: Without any
25 explanation?

1 MR. ROSENSTEIN: Correct.

2 JUSTICE KENNEDY: Well, then why isn't
3 an explanation required here when he does
4 something different?

5 MR. ROSENSTEIN: Because of the
6 background rule, Your Honor. Again, this --
7 the sentencing guidelines were adopted in 1984
8 against a backdrop of long-standing precedent
9 of this Court, reflected most significantly in
10 the Dorszynski case, where the Court indicated
11 that in the absence of any statutory mandate,
12 at common law, the court -- district courts had
13 discretion to impose sentences anywhere up to
14 the statutory maximum.

15 JUSTICE KAGAN: I guess I'm finding it
16 a little bit hard, Mr. Rosenstein, to
17 understand your understanding of the background
18 rule, because my understanding of the
19 background rule comes from Taylor, where it
20 said: Whereas here, Congress has declared that
21 the decision will be governed by consideration
22 of particular factors. A district court must
23 carefully consider those factors as applied to
24 the particular case. And whatever its
25 decision, and clearly articulate their effect

1 in order to permit meaningful appellate review.

2 So we're in one of these "whereas
3 here" situations where Congress has declared
4 that a decision is going to be governed by
5 consideration of particular factors. And
6 Taylor seems to say: Look, what we need for
7 intelligent appellate review is for the
8 district court to clearly articulate why he did
9 what he did.

10 Now it doesn't have to be lengthy. It
11 can just be pointing to, you know, this was a
12 serious crime, here's -- here's why, the end.
13 But -- but there has to be something, says
14 Taylor. No?

15 MR. ROSENSTEIN: Your Honor, we
16 respectfully submit that Taylor does not apply
17 in the context of sentencing. It didn't
18 overrule Dorszynski. And if it had, Your
19 Honor, we submit that Rita well might have come
20 out differently, because this Court ruled in
21 Rita in 2007 that no explicit analysis is
22 required of the 3553(a) factors.

23 There are -- if you break them out,
24 there are 15 distinct factors in 3553(a). And
25 if there's a resentencing, there are also three

1 additional factors established by the policy
2 statement, 1B1.10.

3 JUSTICE BREYER: You did at the
4 beginning -- I mean, there is something I don't
5 understand about this. I -- I tend to agree
6 with you that if we suddenly start saying you
7 have -- I mean, I've seen hundreds, if not
8 thousands, of -- of district court decisions
9 which take the following form: Motion for
10 summary judgment denied, okay, or motion for
11 this or that denied.

12 And if we're suddenly going to say,
13 well, this has to happen more than that word
14 denied, I don't know what's going to happen.
15 So I tended to follow what Justice Sotomayor
16 said. Sometimes the court of appeals would say
17 we need to know more and sometimes they
18 wouldn't.

19 But I think what he's arguing, and I
20 may be missing something, is that the statute
21 says in 3553(c)(1), that if the sentence is
22 within the guideline range and it exceeds 24
23 months, the court at the time of sentencing
24 shall state in open court the reason for
25 imposing sentence at a particular point within

1 the range.

2 Now it doesn't say that when you're
3 reconsidering.

4 MR. ROSENSTEIN: Correct.

5 JUSTICE BREYER: But it does say it at
6 the beginning. And so the background rule
7 isn't that you don't have to give a reason.
8 The background rule is just what I read.

9 So how does it work?

10 MR. ROSENSTEIN: Yes.

11 JUSTICE BREYER: I want to know how it
12 works and, after all, if that's the rule, if
13 I'm right that that is the rule, how do they do
14 it, and shouldn't you have whatever they have
15 to do there the same here?

16 MR. ROSENSTEIN: No, Your Honor.
17 Respectfully, the -- the background rule that I
18 refer to is the rule in the absence of any
19 statutory --

20 JUSTICE BREYER: Well, here is a
21 statute. I'm saying -- my question is, how
22 does that work in the ordinary sentencing case
23 where we've all said, gee, sometimes you just
24 can't say more. Well, the statute seems to say
25 more.

1 And then if it -- whatever that is,
2 why shouldn't it be the same here? And I think
3 what they're saying is you don't have to say
4 it's the same if it's proportional because it's
5 obvious. But if it isn't proportional, it
6 isn't obvious.

7 And so you should have to say
8 something. Okay. So what is the --

9 MR. ROSENSTEIN: Yes --

10 JUSTICE BREYER: -- response? What is
11 the response?

12 MR. ROSENSTEIN: -- Justice Breyer.
13 And the answer to that, Justice Breyer, is that
14 with regard to sentences that are governed by
15 3553(c) --

16 JUSTICE BREYER: Yeah.

17 MR. ROSENSTEIN: -- there are actually
18 three levels of explanatory requirements. The
19 first is the requirement to state reasons in
20 open court, which is 3553(c).

21 JUSTICE BREYER: Yeah. Right.

22 MR. ROSENSTEIN: The second is for a
23 sentence with a range above 24 months --

24 JUSTICE BREYER: That's right.

25 MR. ROSENSTEIN: -- you provide a

1 reason for a particular point in the range, as
2 you articulated.

3 JUSTICE BREYER: Yes.

4 MR. ROSENSTEIN: And the third is for
5 a sentence outside the guideline.

6 JUSTICE BREYER: Yeah, yeah, right.
7 I'm only interested in the particular point
8 within the range.

9 MR. ROSENSTEIN: Correct. But, Your
10 Honor, this provision, 3553, was adopted as
11 part of the Sentencing Reform Act in 1984
12 contemporaneously with Section 3582(c). And in
13 3582(c), the Congress decided not to
14 incorporate the 3553 requirements.

15 And that is why we respectfully submit
16 the 3553(c) requirements do not apply under
17 3582. It expressly incorporates 3553(a), which
18 we recognize and the district court
19 acknowledged, but it does not incorporate the
20 procedural requirements.

21 Now this Court affirmed that in the
22 Dillon case, where --

23 JUSTICE BREYER: I guess that's
24 peculiar. What's the reason for that? Judge,
25 when you give a sentence of 18 to 24 -- you

1 know, the guideline is 108 to 122 months. You
2 pick out 114. And you have to give your reason
3 for the particular point.

4 But if you do precisely the same thing
5 on resentencing, you don't. But why?

6 MR. ROSENSTEIN: And the reason -- the
7 answer, Your Honor, as articulated by this
8 Court in Dillon, is that we are not at a formal
9 resentencing proceeding here. We are at a
10 motion for a reduction, which is -- this Court
11 recognized in Dillon is not governed by the
12 constitutional or remedial holding of Booker.

13 It's an act of congressional lenity,
14 of legislative grace, and Congress in enacting
15 that provision was entitled, we submit, to
16 permit the court to do it in an expeditious
17 way. And --

18 JUSTICE SOTOMAYOR: So assume there
19 wasn't a form and that the judge's real reason
20 was that he thinks blacks who commit this kind
21 of crime should be punished severely.

22 How are we supposed to know or check,
23 or the public know or check, that racism didn't
24 play a part in this? I'm not assuming that any
25 judge would do this, but I'm assuming --

1 MR. ROSENSTEIN: Yes.

2 JUSTICE SOTOMAYOR: -- some
3 impermissible motive is -- is at play. If we
4 don't have any statement by the judge of what
5 he or she is doing or some basic reference to
6 why, how do we know?

7 MR. ROSENSTEIN: And, Your Honor, I
8 would give two answers to that. The first is
9 that no matter what the judge says, you never
10 know what the judge is thinking and doesn't
11 articulate.

12 But the second is that under *Walton*
13 *v. Arizona*, a long-standing principle, courts
14 presume that district courts know the law and
15 apply it faithfully. If it were to the
16 contrary, we would face this issue really in
17 every case. You never know the unstated
18 reasons; you know only the stated reasons. And
19 in this case --

20 JUSTICE SOTOMAYOR: But if you know no
21 reason, which is what Justice Kennedy started
22 with -- we don't really know why he picked 114.

23 MR. ROSENSTEIN: Well, we submit, Your
24 Honor, that you do know enough, just as in any
25 ordinary original sentencing under *Rita*, you

1 know that the court was familiar with the facts
2 and circumstances of the crime, you know that
3 the court evaluated the 3553(a) factors and the
4 policy statements. You have the comments the
5 district court made at the original sentencing,
6 which indicated that the court was aware the
7 defendant had other uncharged conduct.

8 JUSTICE SOTOMAYOR: So -- so let's do
9 a different hypothetical. The judge says: I
10 gave the 114 because he got convicted of a
11 prison infraction that was at the highest
12 level. And, in fact -- not the facts of this
13 case -- the prison infraction was at the lowest
14 level and didn't even result in anything except
15 a warning.

16 How would the appellate court know
17 that the judge made a factual assumption that
18 was erroneous in picking that 114?

19 MR. ROSENSTEIN: In your hypothetical,
20 Justice Sotomayor, the court has articulated
21 that reason?

22 JUSTICE SOTOMAYOR: Yes.

23 MR. ROSENSTEIN: Yes. Well, in that
24 case, you --

25 JUSTICE SOTOMAYOR: But what -- how do

1 we know if they don't articulate --

2 MR. ROSENSTEIN: Right.

3 JUSTICE SOTOMAYOR: -- their reason
4 for doing something, that they're not -- that
5 it's not based on an erroneous factual basis?

6 MR. ROSENSTEIN: So, once again, we
7 can't deal with what the court doesn't say, but
8 if the court did express --

9 JUSTICE SOTOMAYOR: No, but we should.
10 I mean, when we're making a rule that says you
11 never have to, as the Tenth Circuit has
12 indicated, then we don't know if an
13 impermissible factual or legal basis motivated
14 the judge.

15 And with factual, it's not
16 intentional; it's just wrong.

17 MR. ROSENSTEIN: If there were any
18 evidence in the record, Justice Sotomayor, to
19 indicate that such an error had been made, the
20 defendant would be permitted on appeal to argue
21 procedural unreasonableness, just as this Court
22 contemplated in Gall.

23 CHIEF JUSTICE ROBERTS: If there
24 were --

25 JUSTICE KAGAN: Can I go back --

1 CHIEF JUSTICE ROBERTS: If your
2 position prevails, why would any district judge
3 ever say anything about why he -- his position
4 on resentencing?

5 MR. ROSENSTEIN: We -- we don't
6 presume, Your Honor, the district courts are
7 motivated solely by the desire to be -- to
8 avoid appellate review. I believe a district
9 court, as -- as was contemplated in the Rita
10 opinion, it depends on the circumstances.

11 The district court can make its
12 judgment whether or not it believes that the
13 facts are such that it merits a more detailed
14 opinion, but if it's a routine, typical,
15 run-of-the-mill case, as this one was, and the
16 court looked to the original sentencing, where
17 it had said very little, we believe it's
18 appropriate under these circumstances for the
19 court to impose the appropriate sentence and
20 simply say it had considered the factors.

21 CHIEF JUSTICE ROBERTS: Well, a judge
22 who -- under what circumstances was a judge --
23 would a judge who did just that be subject to
24 reversal?

25 MR. ROSENSTEIN: It would depend upon

1 the record, Your Honor. As in all cases, the
2 appellate court would look to the entire
3 record. Given the presumption of regularity
4 which we submit is accorded in all cases, the
5 defendant who appeals this would have to
6 identify some error in the record, something
7 that would merit appellate review.

8 CHIEF JUSTICE ROBERTS: Well, like --
9 like what? I'm -- I'm saying the judge doesn't
10 say anything, and you say the presumption is
11 that he adequately considered all of the
12 factors and all that.

13 MR. ROSENSTEIN: Correct.

14 CHIEF JUSTICE ROBERTS: What type of
15 evidence in the record would suggest that that
16 wasn't the case?

17 MR. ROSENSTEIN: Well, if you're
18 talking only about procedural reasonableness,
19 as we're talking about here, you look to
20 whether the guidelines were properly
21 considered. You would look to whether or not
22 there were other defendants in the case who
23 received disparate sentences. You'd have to
24 find something in the record that indicated
25 that there had been some impropriety in the

1 sentencing proceeding.

2 JUSTICE KENNEDY: So, as -- as I
3 understand it in this case, let's say there --
4 there are any number of choices, but let's say
5 there are three choices: One, the judge has
6 kept the original sentence. Two, he put it at
7 the low end of the guidelines. Three, he put
8 it at the high end of the new guidelines but no
9 greater than the earlier sentence.

10 Any one of those is okay?

11 MR. ROSENSTEIN: Any one of those is
12 okay, Your Honor, as long as there's no --

13 JUSTICE KENNEDY: No reasons required?

14 MR. ROSENSTEIN: Well, the reasons are
15 required. The court is required to apply the
16 3553(a) factors and the policy statement, but
17 in the absence of any indication the court had
18 failed to do that, we submit that that would
19 suffice, even in an original sentencing under
20 Rita.

21 JUSTICE KENNEDY: But in -- in -- in
22 all of the circumstances on the revised --
23 after the sentencing guidelines had been
24 revised, in my three alternatives, in none of
25 those cases is any reason required?

1 MR. ROSENSTEIN: In -- in all cases,
2 the court is required to have reasons, premised
3 on the --

4 JUSTICE KENNEDY: The statement -- in
5 none of those cases need the court state his
6 reasons, under your view, for the resentencing?

7 MR. ROSENSTEIN: In none of those
8 cases would it be required to cite a specific
9 reason for a sentence within the guideline
10 range. That's correct, by the --

11 JUSTICE KAGAN: And your -- your
12 understanding where -- the language that I read
13 you in Taylor where it said that there is some
14 necessity to state some amount of reasoning,
15 what do you think that that applies to?

16 MR. ROSENSTEIN: Your Honor -- Your
17 Honor, we believe that the Taylor case is not
18 generalizable. And as this Court said in Rita,
19 the amount of explanation required under the
20 guidelines depends upon the circumstances.

21 If it were otherwise, then we submit
22 --

23 JUSTICE KAGAN: Well, is Taylor just
24 about the statute? In Taylor, is that all it's
25 about? Because, certainly, Taylor seems to

1 suggest a broader rule. It said, you know,
2 whereas here, Congress has directed a district
3 court to consider particular factors, in order
4 to have effective appellate review, we need
5 some brief statement about why the court has
6 come out the way it has based on those factors.

7 MR. ROSENSTEIN: So we believe, Your
8 Honor -- and there are two answers to that.
9 And the first is that if you look to the
10 concluding paragraph in the Taylor opinion, the
11 court indicated that the trial court in that
12 case relied on factors that were unsupported by
13 the record. So the record itself actually
14 indicated that there was an error that was made
15 by the district court in Taylor.

16 But with regard to the issue of what
17 factors need to be considered, that is
18 ultimately an issue, we submit, of legislative
19 intent.

20 And in this case, in Section 3582,
21 Congress decided to permit an expedited process
22 and not to require all the procedures that
23 Congress created for original sentencing.

24 JUSTICE KAGAN: There's a -- there's
25 another statutory section, which is 3583(e),

1 which directs courts to consider the 3553(a)
2 factors, those -- these same factors that are
3 involved in this case, when terminating periods
4 of supervised release.

5 Do you think a judge can terminate a
6 period of -- of supervised release and send
7 somebody back to prison without any statement
8 of reasons?

9 MR. ROSENSTEIN: Your Honor,
10 hypothetically, the court would be permitted to
11 do that only if the record were sufficient --

12 JUSTICE KAGAN: I'm sorry.
13 Hypothetically what?

14 MR. ROSENSTEIN: Well, in some cases,
15 Your Honor, the record might be clear as to
16 what the basis was, but certainly there would
17 have to be a basis for the court to make that
18 decision.

19 JUSTICE KAGAN: Well, a basis. But
20 the question is, do you think that the court
21 has to state reasons to send somebody back to
22 prison under 3583(e)?

23 MR. ROSENSTEIN: Your Honor, I don't
24 have the language in front of me. I apologize.

25 JUSTICE KAGAN: It doesn't say

1 anything about explanation. So I'll give you
2 the relevant things.

3 MR. ROSENSTEIN: Right.

4 JUSTICE KAGAN: It basically says you
5 have to consider the 3553(a) factors. But then
6 it does not say that you have to explain
7 anything.

8 So the question is whether there's a
9 background rule that says --

10 MR. ROSENSTEIN: Yes.

11 JUSTICE KAGAN: -- of course, before
12 you send somebody back to prison like that, you
13 have to at least say something. That's the
14 question.

15 MR. ROSENSTEIN: Yes. And -- and,
16 again, Your Honor, we believe it would be a
17 question of legislative intent, and we believe
18 that with regard to 3582, it's clear that
19 Congress contemplated an expedited procedure
20 that would not incorporate the reasons required
21 in 3553 and would simply be subject to the
22 background rule.

23 JUSTICE GINSBURG: Can you tell us --

24 JUSTICE BREYER: So can we do this --
25 can we do that --

1 JUSTICE GINSBURG: -- a little
2 something about the form? What -- what was the
3 genesis of that, this Administrative Office
4 Form, what, AO-247?

5 MR. ROSENSTEIN: Correct, Your Honor.

6 JUSTICE GINSBURG: How did that come
7 to -- to be?

8 MR. ROSENSTEIN: My understanding,
9 Your Honor, is that form was developed by the
10 Administrative Office of the U.S. Courts, along
11 with input from the Sentencing Commission, in
12 order to expedite these proceedings and ensure
13 that appropriate information was reflected in
14 the record.

15 Interestingly, Your Honor, the
16 original version of the form, I believe from
17 2008, did not include the language clarifying
18 that the court had considered the 3553(a)
19 factors and the policy statement.

20 In fact --

21 JUSTICE BREYER: All right. It --

22 MR. ROSENSTEIN: -- one of the lower
23 court opinions -- pardon me?

24 JUSTICE BREYER: I just want to go
25 back for a second to Taylor. My understanding

1 is that Taylor is speaking generally in 1988,
2 and it's considering the Speedy Trial Act.

3 Subsequent to that, I believe we
4 decided a case called Rita. And I thought in
5 Rita, we addressed specifically this question
6 at an original sentencing. And what we said,
7 yes, there has to be some explanation, but the
8 length, the detail -- when it's within the
9 guideline, not outside the guideline, and I
10 think that was the intent of the Commission.

11 Outside the guideline, you better
12 explain it. Inside the guideline, in this
13 range, it says, that the statute or precedent
14 does not insist upon a full opinion in every
15 case. The sentencing judge should set forth
16 enough to satisfy the appellate court that he
17 has considered the arguments and has a reasoned
18 basis, but the length, the detail, the content,
19 even when to write is basically up to the
20 judge.

21 Then, when the judge does that, if the
22 appellate court needs more, it can ask for
23 more. Now I thought that was what Rita -- but
24 I haven't looked at it in a long time -- so I
25 thought that's what Rita was saying.

1 And -- but there's nothing -- is there
2 anything wrong with that?

3 MR. ROSENSTEIN: No, Your Honor. And
4 I believe that's consistent with Taylor in this
5 respect, and that is that the principle --

6 JUSTICE BREYER: Well, I hope it was
7 consistent. But if it wasn't consistent, it is
8 the later case and does deal specifically with
9 sentencing guidelines as opposed to dealing
10 with the Speedy Trial Act.

11 MR. ROSENSTEIN: Yes, Your Honor. And
12 I think the -- the -- the point of commonality
13 is that the principle of Rita is that if the
14 district court is acting within the normal
15 range, the typical case, less explanation is
16 required.

17 When the court is doing something
18 unusual, outside the norm, more of an
19 explanation is required. Taylor, of course, is
20 a binary choice. The case is dismissed either
21 with or without prejudice.

22 Here, we're talking about a range
23 where the courts have established that any
24 selection within that range could be a
25 reasonable sentence.

1 JUSTICE KAGAN: Well, that's true, but
2 this case involves what the Petitioner calls a
3 disproportionality; that at the first instance
4 you got the low end of the range and at the
5 second instance, you're no longer at the low
6 end of the range.

7 And so the question that Rita raises
8 is, in a case like that, is something a little
9 bit more required, so that the judge says, you
10 know what, I don't want to be at the low end of
11 the range in -- in -- given this new range,
12 because of the seriousness of the offense. And
13 the judge doesn't have to do that at length, as
14 Rita said, maybe the judge doesn't even have to
15 do it in writing, as long as the judge says
16 something to give both the defendant and the
17 appellate court some understanding of why the
18 judge is doing what the judge is doing.

19 MR. ROSENSTEIN: Yes, Your Honor. And
20 we respectfully submit that there is no magic
21 to this concept of proportionality. This is
22 not something that the defendant has rooted in
23 any statutory requirement or even in any
24 judicial finding.

25 This idea that it needs to be

1 proportional is simply something that they are
2 trying to sell to the Court but we submit
3 really shouldn't be involved.

4 JUSTICE KAGAN: Well, it raises a
5 question, don't you think?

6 MR. ROSENSTEIN: No, I do not, Your
7 Honor. And the reason I do not is because the
8 principle here is that the guidelines are only
9 one relevant factor.

10 If we were in a Booker world, perhaps
11 it would have more significance, but in a
12 post-Booker world, it's clear that that
13 district court in choosing 135 months was not
14 merely saying I will always pick the lowest
15 possible sentence --

16 JUSTICE KAGAN: Quite right. And
17 that's why the -- the court can say I don't
18 think -- I don't want to go with the lowest
19 point in the new range, and -- and that's
20 absolutely the prerogative of the district
21 court.

22 But the question that the Petitioner
23 raises is just whether the judge has to say
24 I've thought about this question and I don't
25 want to be at the low end of the range anymore

1 because of the seriousness of the offense or
2 because of something else.

3 MR. ROSENSTEIN: Correct, Your Honor.

4 JUSTICE KAGAN: It just seems a --
5 it's a minor requirement but one that seems as
6 though it would help the appellate court quite
7 a lot to know why the judge had chosen a
8 sentence that was no longer at the low end of
9 the range.

10 MR. ROSENSTEIN: But I believe, Your
11 Honor, that if you were to look at Rita, that
12 the challenge that they are posing here really
13 would undermine the premise of Rita, which is
14 that for a typical sentence where the court
15 chooses a point within the range, there is no
16 requirement for detailed elaboration of the
17 reasons.

18 And why would more be required in
19 3582, which this case has -- this Court has
20 indicated in Dillon actually is an abbreviated
21 proceeding, not subject to Booker. Why would
22 the Court require more under 3582 than it would
23 under 3553 in an original sentencing?

24 So we respectfully submit that that's
25 essentially what the defendant is asking the

1 Court here to do, is to expand the explanatory
2 requirement not only to the Rita standard but
3 even beyond it.

4 And I think if the Court were to look
5 to the original sentencing in this case, as I
6 indicated, I believe that would not satisfy the
7 defendant.

8 In fact, they -- they have indicated
9 in their reply brief that even the one sentence
10 the government proposed, the clarifying
11 sentence we proposed in our brief at page 40,
12 the defendant in their reply brief at page 19
13 indicates that would not be sufficient for him.

14 So we really don't know what type of
15 detail would be satisfactory, but we
16 respectfully submit that if you were to take
17 their argument to the logical extreme, it would
18 require in every case for the court to address
19 every conceivable factor of which, as I say, if
20 you break them out, there are 15 just in
21 3553(a). Three additional factors added by the
22 policy statement.

23 And so what we believe, Your Honor, is
24 that what the district court did here is more
25 than sufficient. The court made clear on the

1 record that it had considered the relevant
2 factors under 3553(a). It had considered the
3 factors in the policy statement.

4 The court was familiar with the case
5 by virtue of having handled the original
6 sentencing and imposed a sentence that is
7 reasonable and for that reason should be
8 upheld.

9 If there are no further questions.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 MR. ROSENSTEIN: Thank you, Your
13 Honor.

14 CHIEF JUSTICE ROBERTS: Mr. Coberly,
15 you have four minutes remaining.

16 REBUTTAL ARGUMENT OF TODD A. COBERLY
17 ON BEHALF OF THE PETITIONER

18 MR. COBERLY: I'm surprised that the
19 government suggests that Rita or -- excuse
20 me -- Taylor does not apply in the sentencing
21 context. The times this Court has relied on
22 Taylor, it has been in the sentencing context.

23 This Court has relied specifically on
24 Taylor in Rita in stating, "The sentencing
25 judge should set -- set forth enough to satisfy

1 the appellate court that he has considered the
2 parties' arguments and has a reasoned basis for
3 exercising his own legal decision-making
4 authority, see e.g. United States v. Taylor.
5 Nonetheless, when a judge decides simply to
6 apply the guidelines to a particular case,
7 doing so will not necessarily require lengthy
8 explanation."

9 That's exactly all we're asking for.
10 And we understand that we're not asking for a
11 lengthy explanation but that when Congress has
12 channeled the exercise of the discretion of the
13 district court judge by directing it to
14 consider certain factors, the role of the
15 appellate court is to ensure that the district
16 court actually looked at those factors.

17 It's not that it's necessarily the
18 outcome is necessarily wrong but that it
19 actually applied those factors in order to
20 comply with the directives of Congress.

21 JUSTICE ALITO: What would be the
22 minimum that would suffice here?

23 MR. COBERLY: I think the minimum that
24 would be -- would suffice, Your Honor, in a
25 run-of-the-mill case is I looked -- I'm -- if

1 it's disproportionate, as it is here, the
2 reason I imposed the sentence of 114 months or
3 whatever it is, because of the seriousness of
4 the crime of, you know, the defendant's
5 involved in methamphetamine trafficking,
6 something to that effect.

7 Again, I don't want to telegraph to
8 the district court what we think. We don't
9 want to presume because we simply don't know.

10 JUSTICE ALITO: Well, you're asking us
11 to impose a standard. And -- and you could --
12 I think it's entirely fair to ask you what
13 would be the minimum that would be required.

14 So you gave me an answer. The judge
15 would -- if the judge made reference to
16 methamphetamine trafficking, that would be
17 enough?

18 MR. COBERLY: I -- I think if - if
19 there was something that was tied to the
20 particular circumstances of the case, but,
21 again, I mean, the reality here is that's up to
22 the appellate courts. That's up to the
23 district court judge, in the first instance,
24 and then it's up to the -- the appellate courts
25 to determine whether that was sufficient reason

1 to divine the actual reason of the district
2 court judge.

3 JUSTICE KAGAN: But in stating a
4 standard, you're essentially asking us to
5 repeat those words that you just read from
6 Rita, is that correct?

7 MR. COBERLY: Exactly, Your Honor.
8 We're -- we're -- we're not asking anything
9 different than what Rita already requires.

10 And, Justice Alito, your -- your cite
11 to Taylor in -- in your dissent in Gall
12 recognized that the reason it's important for a
13 judge to state reasons to ensure that the
14 district court --

15 JUSTICE BREYER: Rita did say on this
16 point, I think, point within the guidelines
17 that applied, the whole paragraph, which you
18 didn't really have time to read, but the
19 paragraph there talks about sometimes a
20 judicial opinion responds to every argument;
21 sometimes it does not.

22 Sometimes a judge simply writes the
23 word "granted" or "denied" on the face of the
24 motion; other times the -- and the reasons make
25 everything clear. Sometimes they leave -- the

1 law leaves much in this respect to the judge's
2 own professional judgment.

3 You have a borderline case. I mean, I
4 -- I don't know whether more should be called
5 for. And that's why I was looking around of a
6 way of resolving this. And it seemed to me one
7 way to resolve it would be to say you can write
8 pretty minimally, but the court of appeals can
9 ask for more if they need to.

10 MR. COBERLY: I think that's exactly
11 right, Justice Breyer.

12 JUSTICE BREYER: You do?

13 (Laughter.)

14 MR. COBERLY: The problem -- the
15 problem with the government --

16 JUSTICE KAGAN: But when you say
17 minimally, you mean more than just check the
18 box?

19 MR. COBERLY: Yeah, absolutely. I
20 mean, there has to be something -- there has to
21 be something more than -- than just simply
22 saying I considered the factors. There has to
23 be something, and this is how I applied the
24 factors, something minimal.

25 We're not asking for much. We're

1 asking for crumbs here. And I see that my time
2 is up.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel. The case is submitted.

5 (Whereupon, at 1:59 p.m., the case was
6 submitted.)

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