

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.)
)

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IN THE SUPREME COURT OF THE UNITED STATES
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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 P R O C E E D I N G S

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 -- in -- from
8 Booker, through Rita, through Gall, ultimately,
9 what 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, in a -- in a mine-run case, I
25 do believe 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 -- that this particular
10 amendment, 782, affected over 46,000 prisoners.

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

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

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

18 MR. COBERLY: Well, I think it's
19 certainly something you -- you can consider and
20 I would ask the Court to consider this. We're
21 not asking for anything really that the
22 district court is not already -- should be
23 doing, and that is considering the --
24 considering the sentence reduction in light of
25 the 3553(a) factors, and Section 1B1.10 of the

1 guidelines, and then coming to a reasoned
2 decision as -- as to why it's -- it's imposing
3 a particular reduced sentence.

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

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

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

25 JUSTICE KENNEDY: Let me just tell

1 you, given the workload numbers you've just
2 cited and your answer to Justice Alito, I'm
3 becoming less convinced of your case.

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

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

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

24 MR. COBERLY: And that's why I think,
25 I mean, just a few words can matter, Justice

1 Sotomayor.

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

4 MR. COBERLY: Well --

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

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

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

23 JUSTICE SOTOMAYOR: I'm afraid that --
24 you keep answering -- you're creating a rule
25 that makes it impossible for district court

1 judges to do anything but what you want.

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

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

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

17 MR. COBERLY: Your Honor, if -- if the
18 district court judge in this particular case
19 had said something to that effect of: I've
20 looked at this case again, and considering the
21 seriousness of the drug trafficking, and tied
22 it specifically -- just said a word that --
23 that made it clear that that was tied
24 specifically to that case, and I remain
25 convinced that 114 months is reasonable, I

1 think, in that situation, that would be plenty.

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

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

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

21 The question is how much and why
22 checking off a box is not enough, because I
23 take the judge at his or her word that when
24 they check off the box, they've done what
25 3553(a), I think it is, requires. But is there

1 a difference between checking off a box and not
2 checking off a box?

3 MR. COBERLY: I think there is a
4 difference, Your Honor. And it -- it's the
5 fact of an articulation that -- one can be
6 convinced, one understands that the district
7 court judge actually thought about this case
8 and considered it, and simply checking a box I
9 don't think does enough. We -- we say it is --
10 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 the -- a procedural component, and that is
14 simply an explanation to get us to understand
15 the judge's reasoning. So, if there's -- if
16 there's some indication of the judge's
17 reasoning, we would then have something to
18 grasp onto on appeal, and maybe we would argue
19 that on appeal.

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

1 around you put me in the bottom of the range
2 and the second time in the middle? You could
3 -- could have moved for clarification before
4 the district court.

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

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

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

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

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

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

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

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

1 thought 135 months was the right sentence --
2 that was the original sentence, right, 135?

3 MR. COBERLY: Yes, Justice Alito.

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

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

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

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

1 each one. It's the judge takes into account
2 the various factors, the seriousness of the
3 offense, deterrence and so forth, and says this
4 is the right number.

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

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

24 He hasn't justified it. It's not that
25 there's no basis for appellate review. It's

1 that you have a strong case because nothing's
2 on the record to support what has been done.

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

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

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

1 And -- and when -- when there is no
2 reason given, it -- the public and, frankly, my
3 client lacks confidence that that decision was
4 actually made on a sound basis of law as
5 opposed to --

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

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

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

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

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

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

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

17 What else can you say besides that?

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

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

23 JUSTICE KAGAN: Well, isn't --

24 JUSTICE BREYER: They say, I -- I've
25 seen a lot of cases. I -- I -- I see what -- I

1 look at the conduct. I look at the defendant.

2 And this is what strikes me as appropriate.

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

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

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

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

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

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

25 JUSTICE KAGAN: Well, that -- that's

1 this crime. The judge is saying I've looked at
2 this crime, and -- and I don't -- I can't
3 imagine, given the seriousness of this crime,
4 going below 114 months.

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

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

19 What else do you want a judge to say?

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

25 JUSTICE GINSBURG: You -- you seem to

1 be having some kind of a presumption that the
2 reduction should be proportional. So, if the
3 original sentence was at the low end, the
4 reduced sentence should be at the low end.

5 But what statutory provision requires
6 proportionality?

7 MR. COBERLY: Thank you, Justice
8 Ginsburg.

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

21 So, for instance, you know, if someone
22 was sentenced at the top end of the guidelines,
23 there was no new information that was presented
24 by either party in the sentence reduction
25 motion, and the district court judge in a

1 silent order adjusted the -- the sentence to
2 the top of the amended guidelines range, we
3 think that that would be sufficiently clear in
4 the record, and that's --

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

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

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

1 MR. COBERLY: I think the -- I think,
2 Your Honor, that we would have the same
3 problem. It's not with the fact that it's
4 preprinted on a form. It's -- it's -- it's
5 that there was no additional reasoning.

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

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

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

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

21 MR. COBERLY: They say, Justice
22 Breyer, similar -- I mean, at an original
23 sentencing, there's arguments typically
24 presented by both sides as to a particular
25 sentence. And in tying it to this case, the

1 government actually made an argument as to 135
2 months. And the district court judge said the
3 reason the guideline sentence is high in this
4 case is because of the quantity of drugs, the
5 type of drugs. I consider in my experience
6 that the -- the -- the problem with
7 methamphetamine, and I'm adopting essentially
8 the district court's decision. That's all they
9 say, and that's enough.

10 And if I may reserve the rest of my
11 time.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 MR. COBERLY: Thank you, Your Honor.

15 CHIEF JUSTICE ROBERTS: General
16 Rosenstein.

17 ORAL ARGUMENT OF ROD J. ROSENSTEIN
18 ON BEHALF OF THE RESPONDENT

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

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

1 guideline range.

2 The first reason is about judicial
3 integrity. When a federal judge issues an
4 order stating that the court considered the
5 relevant statutory factors, appellate courts
6 presume that the district court did precisely
7 what it said.

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

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

20 CHIEF JUSTICE ROBERTS: What if they
21 --

22 JUSTICE SOTOMAYOR: General, can --

23 CHIEF JUSTICE ROBERTS: -- a judge is
24 -- has had, you know, 600 of these
25 resentencings, every time just checks the box,

1 600, he's done nothing but check the box, and
2 the results are a little off; sometimes it's
3 high, sometimes it's low; you can't really tell
4 why?

5 Do you have the same position?

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

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

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

25 And so it's not merely a matter of

1 checking a box. The court is actually making a
2 conscious decision about what sentence to
3 impose within that new guideline range.

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

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

13 JUSTICE SOTOMAYOR: No, no, no. Take
14 my fact situation.

15 MR. ROSENSTEIN: Yes.

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

19 MR. ROSENSTEIN: With or without --

20 JUSTICE SOTOMAYOR: Does that permit
21 intelligent appellate review?

22 MR. ROSENSTEIN: Your Honor, if the
23 court had completed the form and checked the
24 box indicating it had denied the motion, the
25 court would have certified by signing that form

1 that the court had gone through the appropriate
2 considerations, that is, they considered the
3 3553(a) factors and considered the policy
4 statement.

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

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

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

1 meaningful appellate review?

2 Some courts have said if you refuse to
3 depart completely, you should explain why.

4 Others have said but if you don't and you pick
5 a sentence within the guidelines, we will infer
6 that you've said enough if you signed the form.

7 Others have said you should always give a
8 little bit more.

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

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

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

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

1 entire record --

2 JUSTICE KENNEDY: Look -- looking at
3 this record, do you know why the district judge
4 did what he did?

5 MR. ROSENSTEIN: I believe we --

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

9 MR. ROSENSTEIN: Justice Kennedy, I
10 believe we know just as well following the
11 sentence reduction motion as we did following
12 the original sentencing. And, in fact, if the
13 Court looks to the Joint Appendix at page 26,
14 the original sentencing hearing, which I
15 believe is a typical sentencing hearing, the
16 district court said that it had considered the
17 appropriate factors and selected a sentence of
18 135 months.

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

23 JUSTICE KENNEDY: Well, do -- do you
24 think that in that original sentence it was
25 because it was -- the sentence was at a

1 particular place in the guidelines, i.e., the
2 low end?

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

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

16 That is a somewhat conclusory --

17 JUSTICE KENNEDY: But that's -- that's
18 true in every case.

19 MR. ROSENSTEIN: Sure.

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

25 MR. ROSENSTEIN: Yes, Your Honor.

1 JUSTICE KENNEDY: Without any
2 explanation?

3 MR. ROSENSTEIN: Correct.

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

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

17 JUSTICE BREYER: Can you explain --

18 JUSTICE KAGAN: I guess I'm finding it
19 a little bit hard, Mr. Rosenstein, to
20 understand your understanding of the background
21 rule, because my understanding of the
22 background rule comes from Taylor, where it
23 said: "Where, as here, Congress has declared
24 that a decision will be governed by
25 consideration of particular factors, a district

1 court must carefully consider those factors as
2 applied to the particular case, and whatever
3 its decision, and clearly articulate their
4 effect in order to permit meaningful appellate
5 review."

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

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

19 MR. ROSENSTEIN: Your Honor, we
20 respectfully submit that Taylor does not apply
21 in the context of sentencing. It didn't
22 overrule Dorszynski. And if it had, Your
23 Honor, we submit that Rita well might have come
24 out differently, because this Court ruled in
25 Rita in 2007 that no explicit analysis is

1 required of the 3553(a) factors.

2 There are -- if you break them out,
3 there are 15 distinct factors in 3553(a). And
4 if there's a resentencing, there are also three
5 additional factors established by the policy
6 statement, 1B1.10.

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

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

23 But I think what he's arguing, and I
24 may be missing something, is that the statute
25 says in 3553(c)(1) that if the sentence is

1 within the guideline range and it exceeds 24
2 months, the court at the time of sentencing
3 shall state in open court the reason for
4 imposing sentence at a particular point within
5 the range.

6 Now it doesn't say that when you're
7 reconsidering.

8 MR. ROSENSTEIN: Correct.

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

13 So how does it work?

14 MR. ROSENSTEIN: Yes.

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

20 MR. ROSENSTEIN: No, Your Honor.
21 Respectfully, the -- the background rule that I
22 refer to is the rule in the absence of any
23 statutory --

24 JUSTICE BREYER: Well, here is a
25 statute. I'm saying -- my question is, how

1 does that work in the ordinary sentencing case
2 where we've all said, gee, sometimes you just
3 can't say more. Well, the statute seems to say
4 more.

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

11 And so you should have to say
12 something. Okay. So what is the --

13 MR. ROSENSTEIN: Yes --

14 JUSTICE BREYER: -- response? What is
15 the response?

16 MR. ROSENSTEIN: -- Justice Breyer.
17 And the answer to that, Justice Breyer, is that
18 with regard to sentences that are governed by
19 3553(c) --

20 JUSTICE BREYER: Yeah.

21 MR. ROSENSTEIN: -- there are actually
22 three levels of explanatory requirements. The
23 first is the requirement to state reasons in
24 open court, which is 3553(c).

25 JUSTICE BREYER: Yeah. Right.

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

3 JUSTICE BREYER: That's right.

4 MR. ROSENSTEIN: -- you provide a
5 reason for a particular point in the range, as
6 you articulated.

7 JUSTICE BREYER: Yes.

8 MR. ROSENSTEIN: And the third is for
9 a sentence outside the guideline.

10 JUSTICE BREYER: Yeah, yeah, right.
11 I'm only interested in the particular point
12 within the range.

13 MR. ROSENSTEIN: Correct. But, Your
14 Honor, this provision, 3553, was adopted as
15 part of the Sentencing Reform Act in 1984
16 contemporaneously with Section 3582(c). And in
17 3582(c), the Congress decided not to
18 incorporate the 3553 requirements.

19 And that is why we respectfully submit
20 the 3553(c) requirements do not apply under
21 3582. It expressly incorporates 3553(a), which
22 we recognize and the district court
23 acknowledged, but it does not incorporate the
24 procedural requirements.

25 Now this Court affirmed that in the

1 Dillon case, where --

2 JUSTICE BREYER: Yeah, but I guess
3 that's peculiar. What's the reason for that?
4 Judge, when you give a sentence of 18 to 24 --
5 you know, the guideline is 108 to 122 months.
6 You pick out 114. And you have to give your
7 reason for the particular point.

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

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

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

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

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

5 MR. ROSENSTEIN: Yes.

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

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

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

24 JUSTICE SOTOMAYOR: But if you know no
25 reason, which is what Justice Kennedy started

1 with, we don't really know why he picked 114.

2 MR. ROSENSTEIN: Well, we submit, Your
3 Honor, that you do know enough, just as in any
4 ordinary original sentencing under Rita, you
5 know that the court was familiar with the facts
6 and circumstances of the crime, you know that
7 the court evaluated the 3553(a) factors and the
8 policy statements. You have the comments the
9 district court made at the original sentencing,
10 which indicated that the court was aware the
11 defendant had other uncharged conduct.

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

20 How would the appellate court know
21 that the judge made a factual assumption that
22 was erroneous in picking that 114?

23 MR. ROSENSTEIN: In your hypothetical,
24 Justice Sotomayor, the court has articulated
25 that reason?

1 JUSTICE SOTOMAYOR: Yes.

2 MR. ROSENSTEIN: Yes. Well, in that
3 case, you --

4 JUSTICE SOTOMAYOR: But what -- how do
5 we know if they don't articulate --

6 MR. ROSENSTEIN: Right.

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

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

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

19 And with factual, it's not
20 intentional; it's just wrong.

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

1 contemplated in Gall.

2 CHIEF JUSTICE ROBERTS: If there
3 were -- if your --

4 JUSTICE KAGAN: Can I go back --

5 CHIEF JUSTICE ROBERTS: If your
6 position prevails, why would any district judge
7 ever say anything about why he -- his position
8 on resentencing?

9 MR. ROSENSTEIN: We -- we don't
10 presume, Your Honor, the district courts are
11 motivated solely by the desire to be -- to
12 avoid appellate review.

13 CHIEF JUSTICE ROBERTS: Well --

14 MR. ROSENSTEIN: I believe a district
15 court, as -- as was contemplated in the Rita
16 opinion, it depends on the circumstances.

17 The district court can make its
18 judgment whether or not it believes that the
19 facts are such that it merits a more detailed
20 opinion, but if it's a routine, typical,
21 run-of-the-mill case, as this one was, and the
22 court looked to the original sentencing, where
23 it had said very little, we believe it's
24 appropriate under these circumstances for the
25 court to impose the appropriate sentence and

1 simply say it had considered the factors.

2 CHIEF JUSTICE ROBERTS: Well, a judge
3 who -- under what circumstances was a judge --
4 would a judge who did just that be subject to
5 reversal?

6 MR. ROSENSTEIN: It would depend upon
7 the record, Your Honor. As in all cases, the
8 appellate court would look to the entire
9 record. Given the presumption of regularity,
10 which we submit is accorded in all cases, the
11 defendant who appeals this would have to
12 identify some error in the record, something
13 that would merit appellate review.

14 CHIEF JUSTICE ROBERTS: Well, like --
15 like what? I'm -- I'm saying the judge doesn't
16 say anything, and you say the presumption is
17 that he adequately considered all of the
18 factors and all that.

19 MR. ROSENSTEIN: Correct.

20 CHIEF JUSTICE ROBERTS: What type of
21 evidence in the record would suggest that that
22 wasn't the case?

23 MR. ROSENSTEIN: Well, if you're
24 talking only about procedural reasonableness,
25 as we're talking about here, you look to

1 whether the guidelines were properly
2 considered. You would look to whether or not
3 there were other defendants in the case who
4 received disparate sentences. You'd have to
5 find something in the record that indicated
6 that there had been some impropriety in the
7 sentencing proceeding.

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

16 Any one of those is okay?

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

19 JUSTICE KENNEDY: No reasons required?

20 MR. ROSENSTEIN: Well, the reasons are
21 required. The court is required to apply the
22 3553(a) factors and the policy statement, but
23 in the absence of any indication the court had
24 failed to do that, we submit that that would
25 suffice, even in an original sentencing under

1 Rita.

2 JUSTICE KENNEDY: But in -- in -- in
3 all of the circumstances on the revised --
4 after the sentencing guidelines had been
5 revised, in my three alternatives, in -- in
6 none of those cases is any reason required?

7 MR. ROSENSTEIN: In -- in all cases,
8 the court is required to have reasons, premised
9 on the --

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

13 MR. ROSENSTEIN: In none of those
14 cases would it be required to cite a specific
15 reason for a sentence within the guideline
16 range. That's correct, presume -- provided --

17 JUSTICE KAGAN: And your -- your
18 understanding where -- the language that I read
19 you in Taylor where it said that there is some
20 necessity to state some amount of reasoning,
21 what do you think that that applies to?

22 MR. ROSENSTEIN: Your Honor -- Your
23 Honor, we believe that the Taylor case is not
24 generalizable. And as this Court said in Rita,
25 the amount of explanation required under the

1 guidelines depends upon the circumstances.

2 If it were otherwise, then we submit

3 --

4 JUSTICE KAGAN: Well, is Taylor just
5 about the statute? In Taylor, is that all it's
6 about? Because, certainly, Taylor seemed to
7 suggest a broader rule. It said, you know,
8 where, as here, Congress has directed a
9 district court to consider particular factors,
10 in order to have effective appellate review, we
11 need some brief statement about why the court
12 has come out the way it has based on those
13 factors.

14 MR. ROSENSTEIN: So we believe, Your
15 Honor -- and there are two answers to that.
16 The first is that if you look to the concluding
17 paragraph in the Taylor opinion, the Court
18 indicated that the trial court in that case
19 relied on factors that were unsupported by the
20 record. So the record itself actually
21 indicated that there was an error that was made
22 by the district court in Taylor.

23 But with regard to the issue of what
24 factors need to be considered, that is
25 ultimately an issue, we submit, of legislative

1 intent.

2 And in this case, in Section 3582,
3 Congress decided to permit an expedited process
4 and not to require all the procedures that
5 Congress created for original sentencing.

6 JUSTICE KAGAN: There's a -- there's
7 another statutory section, which is 3583(e),
8 which directs courts to consider the 3553(a)
9 factors, those -- these same factors that are
10 involved in this case, when terminating periods
11 of supervised release.

12 Do you think a judge can terminate a
13 period of -- of supervised release and send
14 somebody back to prison without any statement
15 of reasons?

16 MR. ROSENSTEIN: Your Honor,
17 hypothetically, the court would be permitted to
18 do that only if the record were sufficient --

19 JUSTICE KAGAN: I'm sorry.
20 Hypothetically what?

21 MR. ROSENSTEIN: Well, in some cases,
22 Your Honor, the record might be clear as to
23 what the basis was, but certainly there would
24 have to be a basis for the court to make that
25 decision.

1 JUSTICE KAGAN: Well, a basis. But
2 the question is, do you think that the court
3 has to state reasons to send somebody back to
4 prison under 3583(e)?

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

7 JUSTICE KAGAN: It doesn't say
8 anything about explanation. So I'll give you
9 the relevant things.

10 MR. ROSENSTEIN: Right.

11 JUSTICE KAGAN: It basically says you
12 have to consider the 3553(a) factors. But then
13 it does not say that you have to explain
14 anything.

15 So the question is whether there's a
16 background rule that says --

17 MR. ROSENSTEIN: Yes.

18 JUSTICE KAGAN: -- of course, before
19 you send somebody back to prison like that, you
20 have to at least say something. That's the
21 question.

22 MR. ROSENSTEIN: Yes. And -- and,
23 again, Your Honor, we believe it would be a
24 question of legislative intent, and we believe
25 that with regard to 3582, it's clear that

1 Congress contemplated an expedited procedure
2 that would not incorporate the reasons required
3 in 3553 and would simply be subject to the
4 background rule.

5 JUSTICE GINSBURG: Can you tell us --

6 JUSTICE BREYER: So can we do this --
7 can we do --

8 JUSTICE GINSBURG: -- a little
9 something about the form? What -- what was the
10 genesis of that, this Administrative Office
11 Form, what, AO-247?

12 MR. ROSENSTEIN: Correct, Your Honor.

13 JUSTICE GINSBURG: How did that come
14 to -- to be?

15 MR. ROSENSTEIN: My understanding,
16 Your Honor, is that form was developed by the
17 Administrative Office of the U.S. Courts, along
18 with input from the Sentencing Commission, in
19 order to expedite these proceedings and ensure
20 that appropriate information was reflected in
21 the record.

22 Interestingly, Your Honor, the
23 original version of the form, I believe from
24 2008, did not include the language clarifying
25 that the court had considered the 3553(a)

1 factors and the policy statement.

2 In fact --

3 JUSTICE BREYER: All right. It --

4 MR. ROSENSTEIN: -- one of the lower
5 court opinions -- pardon me?

6 JUSTICE BREYER: I just want to go
7 back for a second to Taylor. My understanding
8 is that Taylor is speaking generally in 1988,
9 and it's considering the Speedy Trial Act.

10 Subsequent to that, I believe we
11 decided a case called Rita. And I thought in
12 Rita, we addressed specifically this question
13 at an original sentencing. And what we said,
14 yes, there has to be some explanation, but the
15 length, the detail -- when it's within the
16 guideline, not outside the guideline, and I
17 think that was the intent of the Commission.

18 Outside the guideline, you better
19 explain it. Inside the guideline, in this
20 range, it says, that the statute or precedent
21 does not insist upon a full opinion in every
22 case. The sentencing judge should set forth
23 enough to satisfy the appellate court that he
24 has considered the arguments and has a reasoned
25 basis, but the length, the detail, the content,

1 even when to write is basically up to the
2 judge.

3 Then, when the judge does that, if the
4 appellate court needs more, it can ask for
5 more. Now I thought that was what Rita -- but
6 I haven't looked at it in a long time -- so I
7 thought that's what Rita was saying.

8 And -- but there's nothing -- is there
9 anything wrong with that?

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

13 JUSTICE BREYER: Well, I hope it was
14 consistent. But if it wasn't consistent, it is
15 the later case and does deal specifically with
16 sentencing guidelines, as opposed to dealing
17 with the Speedy Trial Act.

18 MR. ROSENSTEIN: Yes, Your Honor. And
19 I think the -- the -- the point of commonality
20 is that the principle of Rita is that if the
21 district court is acting within the normal
22 range, the typical case, less explanation is
23 required.

24 When the court is doing something
25 unusual, outside the norm, more of an

1 explanation is required. Taylor, of course, is
2 a binary choice. The case is dismissed either
3 with or without prejudice.

4 Here, we're talking about a range
5 where the courts have established that any
6 selection within that range could be a
7 reasonable sentence --

8 JUSTICE KAGAN: Well, that's true, but
9 this case involves what the Petitioner calls a
10 disproportionality; that at the first instance
11 you got the low end of the range and at the
12 second instance, you're no longer at the low
13 end of the range.

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

1 MR. ROSENSTEIN: Yes, Your Honor. And
2 we respectfully submit that there is no magic
3 to this concept of proportionality. This is
4 not something that the defendant has rooted in
5 any statutory requirement or even in any
6 judicial finding.

7 This idea that it needs to be
8 proportional is simply something that they are
9 trying to sell to the Court but we submit
10 really shouldn't be involved.

11 JUSTICE KAGAN: Well, it raises a
12 question, don't you think?

13 MR. ROSENSTEIN: No, I do not, Your
14 Honor. The reason I do not is because the --
15 the principle here is that the guidelines are
16 only one relevant factor.

17 If we were in a Booker world, perhaps
18 it would have more significance, but in a
19 post-Booker world, it's clear that that
20 district court in choosing 135 months was not
21 merely saying I will always pick the lowest
22 possible sentence --

23 JUSTICE KAGAN: Quite right. And
24 that's why the -- the court can say I don't
25 think -- I don't want to go with the lowest

1 point in the new range, and -- and that's
2 absolutely the prerogative of the -- the
3 district court.

4 But the question that the Petitioner
5 raises is just whether the judge has to say,
6 I've thought about this question and I don't
7 want to be at the low end of the range anymore
8 because of the seriousness of the defense -- of
9 the offense or because of something else.

10 MR. ROSENSTEIN: Correct, Your Honor.

11 JUSTICE KAGAN: It just seems a --
12 it's a minor requirement but one that seems as
13 though it would help the appellate court quite
14 a lot to know why the judge had chosen a
15 sentence that was no longer at the low end of
16 the range.

17 MR. ROSENSTEIN: But I believe, Your
18 Honor, that if you were to look at Rita, that
19 the challenge that they are posing here really
20 would undermine the premise of Rita, which is
21 that for a typical sentence where the court
22 chooses a point within the range, there is no
23 requirement for detailed elaboration of the
24 reasons.

25 And why would more be required in

1 3582, which this case has -- this Court has
2 indicated in Dillon actually is an abbreviated
3 proceeding, not subject to Booker. Why would
4 the Court require more under 3582 than it would
5 under 3553 at an original sentencing?

6 So we respectfully submit that that's
7 essentially what the defendant is asking the
8 Court here to do, is to expand the explanatory
9 requirement not only to the Rita standard but
10 even beyond it.

11 And I think if the Court were to look
12 to the original sentencing in this case, as I
13 indicated, I believe that would not satisfy the
14 defendant.

15 In fact, they -- they have indicated
16 in their reply brief that even the one sentence
17 the government proposed, the clarifying
18 sentence we proposed in our brief at page 40,
19 the defendant in their reply brief at page 19
20 indicates that would not be sufficient for him.

21 So we really don't know what type of
22 detail would be satisfactory, but we
23 respectfully submit that if you were to take
24 their argument to the logical extreme, it would
25 require in every case for the court to address

1 every conceivable factor, of which, as I say,
2 if you break them out, there are 15 just in
3 3553(a). Three additional factors added by the
4 policy statement.

5 And so what we believe, Your Honor, is
6 that what the district court did here is more
7 than sufficient. The court made clear on the
8 record that it had considered the relevant
9 factors under 3553(a). It had considered the
10 factors in the policy statement.

11 The court was familiar with the case
12 by virtue of having handled the original
13 sentencing and imposed a sentence that is
14 reasonable and for that reason should be
15 upheld.

16 If there are no further questions.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 MR. ROSENSTEIN: Thank you, Your
20 Honor.

21 CHIEF JUSTICE ROBERTS: Mr. Coberly,
22 you have four minutes remaining.

23 REBUTTAL ARGUMENT OF TODD A. COBERLY
24 ON BEHALF OF THE PETITIONER

25 MR. COBERLY: I'm surprised that the

1 government suggests that Rita or -- excuse
2 me -- Taylor does not apply in the sentencing
3 context. The times this Court has relied on
4 Taylor, it has been in the sentencing context.

5 This Court has relied specifically on
6 Taylor in Rita in stating, "The sentencing
7 judge should set -- set forth enough to satisfy
8 the appellate court that he has considered the
9 parties' arguments and has a reasoned basis for
10 exercising his own legal decision-making
11 authority. See e.g. United States v. Taylor.
12 Nonetheless, when a judge decides simply to
13 apply the Guidelines to a particular case,
14 doing so will not necessarily require lengthy
15 explanation."

16 That's exactly all we're asking for.
17 And we understand that we're not asking for a
18 lengthy explanation but that when Congress has
19 channeled the exercise of the discretion of the
20 district court judge by directing it to
21 consider certain factors, the role of the
22 appellate court is to ensure that the district
23 court actually looked at those factors.

24 It's not that it's necessarily -- the
25 outcome is necessarily wrong but that it

1 actually applied those factors in order to
2 comply with the directives of Congress.

3 JUSTICE ALITO: What would be the
4 minimum that would suffice here?

5 MR. COBERLY: I think the minimum that
6 would be -- would suffice, Your Honor, in a
7 run-of-the-mill case is I looked -- I'm -- if
8 it's disproportionate, as it is here, the
9 reason I imposed a sentence of 114 months or
10 whatever it is, because of the seriousness of
11 the crime of, you know, the defendant's
12 involved in methamphetamine tracking --
13 trafficking, something to that effect.

14 Again, I don't want to telegraph to
15 the district court what we think. We don't
16 want to presume because we simply don't know.

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

21 So you gave me an answer. The judge
22 would -- if the judge made reference to
23 methamphetamine trafficking, that would be
24 enough?

25 MR. COBERLY: I -- I think if -- if

1 there was something that was tied to the
2 particular circumstances of the case, but,
3 again, I mean, the -- the reality here is
4 that's up to the appellate courts. That's up
5 to the district court judge in the first
6 instance, and then it's up to the -- the
7 appellate courts to determine whether that was
8 sufficient reason to divine the -- the actual
9 reason of the district court judge.

10 JUSTICE KAGAN: But in stating a
11 standard, you're essentially asking us to
12 repeat those words that you just read from
13 Rita, is that correct?

14 MR. COBERLY: Exactly, Your Honor.
15 We're -- we're -- we're not asking anything
16 different than what Rita already requires.

17 And, Justice Alito, your -- your cite
18 to Taylor in -- in your dissent in Gall
19 recognized that the reason it's important for a
20 judge to state reasons to ensure that the
21 district court --

22 JUSTICE BREYER: What Rita did say on
23 this point, I think -- point within the
24 guidelines that applied, the whole paragraph,
25 which you didn't really have time to read, but

1 the paragraph there talks about sometimes a
2 judicial opinion responds to every argument;
3 sometimes it does not.

4 Sometimes a judge simply writes the
5 word "granted" or "denied" on the face of the
6 motion; other times the -- and the reasons make
7 everything clear. Sometimes they leave -- the
8 law leaves much in this respect to the judge's
9 own professional judgment.

10 You have a borderline case. I mean, I
11 -- I don't know whether more should be called
12 for. And that's why I was looking around of a
13 way of resolving this. And it seemed to me one
14 way to resolve it would be to say you can write
15 pretty minimally, but the court of appeals can
16 ask for more if they need to.

17 MR. COBERLY: I think that's exactly
18 right, Justice Breyer.

19 JUSTICE BREYER: You do?

20 (Laughter.)

21 MR. COBERLY: The problem -- the
22 problem with the government --

23 JUSTICE KAGAN: But when you say
24 minimally, you mean more than just check the
25 box, right?

1 MR. COBERLY: Yeah, absolutely. I
2 mean, there has to be something -- there has to
3 be something more than -- than just simply
4 saying I considered the factors. There has to
5 be something, and this is how I applied the
6 factors, something minimal.

7 We're -- we're not asking for much.
8 We're asking for crumbs here. And I see that
9 my time is up.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel. The case is submitted.

12 (Whereupon, at 1:59 p.m., the case was
13 submitted.)

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