No. 12-705

In the Supreme Court of the United States

JOHN DOE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a district court conducting a proceeding on the government's motion under Federal Rule of Criminal Procedure 35(b) to reduce a sentence for substantial assistance may rely on non-assistance factors, including the sentencing factors in 18 U.S.C. 3553(a), to increase the reduction beyond the amount warranted by the defendant's assistance alone.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is under seal and unreported. The opinion and order of the district court (Pet. App. 12a-19a) is also under seal and unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 14, 2012. The petition for a writ of certiorari was filed on November 9, 2012. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Ohio, petitioner was convicted of conspiracy to traffic in cocaine and marijuana, in violation of 21 U.S.C. 846. Pet. App. 22a. He was sentenced to 360 months of imprisonment, to be followed

by 10 years of supervised release. *Id.* at 2a, 26a. The court of appeals affirmed. *Id.* at 2a. Thereafter, the government filed a motion for reduction of sentence for substantial assistance pursuant to Federal Rule of Criminal Procedure 35(b). The district court reduced petitioner's sentence by a total of 84 months, resulting in a sentence of 276 months of imprisonment. Pet. App. 12a-19a, 24a. The court of appeals affirmed. *Id.* at 1a-11a.

1. a. During the 1990s, petitioner participated in a drug trafficking enterprise that involved more than 75 kilograms of cocaine and 2000 pounds of marijuana. Following his conviction and incarceration, petitioner cooperated with the government. In 2009, petitioner testified as a government witness in a federal criminal trial in Wisconsin. As a result, the government filed a motion for reduction of sentence for substantial assistance under Rule 35(b), and recommended a sentence reduction of 24 months. The district court granted the motion and reduced petitioner's sentence by 24 months. Pet. App. 2a.

Petitioner filed a motion to reconsider and a notice of appeal. Petitioner's motion alleged that he had provided greater substantial assistance than the government had acknowledged. The court of appeals remanded the case to the district court to consider petitioner's motion to reconsider. The district court stayed consideration of the motion pending the Sixth Circuit's en banc decision in *United States* v. *Grant*, 636 F.3d 803, cert. denied, 132 S. Ct. 371 (2011), and *Pepper* v. *United States*, 131 S. Ct. 1229 (2011). Pet. App. 2a-3a.

In *Grant*, the court of appeals held that a district court considering a sentence reduction under Rule 35(b) may not increase the reduction based on the sentencing

factors set forth in 18 U.S.C. 3553(a), which govern a district court's imposition of a sentence in the first instance. 636 F.3d at 817-818; see 18 U.S.C. 3553(a) (listing sentencing factors that include the nature of the offense, characteristics of the defendant, need for deterrence, and need to provide restitution to the victims). *Grant* also held, however, that a district court may take into account certain "contextual factors," such as the severity of the defendant's crime, in "temper[ing]" the "extent of the reduction." 636 F.3d at 817. After *Grant* was decided, the district court scheduled a hearing on petitioner's motion for reconsideration, cautioning the parties that *Grant* did not permit a plenary resentencing proceeding involving de novo consideration of the Section 3553(a) factors. Pet. App. 3a, 7a.

Before the hearing, the government filed a second Rule 35(b) motion requesting a further 60-month reduction in petitioner's sentence based on petitioner's assistance as to a smuggling operation in Kentucky. The government, however, disputed petitioner's allegation that he had provided significant additional assistance, stating that the other alleged instances of assistance either had not yet ripened into substantial assistance, or they were overstated. Pet. App. 13a-14a.

b. After multiple hearings at which petitioner was permitted to present evidence that he had provided specific instances of substantial assistance beyond that acknowledged by the government, the district court granted the government's motion and reduced petitioner's sentence by an additional 60 months, for a total reduction of 84 months. Pet. App. 12a-19a. The district court found that petitioner had provided substantial assistance in connection with the Wisconsin and Kentucky matters identified by the government, but that he

had not yet provided substantial assistance on other matters. *Id.* at 14a. The court also held that, although it could not consider the "full panoply" of the Section 3553(a) factors under *Grant*, it could consider "contextual" factors as well as the factors listed in Section 5K1.1 of the Sentencing Guidelines, which are to be considered in determining the "appropriate" substantial-assistance reduction when the defendant's assistance occurs before the imposition of the sentence. *Id.* at 15a-16a (citing *Grant*, 636 F.3d at 816-817). Because Section 5K1.1 provides that safety risks resulting from the defendant's assistance are a relevant consideration, the district court evaluated petitioner's claim that he was entitled to an increased sentence reduction because of threats to his safety in prison. The court observed that some evidence indicated that an alleged knife attack on petitioner had been self-inflicted, and it concluded that petitioner had not demonstrated that Bureau of Prisons safety measures were insufficient. *Id.* at 17a-18a. The court therefore declined to increase petitioner's sentence reduction based on safety concerns. *Ibid.* Finally, the court rejected petitioner's argument that his assistance warranted a sentence reduction "equal to time served." *Id.* at 18a-19a.

2. The court of appeals affirmed. Pet. App. 1a-11a. As relevant here, the court of appeals concluded that the district court properly resolved the government's Rule 35(b) motion in light of *Grant*. The court of appeals emphasized that the district court gave petitioner "extensive opportunities" to present his case for a sentence reduction and permitted him to present evidence of *Grant*'s contextual factors, as well as evidence concerning his safety in prison. *Id.* at 6a-7a. The court of appeals rejected petitioner's contention that the district

court erred by refusing to undertake a "full resentencing," explaining that *Grant* did not permit a plenary resentencing using the Section 3553(a) factors. *Id.* at 7a.[1]

ARGUMENT

Petitioner contends (Pet. 9-27) that Federal Rule of Criminal Procedure 35(b), which permits a district court to reduce a previously imposed prison sentence if the defendant has provided substantial assistance to the government after sentencing, authorizes a district court to consider the factors identified in 18 U.S.C. 3553(a), unrelated to the defendant's cooperation, in order to increase the sentence reduction beyond that warranted based on the assistance alone. The court of appeals correctly rejected that argument. Although a narrow conflict exists between the Ninth Circuit and the other circuits to consider the issue, that conflict does not warrant this Court's review because it is unlikely to have much practical significance. In any event, this case is not a good vehicle to decide the issue because petitioner has not identified any Section 3553(a) factors that would have resulted in an additional sentence reduction beyond the 84 months that petitioner received for his assistance. Further review is therefore unwarranted.

1. Rule 35(b), captioned "Reducing a Sentence for Substantial Assistance," provides that "[u]pon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after

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[1] The court of appeals also held that the district court (1) adequately considered the factors in Sentencing Guidelines § 5K1.1 in evaluating petitioner's claim, and (2) correctly concluded that *Pepper* was inapplicable to petitioner's case. Pet. App. 9a-11a. Petitioner does not seek this Court's review of those fact-bound rulings. See Pet. I.

sentencing, provided substantial assistance in investigating or prosecuting another person." Fed. R. Crim. P. 35(b)(1). Rule 35(b)(2) permits reductions based on motions filed more than one year after sentencing in certain circumstances, including when a defendant provides information to the government within one year of sentencing but the information does not become useful to the government until more than one year after sentencing. See Fed. R. Crim. P. 35(b)(2)(B).

a. As petitioner observes (Pet. 10 n.2), the courts of appeals have unanimously held that a district court's decision whether to grant a Rule 35(b) motion must be based exclusively on the defendant's substantial assistance; non-assistance factors may not be considered. See, *e.g.*, *United States* v. *Tadio*, 663 F.3d 1042, 1046-1047 (9th Cir. 2011), cert. denied, 132 S. Ct. 2703 (2012); *United States* v. *Clawson*, 650 F.3d 530, 532 n.1 (4th Cir. 2011); see also *Pepper* v. *United States*, 131 S. Ct. 1229, 1248 n.15 (2011) ("Rule 35(b) departures address only postsentencing cooperation with the Government, not postsentencing rehabilitation generally, and thus a defendant with nothing to offer the Government can gain no benefit from Rule 35(b).").

b. Once a district court has concluded that the Rule 35(b) motion should be granted because the defendant has provided substantial assistance, the court must determine the extent of the resulting sentence reduction. "Every court [of appeals] that has addressed the question has concluded that a court may consider at least some non-assistance factors at this step." *Tadio*, 663 F.3d at 1048. And every court of appeals has held that consideration of non-assistance factors in determining the amount of the reduction does not equate to a full, de novo resentencing. *Id.* at 1055; *United States* v.

Grant, 636 F.3d 803, 815-816 (6th Cir.) (en banc), cert. denied, 132 S. Ct. 371 (2011); *United States* v. *Shelby*, 584 F.3d 743, 748-749 (7th Cir. 2009).

With respect to considering non-assistance factors in determining the extent of the reduction, the Sixth Circuit, like the majority of other courts, permits consideration of non-assistance factors in the Rule 35(b) analysis but does not permit the district court to increase a sentence reduction based on those factors alone. The Sixth Circuit, however, uses different terminology than other courts to describe the appropriate analysis. The only court of appeals to deviate from the majority rule is the Ninth Circuit, which permits district courts to use non-assistance factors to increase a Rule 35(b) sentence reduction beyond the amount warranted by the defendant's substantial assistance. Because the Ninth Circuit has emphasized that its rule does not permit district courts to engage in plenary resentencing proceedings, however, that disagreement does not have broad practical impact, and it does not warrant this Court's review.

In *United States* v. *Grant*, the Sixth Circuit held that a district court may not consider the Section 3553(a) factors in determining the extent of a sentence reduction under Rule 35(b). 636 F.3d at 815-816. At the same time, however, the *Grant* court held that district courts have broad discretion in valuing a defendant's assistance and that the extent of a Rule 35(b) reduction "might be tempered by other factors affecting the valuation." *Id.* at 817. Accordingly, a district court "might wish to consider the context surrounding the initial sentence in valuing the assistance." *Ibid.* The court listed several non-exclusive "contextual" factors that a district court may consider, including whether the reduced sentence is lower than sentences given to less-culpable co-

defendants, or whether the defendant's assistance should be fully rewarded because he is among the less-culpable co-defendants; whether the defendant has the capacity to abide by the law, as evidenced by his "prior criminal activity"; and whether the defendant was convicted of a heinous crime that warrants a lesser reduction than for a defendant who has not been so convicted. *Ibid.*

The Sixth Circuit emphasized that there is an "obvious overlap" between its "context" factors and the Section 3553(a) factors. *Grant*, 636 F.3d at 818. Section 3553(a)'s factors include "the nature and circumstances of the offense and the history and characteristics of the defendant"; the need for the sentence "to reflect the seriousness of the offense," provide "adequate deterrence," and "protect the public"; relevant Guidelines and policy statements; "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct"; and the "need to provide restitution" to victims. 18 U.S.C. 3553(a). Thus, all of the *Grant* factors are included in Section 3553(a). Because *Grant*'s factors are merely illustrative, moreover, district courts might decide to consider additional "context" factors that could mirror other Section 3553(a) factors, such as characteristics of the defendant other than his criminal history. The *Grant* court thus emphasized that its refusal to permit consideration of Section 3553(a) factors was primarily a question of "terminology": the court concluded that it was necessary to avoid "mingling the terminology of [Section] 3553(a) with the concept of valuation of assistance." 636 F.3d at 818. To avoid "cloud[ing]" the fact that the purpose of the Rule 35(b) hearing is to determine whether a defendant is entitled to a reduction for

substantial assistance, rather than to engage in a de novo resentencing, the court of appeals adopted "context" factors that effectively permit district courts to consider Section 3553(a) factors in "termper[ing]" a Rule 35(b) sentence reduction. *Id.* at 817, 818.

Because *Grant*'s "context" factors mirror those in Section 3553(a), the *Grant* court stated that "[t]he practical implications of this decision are quite similar to those of our sister circuits." 636 F.3d at 817. That statement referred to holdings that a district court may consider Section 3553(a) in determining whether to grant a Rule 35(b) reduction that is less than that recommended by the government. *Ibid.* (citing *Shelby*, 584 F.3d at 748, and *United States* v. *Manella*, 86 F.3d 201, 205 (11th Cir. 1996) (per curiam)); see also *United States* v. *Davis*, 679 F.3d 190, 196-197 (4th Cir. 2012); *United States* v. *Rublee*, 655 F.3d 835, 839 (8th Cir. 2011), cert. denied, 132 S. Ct. 1647 (2012); *United States* v. *Chapman*, 532 F.3d 625, 628-629 (7th Cir. 2008); *United States* v. *Neary*, 183 F.3d 1196, 1197-1198 (10th Cir. 1999). Those courts reason that although the outer limit of the sentence reduction must be justified by the value of the defendant's assistance, district courts must be permitted to consider "the continuing danger the defendant poses to society, the heinous nature of his crimes, or other factors [that are] relevant" in order to avoid granting reductions that are unreasonably generous in light of those sentencing considerations. *Davis*, 679 F.3d at 196; *Shelby*, 584 F.3d at 748-749.[2]

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[2] Petitioner contends (Pet. 16-17 & n.3) that the Fourth Circuit's decision in *Davis* indicates that district courts may rely on the Section 3553(a) factors to justify granting a sentence reduction that is *greater* than the reduction warranted by the assistance alone. Petitioner is incorrect. *Davis* affirmed a district court's decision to grant

Although petitioner characterizes these decisions as conflicting with *Grant*, the difference is, as *Grant* put it, primarily one of "terminology." 636 F.3d at 818. As the Fourth Circuit recognized in *Davis*, *Grant* is "consistent" with *Davis, Shelby*, and similar cases because it holds that a non-exhaustive list of factors that essentially restate the Section 3553(a) factors may be used to limit a reduction for substantial assistance. See *Davis*, 679 F.3d at 196 n.7 (discussing *Grant*); *Tadio*, 663 F.3d at 1048-1049 ("As a practical matter, it may turn out that the difference between the list of [Section] 3553(a) factors and the list of factors enumerated in *Grant* is not all that great."). Even assuming that the difference in "terminology" used by the Sixth Circuit and that used by the circuits that invoke Section 3553(a) might be outcome-determinative in a particular case, petitioner would not benefit from the Court's resolution of that difference, as these courts uniformly hold that courts may not *increase* a sentence reduction beyond what is warranted by the defendant's assistance.

Only the Ninth Circuit has held that a district court may rely on the Section 3553(a) factors to increase a sentence reduction beyond the amount warranted by the defendant's assistance. See *Tadio*, 663 F.3d at 1046-1055. That disagreement, however, may not have significant practical import. The *Tadio* court emphasized that although a district court "may rely on the [Section] 3553(a) factors to move in either direction," *id.* at 1052, "a resentencing under Rule 35(b) is not the equivalent of

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a lesser reduction based on the Section 3553(a) factors, and it emphasized that its decision was "consistent" with those courts of appeals that have held that the Section 3553(a) factors may be used to limit, but not to increase, the reduction warranted by the defendant's assistance. 679 F.3d at 196-197.

a *de novo* sentencing," *id.* at 1055. Thus, the district court "is not free to impose whatever sentence it now believes to be just, irrespective of the original sentencing and irrespective of the amount of assistance rendered by the defendant." *Ibid.* The amount of the reduction, moreover, "should always be determined in reference to the starting point." *Ibid.* Because the Ninth Circuit has made clear that district courts are not permitted to engage in plenary resentencing in a Rule 35(b) proceeding, the ability to use Section 3553(a) to justify granting a reduction greater than that warranted for the defendant's assistance alone is unlikely to have much practical effect. In the one reported Rule 35(b) decision since *Tadio*, the district court acknowledged its authority to increase the reduction based on Section 3553(b) factors, but it nonetheless declined to do so. See *United States* v. *Clifford*, No. 10–00349 HG–1, 2012 WL 1028088, at *2 (D. Haw. Mar. 23, 2012).

Because the Ninth Circuit has instructed district courts not to engage in a full resentencing, and to ensure that the Rule 35(b) analysis focuses on the value of the defendant's assistance, the disagreement between the Ninth Circuit and the other courts to consider the issue does not warrant this Court's review.[3]

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[3] Petitioner observes (Pet. 25) that, in seeking rehearing en banc of the Sixth Circuit's initial panel decision in *Grant*, the government stated that the panel decision had created a conflict on an issue of "exceptional importance." Gov't Pet. Reh'g En Banc, at 1, No. 07-3831 (filed July 22, 2009). As the government explained in its rehearing petition, full-court review of the panel's decision was important because the panel had suggested that district courts were empowered to undertake a "wide-ranging resentencing" in adjudicating Rule 35(b) motions. *Id.* at 2; see also *id.* at 13 (stating that panel's decision would be "highly disruptive" because "Rule 35(b) proceedings are not intended to be full resentencings"); *United States* v. *Grant*, 567 F.3d

2. Further review is also unwarranted because the court of appeals' decision is correct. A district court must determine the extent of any sentence reduction under Rule 35(b) based exclusively on the defendant's assistance and may not reduce the sentence below the level warranted by that assistance based on other factors, including factors that could be considered at an initial sentencing under 18 U.S.C. 3553(a). The text of Rule 35(b) authorizes only a "reduc[tion]" in a sentence previously imposed. It does not authorize a plenary resentencing or reconsideration of factors on which the original sentence may have been based. The title of Rule 35(b) specifically refers to a reduction in sentence "for Substantial Assistance," and Subsection (b)(3) of the rule stipulates that a court may consider presentence cooperation "[i]n evaluating" a defendant's "substantial assistance." Fed. R. Crim. P. 35(b)(3). Nothing in Rule 35(b) suggests that a court may look beyond the nature and extent of a defendant's assistance to grant a sentence reduction based on unrelated sentencing factors, such as "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. 3553(a)(1).

This Court's analysis in *Dillon* v. *United States*, 130 S. Ct. 2683 (2010), supports that conclusion. In *Dillon*, this Court recognized that post-judgment sentence-modification proceedings, such as those permitted under 18 U.S.C. 3582(c)(2) and Rule 35, are not "plenary resentencing proceedings." 130 S. Ct. at 2692. Rather, the Court explained, they constitute "narrow exception[s] to the rule of finality" that "delineate[] a limited set of

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776, 783 (6th Cir. 2009), vacated on reh'g, 636 F.3d 803 (6th Cir. 2011). Unlike the *Grant* panel, the Ninth Circuit in *Tadio* made clear that Rule 35(b) proceedings are not full resentencings.

circumstances in which a sentence may be corrected or reduced." *Ibid.* The Court observed that Rule 43 of the Federal Rules of Criminal Procedure "requires that a defendant be present at 'sentencing,' but it excludes from that requirement proceedings that 'involv[e] the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c).'" *Ibid.* (citations omitted; alteration in original). Accordingly, the Court recognized, Rule 43 "sets the proceedings authorized by [Section] 3582(c)(2) and Rule 35 apart from other sentencing proceedings." *Ibid.*

The purpose of Rule 35(b) is to aid the government in obtaining assistance from already-sentenced defendants in the investigation or prosecution of other criminals. See *Shelby*, 584 F.3d at 745 ("The purpose of Rule 35(b)(2) is to facilitate law enforcement by enabling the government to elicit valuable assistance from a criminal defendant more than a year after he was sentenced by asking the sentencing judge to reduce the defendant's sentence as compensation for the assistance that he provided."). That purpose would be undermined if, as petitioner urges, Rule 35(b) were construed to allow plenary reconsideration of a defendant's sentence, including whether the defendant has exhibited post-sentencing characteristics that warrant an updated "individualized" assessment of the appropriate sentence. Pet. 21. The risks and burdens to the government of such a scheme "would almost certainly reduce the number of [Rule 35(b)] motions filed, to the detriment of the government * * * and of those criminal defendants who would be the beneficiaries of such a motion if it were filed." *Shelby*, 584 F.3d at 746.

Petitioner contends (Pet. 19-20) that two separate amendments to Rule 35, in 2002 and 2007, make clear

that district courts should be permitted to base a sentence reduction beyond that warranted by a defendant's substantial assistance on Section 3553(a) factors. That contention is without merit.

Before 2002, Rule 35(b) provided that a court could reduce a sentence "to reflect a defendant's subsequent substantial assistance in investigating or prosecuting another person, in accordance with the guidelines and policy statements issued by the Sentencing Commission." 18 U.S.C. App. at 1633 (2000). That language was parallel to the statutory provision in 18 U.S.C. 3553(e) for cooperation-based sentencing reductions below the statutory mandatory minimum, which authorizes a reduction "so as to reflect a defendant's substantial assistance." Whereas Rule 35(b) authorizes a reduction for substantial assistance after imposition of the original sentence, 18 U.S.C. 3553(e) authorizes a reduction below the mandatory minimum at the initial sentencing as a reward for a defendant's pre-sentence substantial assistance. Section 3553(e) has consistently been construed to allow departures based only on "the 'nature, extent, and significance' of the defendant's assistance." *United States* v. *Bullard*, 390 F.3d 413, 416 (6th Cir. 2004) (quoting Sentencing Guidelines § 5K1.1); *id.* at 416-417 (holding that the extent of a departure under Section 3553(e) may be based only on factors relating to a defendant's cooperation and citing cases from the First, Fourth, Seventh, Ninth, Tenth, and Eleventh Circuits); *United States* v. *Burns*, 577 F.3d 887, 894 (8th Cir. 2009) (en banc). Because Rule 35(b) is the post-sentencing counterpart to Section 3553(e), courts accordingly construed Rule 35(b) to prohibit increasing a defendant's sentence reduction based on Section 3553(a) factors.

See, *e.g.*, *Grant*, 636 F.3d at 813-814; *Shelby*, 584 F.3d at 749.

In 2002, as part of a "stylistic" revision of the rules that was not intended to have substantive effect, the words "to reflect" were removed, so that the amended rule authorized the court to reduce a sentence if "(A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and (B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements." 18 U.S.C. App. at 1633 (Supp. II 2002); see *United States* v. *Poland*, 562 F.3d 35, 37-40 (1st Cir. 2009) (discussing the history and amendments of Rule 35(b)).

In 2007, following this Court's decision in *United States* v. *Booker*, 543 U.S. 220 (2005), the rule was again amended to eliminate the reference to the Sentencing Guidelines. The rule now provides in relevant part that, upon the government's motion, "the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person." Fed. R. Crim. P. 35(b)(1). According to the Advisory Committee Notes accompanying the 2007 amendment, the reference to the Sentencing Guidelines was eliminated in response to *Booker*. See Fed. R. Crim. P. 35(b)(1) advisory committee's note (2007 Amendment) (18 U.S.C. App. at 488) (Supp. I 2009) ("The amendment conforms Rule 35(b)(1) to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). * * * Subdivision (b)(l)(B) has been deleted because it treats the guidelines as mandatory."). Contrary to petitioner's argument (Pet. 20), nothing indicates that the Advisory Committee intended to broaden the scope of the relevant considerations in

reducing a defendant's sentence for substantial assistance.

Thus, neither of the amendments to Rule 35(b) authorizes a district court to reduce a sentence based on factors other than the defendant's substantial assistance. The removal of the words "to reflect" was part of a merely 'stylistic' clarification. *Shelby*, 584 F.3d at 748. As for the 2007 amendments, the removal of the requirement that any reduction "accord" with the Sentencing Guidelines does not suggest that the sentencing court may base a reduction on factors other than the defendant's assistance. And neither *Booker* nor the Sixth Amendment prohibits Congress from limiting the factors a sentencing court may consider in granting a sentence reduction. See *Dillon*, 130 S. Ct. at 2692.

3. Not only is the decision below correct and the narrow disagreement between the Ninth Circuit and other circuits not sufficiently important to warrant review, but this case would not be a good vehicle to resolve the issue because petitioner has not suggested that he would have received a sentence reduction of more than 84 months in any other circuit.

Although petitioner contends that the district court should have been permitted to rely on Section 3553(a) in increasing his sentence reduction beyond that warranted by his assistance, petitioner has not identified a favorable Section 3553(a) factor that might have increased the reduction had the district court considered it. See Pet. 3-27. Indeed, petitioner has never explained how consideration of the Section 3553(a) factors would result in a greater sentence reduction than the 84 months he received. The district court cautioned the parties that, in light of *Grant*, it would not entertain arguments about matters not related to petitioner's assistance, Pet. App.

15a, and petitioner challenged that limitation on appeal. Petitioner did not explain, however, what evidence of favorable Section 3553(a) factors he would have presented. Instead, petitioner stated in generic terms, using the language of Section 3553(a) itself, that he would have presented "factors including the history and characteristics of the defendant, how and whether the defendant promotes respect for the law, how and whether any anticipated modified punishment serves as a deterrence, and how the entire process and recommendation affect the public." Pet. C.A. Br. 13. Because petitioner has not explained at any stage how the Section 3553(a) factors would justify a sentence reduction greater than the 84 months that he received in the case, he has not demonstrated that he would benefit from a resolution of the question presented in his favor.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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