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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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FREEMAN *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 09–10245. Argued February 23, 2011—Decided June 23, 2011

In order to reduce unwarranted federal sentencing disparities, the Sentencing Reform Act of 1984 authorizes the United States Sentencing Commission to create, and to retroactively amend, Sentencing Guidelines to inform judicial discretion. Title 18 U. S. C. §3582(c)(2) permits a defendant who was sentenced to a term of imprisonment "based on" a Guidelines sentencing range that has subsequently been lowered by retroactive amendment to move for a sentence reduction. This case concerns §3582(c)(2)'s application to cases in which the defendant and the Government have entered into a plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C), which permits the parties to "agree that a specific sentence or sentencing range is the appropriate disposition of the case," and "binds the court [to the agreed-upon sentence] once [it] accepts the plea agreement."

Petitioner Freeman was indicted for various crimes, including possessing with intent to distribute cocaine base. 21 U. S. C. §841(a)(1). He entered into an 11(c)(1)(C) agreement to plead guilty to all charges; in return the Government agreed to a 106-month sentence. The agreement states that the parties independently reviewed the applicable Guidelines, noted that Freeman agreed to have his sentence determined under the Guidelines, and reflected the parties' understanding that the agreed-to sentence corresponded with the minimum sentence suggested by the applicable Guidelines range of 46 to 57 months, along with a consecutive mandatory minimum of 60 months for possessing a firearm in furtherance of a drug-trafficking crime under 18 U. S. C. §924(c)(1)(A). Three years after the District Court accepted the plea agreement, the Commission issued a retroactive Guidelines amendment to remedy the significant disparity between the penalties for cocaine base and powder cocaine offenses.

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Because the amendment's effect was to reduce Freeman's applicable sentencing range to 37 to 46 months plus the consecutive 60-month mandatory minimum, he moved for a sentence reduction under §3582(c)(2). However, the District Court denied the motion, and the Sixth Circuit affirmed because its precedent rendered defendants sentenced pursuant to 11(c)(1)(C) agreements ineligible for §3582(c)(2) relief, barring a miscarriage of justice or mutual mistake.

Held: The judgment is reversed, and the case is remanded.

355 Fed. Appx. 1, reversed and remanded.

JUSTICE KENNEDY, joined by JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE KAGAN, concluded that defendants who enter into 11(c)(1)(C) agreements that specify a particular sentence as a condition of the guilty plea may be eligible for relief under §3582(c)(2). Pp. 5–10.

(a) The text and purpose of the statute, Rule 11(c)(1)(C), and the governing Guidelines policy statements compel the conclusion that the district court has authority to entertain §3582(c)(2) motions when sentences are imposed in light of the Guidelines, even if the defendant enters into an 11(c)(1)(C) agreement. The district judge must, in every case, impose "a sentence sufficient, but not greater than necessary, to comply with" the purposes of federal sentencing, in light of the Guidelines and other relevant factors. §3553(a). The Guidelines provide a framework or starting point—a basis, in the term's commonsense meaning—for the judge's exercise of discretion. Rule 11(c)(1)(C) permits the defendant and the prosecutor to agree on a specific sentence, but that agreement does not discharge the district court's independent obligation to exercise its discretion. In the usual sentencing, whether following trial or plea, the judge's reliance on the Guidelines will be apparent when the judge uses the Guidelines range as the starting point in the analysis and imposes a sentence within the range. *Gall* v. *United States*, 552 U. S. 38, 49. Even where the judge varies from the recommended range, *id.*, at 50, if the judge uses the sentencing range as the beginning point to explain the deviation, then the Guidelines are in a real sense a basis for the sentence. The parties' recommended sentence binds the court "once the court accepts the plea agreement," Rule 11(c)(1)(C), but the relevant policy statement forbids the judge to accept an agreement without first giving due consideration to the applicable Guidelines sentencing range, even if the parties recommend a specific sentence as a condition of the guilty plea, see U. S. Sentencing Commission, Guidelines Manual §6B1.2. This approach finds further support in the policy statement applicable to §3582(c)(2) motions, which instructs the district court in modifying a sentence to substitute the retroactive amendment, but to leave all original Guidelines determinations in

place, §1B1.10(b)(1). Pp. 5–7.

(b) Petitioner's sentencing hearing transcript reveals that the District Court expressed its independent judgment that the sentence was appropriate in light of the applicable Guidelines range. Its decision was therefore "based on" that range within §3582(c)(2)'s meaning. P. 7.

(c) The Government's argument that sentences that follow an 11(c)(1)(C) agreement are based only on the agreement itself and not the Guidelines, and are therefore ineligible for §3582(c)(2) reduction, must be rejected. Even when a defendant enters into an 11(c)(1)(C) agreement, the judge's decision to accept the plea and impose the recommended sentence is likely to be based on the Guidelines; and when it is, the defendant should be eligible to seek §3582(c)(2) relief. Pp. 7–10.

JUSTICE SOTOMAYOR concluded that if an agreement under Federal Rule of Criminal Procedure 11(c)(1)(C) ((C) agreement) expressly uses a Guidelines sentencing range applicable to the charged offense to establish the term of imprisonment, and that range is subsequently lowered by the Sentencing Commission, the prison term is "based on" the range employed and the defendant is eligible for sentence reduction under 18 U. S. C. §3582(c)(2). Pp. 1–11.

(a) The term of imprisonment imposed by a district court pursuant to a (C) agreement is "based on" the agreement itself, not on the judge's calculation of the Guidelines sentencing range. To hold otherwise would be to contravene the very purpose of (C) agreements—to bind the district court and allow the Government and the defendant to determine what sentence he will receive. Pp. 1–5.

(b) This does not mean, however, that a term of imprisonment imposed under a (C) agreement can *never* be reduced under §3582(c)(2). Because the very purpose of a (C) agreement is to allow the parties to determine the defendant's sentence, when the agreement itself employs a particular Guidelines sentencing range applicable to the charged offenses in establishing the term of imprisonment imposed by the district court, the defendant is eligible to have his sentence reduced under §3582(c)(2). Pp. 5–9.

(c) Freeman is eligible. The offense level and criminal history category set forth in his (C) agreement produce a sentencing range of 46 to 57 months; it is evident that the parties combined the 46-month figure at the low end of the range with the 60-month mandatory minimum sentence under §924(c)(1)(A) to establish the 106-month sentence called for in the agreement. Under the amended Guidelines, however, the applicable sentencing range is now 37 to 46 months. Therefore, Freeman's prison term is "based on" a sentencing range that "has subsequently been lowered by the Sentencing Com-

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mission," rendering him eligible for sentence reduction. Pp. 9–11.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which GINSBURG, BREYER, and KAGAN, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in the judgment. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA, THOMAS, and ALITO, JJ., joined.