

***Dillon v. United States*, — S. Ct. —, No. 09-6338 (June 17, 2010). Opinion by Justice Sotomayor.**

The Supreme Court, in a 7-1 opinion with Justice Alito recused, considered what the impact of its *Booker* decision should be on sentence reductions under 18 U.S.C. § 3582(c)(2). The Court concluded that *Booker* does not apply to proceedings under section 3582(c)(2) and that §1B1.10 is binding on courts reducing sentences under that provision.

The Court began its analysis of the case by addressing the petitioner's argument that proceedings under section 3582(c)(2) are “resentencing” proceedings, concluding that the plain language of the statute does not support this characterization. The Court also noted that the statute only applies to those prisoners whose guideline range was subsequently reduced by the Commission. These two factors, the Court concluded, demonstrate Congress’s intent that such proceedings not be complete resentencings. The Court went on to state, however, that “[t]he substantial role Congress gave the Commission with respect to sentence-modification proceedings further supports this conclusion,” stating that both 28 U.S.C. §§ 994(o) and (u) “constrain[]” a district court’s power under section 3582(c)(2).

The statute, the Court stated, requires a two-step approach in such cases: in the first step, the court must “follow the Commission’s instructions in §1B1.10 to determine the prisoner’s eligibility for a sentence modification and the extent of the reduction authorized.” In the second step, the court must “consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by reference to the policies relevant at step one is warranted in whole or in part under the particular circumstances of the case.” The Court further stated: “Because reference to § 3553(a) is appropriate only at the second step of this circumscribed inquiry, it cannot serve to transform the proceedings under § 3582(c)(2) into plenary resentencing proceedings.”

The Court held that section 3582(c)(2) proceedings do not implicate the Sixth Amendment right at issue in *Booker* because they “represent[] a congressional act of lenity intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines.” The Court also held that the remedial *Booker* opinion does not apply to section 3582(c)(2) proceedings, rejecting the Ninth Circuit’s opinion in *United States v. Hicks*, 472 F.3d 1167, 1170

(2007). The Court again distinguished section 3582(c)(2) proceedings from other sentencing proceedings, concluding that “requiring courts to honor §1B1.10(b)(2)’s instruction not to depart from the amended Guidelines range at [section 3582(c)(2)] proceedings will create none of the confusion or unfairness that led us in *Booker* to reject the Government’s argument for a partial fix.”

The Court finally addressed Dillon’s argument that the district court should have corrected his criminal history calculation, holding that because §1B1.10(b)(1) instructs the court to leave other guideline application decisions unchanged, the district court correctly declined to do so.

In dissent, Justice Stevens set forth his view that *Booker*’s remedial opinion should apply to section 3582(c)(2) proceedings, conceding that “[a]s a matter of textual analysis, divorced from judicial precedent, it is certainly reasonable for the Court to find that the Commission can set mandatory limits on sentence reductions under § 3582(c)(2)” but disagreeing that this analysis is sufficient to decide the case. Justice Stevens expressed his view that “[t]he only fair way to read the *Booker* majority’s remedy is that it eliminated the mandatory features of the Guidelines—all of them.” Additionally, Justice Stevens expressed his view that the majority’s decision raises separation-of-powers and delegation concerns.