

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

FELIX CISNEROS, JR.,

Defendant – Appellant.

No. 24-6774

D.C. No.
2:21-cr-00051-
RGK-1

OPINION

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding.

Argued and Submitted March 12, 2026
Pasadena, California

Filed August 21, 2026

Before: Richard C. Tallman, Johnnie B. Rawlinson, and
David F. Hamilton, Circuit Judges.*

Opinion by Judge Hamilton;
Dissent by Judge Rawlinson

* The Honorable David F. Hamilton, United States Circuit Judge for the Court of Appeals, Seventh Circuit, sitting by designation.

SUMMARY**

Criminal Law

The panel affirmed a sentence imposed on Felix Cisneros, Jr., a former special agent for the Department of Homeland Security, who was convicted of taking bribes in exchange for misusing a confidential law enforcement database to help criminals and fraudulently attempting to bring an inadmissible noncitizen into the country through immigration parole.

U.S.S.G. § 2C1.1(b)(3) provides an enhancement for a bribery offense that “involved an elected public official or any public official in a high-level decision-making or sensitive position.” Application Note 4(A) to § 2C1.1 defines “high-level decision-making or sensitive position” as “a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.” Application Note 4(B) provides examples of a “high-level decision-making position” and, separately, examples of a “sensitive position.” The examples of a “sensitive position” include “a juror, a law enforcement officer, an election official, and any other similarly situated individual.”

In Cisneros’ prior appeal, this court affirmed his convictions but vacated his sentence and remanded for resentencing after concluding that, in applying the § 2C1.1(b)(3) enhancement, the district court erred by

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

relying on the commentary without first finding the guideline text to be genuinely ambiguous. At resentencing on remand, the district court concluded that the text of § 2C1.1(b)(3) is ambiguous. It then turned to the commentary, which it stated “addresses this exact issue . . . and makes it clear that it would apply in a case like this.”

In this appeal, Cisneros challenged the district court’s application of the § 2C1.1(b)(3) enhancement at resentencing. The panel held that § 2C1.1(b)(3)’s text is ambiguous as to whether the enhancement applies only to a “sensitive position” that is also “high-level,” that the term “sensitive position” is ambiguous, and that on both questions Application Note 4 warrants deference because it reasonably interprets the guideline. Because Cisneros, as a law enforcement officer, held a “sensitive position” identified in Application Note 4(B), the district court did not err in applying the enhancement.

Cisneros also argued that the district court erred by insufficiently addressing the sentencing factors set forth in 18 U.S.C. § 3553(a) and his arguments for a downward variance. The panel held that the record, including the prior appeal, makes the rationale behind district court’s decision clear and reasonable.

Judge Rawlinson dissented because the opinion essentially endorses the district court’s cavalier disregard of this court’s mandate. She wrote that the district court completely disregarded this court’s instructions that, in determining whether § 2C1.3(b)(3) is genuinely ambiguous, it “must exhaust all the traditional tools of construction,” “carefully consider the text, structure, history, and purpose” of § 2C1.3(b)(3), and employ all of its interpretive tools.

COUNSEL

Juan M. Rodriguez (argued), Daniel G. Boyle, and Michael J. Morse, Assistant United States Attorneys; Alexander P. Robbins, Assistant United States Attorney, Chief, Criminal Appeals Section; Bilal A. Essayli, Acting United States Attorney; Office of the United States Attorney, United States Department of Justice, Los Angeles, California; for Plaintiff-Appellee.

Sonam A.H. Henderson (argued), Assistant Federal Public Defender; Cuauhtémoc Ortega, Federal Public Defender; Office of the Federal Public Defender, Los Angeles, California; for Defendant-Appellant.

OPINION

HAMILTON, Circuit Judge:

A former special agent for the Department of Homeland Security was convicted of taking bribes in exchange for misusing a confidential law enforcement database to help criminals and fraudulently attempting to bring an inadmissible noncitizen into the country through immigration parole. He argues that the district court erred by applying a sentencing guideline enhancement for defendants who hold a “high-level decision-making or sensitive position” and by not sufficiently explaining its reasoning for sentencing him as it did. We affirm.

I. Factual and Procedural Background

Defendant-appellant Felix Cisneros, Jr., was a veteran special agent for Homeland Security Investigations (HSI), a

federal law enforcement agency within the Department of Homeland Security (DHS). A government witness who worked with Cisneros testified that he had “a really good reputation as a heavy hitting special agent” working on “high-level narcotics, and cartel” investigations. Cisneros had another side, though. For several years, he took bribes from Edgar Sargsyan and Levon Termendzhyan, figures in organized crime networks, in exchange for abusing his position to aid their crimes.

Cisneros was first indicted in 2017 on several charges related to Termendzhyan. He was convicted, sentenced to a year and a day, and released from federal prison in December 2019. This court affirmed three of his four convictions from that case. *United States v. Cisneros* (*Cisneros I*), 825 F. App’x 429, 431 (9th Cir. 2020) (mem.).

The convictions in this case are based on three other incidents in which Cisneros aided or attempted to aid Sargsyan. First, Sargsyan paid Cisneros to misuse a confidential DHS database to reveal what the government knew about an associate of Sargsyan’s who was having trouble entering the United States, as well as to “clean” that person’s immigration record to facilitate his entry. Second, Cisneros misused the database again to determine if Sargsyan was under investigation after an associate of his was arrested. Third, Cisneros attempted to bring a foreign national, Sargsyan’s brother-in-law, into the United States through immigration parole, which allows an otherwise inadmissible person to enter the country for a limited time while bypassing the normal visa and inspection process, often to assist with an investigation. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(a). Cisneros convinced his immediate supervisor to approve the request, which falsely claimed that the brother-in-law could assist with a

local police investigation. The request was ultimately denied because Customs and Border Patrol discovered that the man had attempted to obtain a visa several times within a short period.

The operative indictment in this case charged Cisneros with Count 1 for conspiracy to commit bribery of a public official (himself), 18 U.S.C. §§ 201(b)(2), 371; Count 2 for accepting a bribe as a public official, § 201(b)(2); Counts 3 through 28 for money laundering, § 1956(a); and Counts 29 and 30 for filing false tax returns, 26 U.S.C. § 7206(1). He was convicted by a jury on all charges. Cisneros asked for a sentence of 41 months in prison, which was at the low end of the advisory range that he believed applied. The government asked for 145 months, close to the high end of its preferred advisory range. The district court agreed with the government's calculation of the advisory range, which included a four-level enhancement under Section 2C1.1(b)(3) of the Sentencing Guidelines that applies to bribery offenses "involv[ing] an elected public official or any public official in a high-level decision-making or sensitive position." The court then imposed a low-end sentence of 121 months in prison. The court noted Cisneros' military and law enforcement service but called that service a "two edged sword," since "you would expect him to fulfill the trust and the confidence of everybody that he had, which he violated."

On appeal, this court affirmed each of those convictions but vacated and remanded for resentencing after concluding that the court erred by relying on the commentary to U.S.S.G. § 2C1.1(b)(3) without first finding the text to be genuinely ambiguous. *United States v. Cisneros (Cisneros II)*, No. 22-50296, 2024 WL 3770325, at *2 (9th Cir. Aug. 13, 2024) (mem.).

On remand, the parties submitted new sentencing memoranda that focused primarily on the § 2C1.1(b)(3) issue. Cisneros also argued that a twelve-month downward departure under U.S.S.G. § 5K2.23 was appropriate because he had completed his term of imprisonment for his first set of convictions, which charged conduct relevant to these new convictions.¹ Cisneros calculated his advisory range as 63 to 78 months. He then asked for a downward variance to 51 months and incorporated by reference his previous arguments about the sentencing factors under 18 U.S.C. § 3553(a). He added that he had been a model inmate for the year and a half since his original sentencing hearing, and he submitted a new letter of recommendation from a correctional officer. The government did not address the § 5K2.23 issue and calculated the advisory range as 97 to 121 months. This time, the government asked for a sentence at the low end of the advisory range.

At the resentencing hearing, the district court heard argument on the bribery enhancement issue and concluded that the text of § 2C1.1(b)(3) is ambiguous. Then, the court turned to the commentary, which it stated “addresses this exact issue . . . and makes it clear that it would apply in a case like this.” The court agreed with the government’s calculation of the advisory range and imposed an 85-month sentence, which it reached by departing downward from the low end of the range by 12 months. Cisneros has appealed this new sentence.

¹ Section 5K2.23 has since been removed from the Guidelines Manual. U.S.S.G. App. C, amend. 836 (Nov. 2025).

II. *The Bribery Enhancement*

Cisneros first challenges the district court’s application of the sentencing enhancement under § 2C1.1(b)(3). The guideline provides an enhancement for a bribery offense that “involved an elected public official or any public official in a high-level decision-making or sensitive position.” The enhancement is four levels unless the resulting offense level would be less than 18, in which case the offense level is increased to 18.

Application Note 4(A) to § 2C1.1 defines “high-level decision-making or sensitive position” as “a position characterized by a direct authority to make decisions for, or on behalf of, a government department, agency, or other government entity, or by a substantial influence over the decision-making process.” Then, Application Note 4(B) provides examples of a “high-level decision-making position” and, separately, examples of a “sensitive position.” The examples of a “sensitive position” include “a juror, a law enforcement officer, an election official, and any other similarly situated individual.” Cisneros was a law enforcement officer, so if deference to Application Note 4 is appropriate, we must affirm.

More is required, however, before we may consider Application Note 4. We may not defer to the Sentencing Commission’s commentary interpreting the Sentencing Guidelines unless the guideline itself is genuinely ambiguous. *United States v. Castillo*, 69 F.4th 648, 655–56 (9th Cir. 2023). Before concluding that the guideline is genuinely ambiguous, “a court must exhaust all the ‘traditional tools’ of construction.” *Id.* at 655 (quoting *Kisor v. Wilkie*, 588 U.S. 558, 575 (2019)). The district court’s

failure to do so was the basis for our remand of Cisneros' original sentence. *See Cisneros II*, 2024 WL 3770325, at *2.

Ambiguity alone does not warrant deference. The agency's interpretation must be reasonable, which means it "come[s] within the zone of ambiguity the court has identified after employing all its interpretive tools." *Kisor*, 588 U.S. at 575–76. And the "character and context of the agency's interpretation" must "entitle[] it to controlling weight," which it does if "(i) the interpretation is the agency's official position, rather than any more ad hoc statement not reflecting the agency's views; (ii) the interpretation implicates the agency's substantive expertise; and (iii) the interpretation reflects the agency's fair and considered judgment." *United States v. Trumbull*, 114 F.4th 1114, 1118 (9th Cir. 2024) (citation modified).

Cisneros first argues that § 2C1.1(b)(3) can apply only if he held a "high-level sensitive position" and that his position was not "high-level." Next, Cisneros argues that even if a position need not be "high-level," his was not "sensitive." Finally, he argues that if the guideline is ambiguous, Application Note 4 is not a reasonable interpretation of it and therefore is not entitled to deference.²

The district court explained only briefly its conclusion that the guideline here is ambiguous, noting that both sides had made good arguments for their conflicting textual

² Cisneros makes no argument concerning *Kisor*'s third step: whether the "character and context of the agency's interpretation," if reasonable, is entitled to "controlling weight." *Trumbull*, 114 F.4th at 1118 (citation modified). Accordingly, he has forfeited any challenge on that ground. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) ("[W]e will not consider any claims that were not actually argued in appellant's opening brief.").

interpretations. Whether a guideline is ambiguous is a question of law that we decide *de novo*, without deference to the district court’s conclusion or reasoning. *United States v. Trumbull*, 114 F.4th at 1118. (For this reason, we disagree with the arguments of our dissenting colleague and do not see value in a second remand to the district court for a more detailed explanation of its legal conclusion, with which we agree.) We also review the district court’s factual findings for clear error and its application of the guidelines to the facts of the case for abuse of discretion. *United States v. Gasca-Ruiz*, 852 F.3d 1167, 1170–71 (9th Cir. 2017) (en banc). Here, Cisneros challenges the district court’s interpretation of the guideline and its application of the guideline to him. Thus, we review the former *de novo* and the latter for abuse of discretion.

We hold that U.S.S.G. § 2C1.1(b)(3)’s text is ambiguous as to whether the enhancement applies only to a “sensitive position” that is also “high-level,” that the term “sensitive position” is ambiguous, and that on both questions Application Note 4 warrants deference because it reasonably interprets the guideline. Because Cisneros, as a law enforcement officer, held a “sensitive position” identified in Application Note 4(B), the district court did not err in applying the enhancement.

A. “*High-Level*”

Cisneros first argues that the language of § 2C1.1(b)(3)—“any public official in a high-level decision-making or sensitive position”—means a defendant must have held a position which was *both* “sensitive” and “high-level.” He cites the series-qualifier canon, which posits that “when there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or

postpositive modifier normally applies to the entire series.” Appellant’s Br. at 19 (alteration omitted) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012)). According to Cisneros, for “high-level” not to modify “sensitive position,” the determiner “a” would have to be repeated, as in, “a high-level decision-making position or a sensitive position.” The government argues that a “sensitive position” need not be “high-level” for the enhancement to apply.³

1. *Ambiguity*

Castillo requires us to exhaust the traditional tools of interpretation before deferring to what the Sentencing Commission says in its commentary about its guidelines. 69 F.4th at 655–56. Under this new standard, prior case law on § 2C1.1(b)(3) is of limited value. The government’s cited cases concluding or implying that a “sensitive position” of any kind is sufficient, “high-level” or not, all expressly relied on Application Note 4 without first finding the guideline genuinely ambiguous. See *United States v. Zamora*, 982 F.3d 1080, 1084 (7th Cir. 2020); *United States v. Dodd*, 770 F.3d 306, 310 & n.4 (4th Cir. 2014); *United States v. Hill*, 645 F.3d 900, 907–08 (7th Cir. 2011); *United States v. Griffith*, 781 F. App’x 418, 420–21 (6th Cir. 2019); *United States v. Grosso*, 658 F. App’x 43, 46 (3d Cir. 2016); *United States v. Guzman*, 383 F. App’x 493, 494 (5th Cir. 2010). Another case relied on by both parties, which did not rely on the commentary, contains language suggesting both answers. See *United States v. Matzkin*, 14 F.3d 1014, 1016–17, 1021 (4th Cir. 1994) (using both “high level sensitive

³ The government did not argue in the alternative that Cisneros held a “high-level” position, so we do not reach that issue.

position” and “sensitive position” to describe the defendant’s role).

The series-qualifier canon is applied with an eye to context and purpose. *Yellen v. Confederated Tribes of Chehalis Reservation*, 594 U.S. 338, 359 (2021) (“[T]he series-qualifier canon gives way when it would yield a ‘contextually implausible outcome.’”) (quoting *Facebook, Inc. v. Duguid*, 592 U.S. 395, 406–07 (2021)). Either the sentence’s grammatical structure or the semantic context of the modifier and the words to be modified may show that the canon should not be applied. See *Koletas v. United States*, 159 F.4th 813, 825–26 (11th Cir. 2025) (application of series-qualifier canon affected by presence or absence of a comma, separate infinitive verb forms, and the need for listed verbs to have an object).

At first glance, we see nothing semantically implausible with either side’s argument. The Sentencing Commission could certainly have written the guideline to apply only where the public official held a “high-level” position, or it could have written the guideline to apply to a “sensitive position” of any level.

The main problem with Cisneros’ argument is instead grammatical. To start, he cannot decide whether he thinks “high-level” modifies the noun “position” or the phrases “decision-making position” and “sensitive position.” He first suggests the former, writing that § 2C1.1(b)(3) “ask[s] the reader to consider whether the defendant is a ‘public official’ in ‘a high-level . . . position’ that is either ‘decision-making or sensitive.’” Appellant’s Br. at 19–20 (second alteration in original). In the next paragraph, however, he switches to the latter, writing that “the parallel construction without a repeated determiner indicates that ‘high-level’

modifies both ‘decision-making’ and ‘sensitive’ positions.” *Id.* at 20. We address both readings.

We start with Cisneros’ second reading. If he were correct in saying that “high-level” modified “decision-making positions” and “sensitive positions,” then “high-level decision-making” and “high-level sensitive” would each serve as cumulative adjectives. Cumulative adjectives “describe[] the combination of the next modifier plus the noun it modifies,” and no comma is expected between them. *Suzie’s Brewery Co. v. Anheuser-Busch Cos.*, 519 F. Supp. 3d 839, 852 n.10 (D. Or. 2021) (citation omitted). The problem with this view, as the government points out, is that the phrase “high-level sensitive” is incoherent. A position can be “*highly* sensitive,” but that means something else.

If instead Cisneros’ first reading were correct in saying that “high-level” modified only “position,” then the text of § 2C1.1(b)(3) might be missing something. “Multiple adjectives that all modify a single (or head) noun are known as ‘coordinate adjectives’ and generally are separated by commas or the word ‘and.’” *Id.* at 852. According to some grammatical sources, that rule “should” apply where the adjectives have a “logical connection in sense,” which is why the phrase “white brick house” sounds right and “white and brick house” sounds wrong. *See* Chicago Manual of Style § 5.95 (18th ed. 2024). The words “high-level” and “decision-making” are related in a sense, much like the adjectives in the phrase “skilled, experienced chess player.” *Id.*

According to these grammatical sources, for Cisneros’ reading to be correct, the guideline would have to read either as “high-level *and* decision-making or sensitive position” or “a high-level, decision-making or sensitive position.” That

is not how it reads, though. Notably, the court in *Matzkin* added such a comma in one passage relied on by Cisneros, creating the doubly atextual phrase “high level, sensitive *person*,” even though that comma did not appear in the version of the guideline in effect at that time either. 14 F.3d at 1016 (emphasis added); *see* U.S.S.G. § 2C1.1(b)(2)(B) (Nov. 1993). Other grammatical sources, however, approve of asyndetical coordination, where the coordinator (a comma or the word “and”) “is not present but could be inserted.” Sidney Greenbaum, *The Oxford English Grammar* § 5.39 (1996). If we trust these latter sources, then this particular reading by Cisneros could still be correct since the lack of a comma would not necessarily preclude the presence of coordinate adjectives.

With two semantically and grammatically plausible readings, we conclude that the guideline is genuinely ambiguous as to whether a “sensitive position” must be “high-level” for the enhancement to apply. *See Castillo*, 69 F.4th at 655–56. We therefore turn next to the commentary.

2. *Reasonable Interpretation*

Application Note 4(B) to § 2C1.1 provides separate examples of a “high-level decision-making position” and of a “sensitive position.” This structure shows that the Commission did not intend “high-level” to modify “sensitive position.” Because this reading is consistent with both grammatical rules we reviewed above, we defer to it as a reasonable interpretation within the guideline’s zone of ambiguity. Cisneros need not have held a “high-level” position for the enhancement to apply.

B. “Sensitive Position”

Next, Cisneros argues that his position as a rank-and-file investigator without employees under his supervision or what he considers “real powers” could not be “sensitive” because he did not deal with “highly classified or top secret matters of policy or national security.” The government argues that Cisneros “easily” held a “sensitive position” without relying on the examples in Application Note 4(B). Again, *Castillo* requires us to exhaust the traditional tools of construction before considering the examples provided in Application Note 4(B), which specifically designates “a law enforcement officer” without further qualification as holding a “sensitive position.” 69 F.4th at 655–56.

1. Ambiguity

Like the word “cool”—which might refer to temperature, temperament, or personal style, among other things, *see Kasparov, Pte Ltd. v. Zacherl*, 798 F. Supp. 3d 551, 561 (E.D.N.C. 2025)—the word “sensitive” could carry multiple distinct senses. For example, in common usage a position might be called “sensitive” because it confers powerful authorities, grants access to nonpublic information, is highly visible to public scrutiny, or deals with vulnerable populations.

Both parties come armed with their preferred dictionary definitions of the word “sensitive.” Some definitions focus on access to information and to require a nexus to national security or classified intelligence.⁴ Another suggests “the

⁴ E.g., “Sensitive,” Merriam-Webster, <https://www.merriam-webster.com/dictionary/sensitive> [https://perma.cc/Z5K6-LZPJ] (definition 4: “concerned with highly classified government information

potential . . . for serious repercussions” is enough.⁵ We have no difficulty concluding that fraudulently admitting a person into the United States and tipping off a criminal suspect to a federal investigation are “serious repercussions.” While those actions could conceivably have national security implications in other situations, the government’s arguments have hewed closely to the facts of this case, which involve organized crime rather than nuclear secrets or international terrorism. Dictionaries alone cannot decide this case. See *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636, 643 & n.3 (7th Cir. 2014) (en banc) (“[J]udges and lawyers must take care not to ‘overread’ what dictionaries tell us.”) (quoting *Jordan v. De George*, 341 U.S. 223, 234 (1951) (Jackson, J., dissenting) (“dictionaries, the last resort of the baffled judge”), and Frank H. Easterbrook, *Text, History, and Structure in Statutory Interpretation*, 17 Harv. J.L. & Pub. Pol’y 61, 67 (1994) (characterizing dictionary as “a museum of words, an historical catalog rather than a means to decode the work of legislatures”)).

Turning to the surrounding words also does not settle the question. Cisneros points to the statutory canons of *noscitur a sociis* and the avoidance of surplusage to argue for a narrow reading of “sensitive position” limited to “an elevated position involving highly classified government information or with discretionary authority over important

or involving discretionary authority over important policy matters”); “Sensitive,” American Heritage Dictionary, <https://ahdictionary.com/word/search.html?q=sensitive> [<https://perma.cc/Z9CB-9CJS>] (definition 7: “Of or relating to secret or classified information”).

⁵ “Sensitive,” Oxford English Dictionary, https://www.oed.com/dictionary/sensitive_adj [<https://perma.cc/5ZR2-JNQW>] (definition 7).

policy matters, akin to an elected official or a high-level decision-making official.” Appellant’s Br. at 25–30.

We see several problems with this argument. For one, Cisneros’ definition effectively adds “high-level” back into “sensitive position.” He also ignores the possibility that elected officials, high-level decision-makers, and those in “sensitive positions” could be intended to capture three comparable, sometimes overlapping, but distinct categories. If so, setting the bar for a “sensitive position” as one dealing in “highly classified” information would be anomalous. Other courts have applied the enhancement to bribery offenses involving an elected member of a local school board, *United States v. Richard*, 775 F.3d 287, 297 (5th Cir. 2014), and the chair of the dental department of a county-owned hospital, *United States v. Hills*, 27 F.4th 1155, 1194 (6th Cir. 2022), neither of whom had access to classified information.

That said, we also are not convinced by the government’s capacious reading of “sensitive position” to cover essentially any public official with access to nonpublic information. At oral argument in *Cisneros II*, the government contended that even a clerk at the department of motor vehicles could qualify. That interpretation would seem to sweep in practically every public official.

Nor are history and structure dispositive. Before a 2004 amendment, the enhancement now codified in § 2C1.1(b)(3) was eight levels, not four. *See* U.S.S.G. App. C, amend. 666 (Nov. 2004). This history raises the possibility that the Commission wanted to limit the harshness of the enhancement but at the same time to broaden its scope. If we could look to the commentary at this stage—which *Castillo* tells us we cannot do yet, 69 F.4th at 655–56—we

would learn that that's precisely what happened: the pre-amendment eight-level enhancement applied only to "supervisory" law enforcement officers, while the post-amendment four-level enhancement was intended to apply to all law enforcement. *Zamora*, 982 F.3d at 1085; *Dodd*, 770 F.3d at 310 n.5. Without considering the commentary, however, the amendment to the guideline text itself does not signal just how much more broadly to read it.

The facts of this case, moreover, make relying on the textual amendment especially iffy. The amendment also created § 2C1.1(b)(4), which provides a two-level enhancement for a defendant who "was a public official who facilitated (A) entry into the United States for a person, a vehicle, or cargo; (B) the obtaining of a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) the obtaining of a government identification document." Without consulting the commentary, it is unclear whether the Commission expected these enhancements to "stack" in the case of a law enforcement officer abusing his position to bring a noncitizen into the country illegally, or whether it anticipated that a special agent involved in this form of on-the-ground corruption would ordinarily not also qualify for the four-level enhancement under § 2C1.1(b)(3). Accordingly, after carefully considering the parties' arguments and the tools of construction, we agree with our colleague on the district court that the term "sensitive position" as used in § 2C1.1(b)(3) is genuinely ambiguous.⁶

⁶ The term "sensitive position" may also be vague. Like the word "tall" when used to refer to height, a public office might fall on a spectrum of "sensitivity," with no clear cut-off for when a non-sensitive position

2. *Reasonable Interpretation*

Having found the guideline ambiguous, we may now turn, as the district court did, to the commentary. Application Note 4 warrants deference so long as it provides a reasonable construction of the guideline. *Castillo*, 69 F.4th at 655–56. We conclude that it does.

The examples of “sensitive positions” provided in Application Note 4 reveal why the parties’ dueling dictionary definitions of “sensitive” miss the mark. In general, election results and even many records about individual voters are subject to public disclosure, *e.g.*, Wash. Rev. Code § 29A.08.720(3)(a), while petit jurors are sworn to secrecy only during deliberations, after which they may say whatever they like, *see* Cal. Civ. Proc. Code § 206(a)–(b). Instead of access to nonpublic information, the connection between jurors, election officials, and law enforcement officers—or, at the least, one reasonable justification for classifying them together as “sensitive positions”—is that each of these roles exercises a special public trust.

These positions grant unique powers in areas both vital to good government and vulnerable to corruption, namely trials, elections, and criminal investigations. Jurors and election officials hold “sensitive positions” not primarily because of what they know but because the incentives to bribe them can be great and corrupt decisions can be hard to detect and overturn. *See United States v. Snell*, 152 F.3d 345, 348 (5th Cir. 1998) (affirming application of

becomes a sensitive one. *See Kasparov*, 798 F. Supp. 3d at 561. Even if the sense in which a word is used is not in doubt, “[a] vague or imprecise regulation can be ambiguous under *Kisor*.” *Trumbull*, 114 F.4th at 1119.

enhancement for juror who solicited bribe and noting “the prominence of juries in our legal system” and “the extraordinary responsibility of every juror in preserving that system”).

Seen this way, the Sentencing Commission’s choice, as expressed in the commentary, to include law enforcement officers as eligible for the four-level enhancement is readily understandable and certainly reasonable. Law enforcement officers from beat cops to the director of the FBI decide which offenses to investigate, which investigatory steps to take—including arresting individuals for offenses committed in their presence and seeking arrest warrants—and which cases to refer for prosecution. These are all discretionary decisions with enormous effects on individuals’ lives. That discretion is part of why detecting corruption and obtaining justice for the unheard victim or for the wrongly accused can be so difficult. *See Zamora*, 982 F.3d at 1085 (“No policy can delineate ahead of time exactly when and to what extent police officers or prison guards will investigate an individual suspected of possessing or trafficking drugs.”).

Even if rank-and-file law enforcement officers do not make the final decisions on some matters, they still have “substantial influence over the decision-making process.” U.S.S.G. § 2C1.1 cmt. n.4(A) (defining the umbrella term “high-level decision-making or sensitive position”). Thus, the zone of ambiguity of the term “sensitive position” comfortably includes sworn law enforcement officers entitled to make arrests. *See United States v. Johnson*, 605 F.3d 82, 82–84 (D.C. Cir. 2010) (affirming application of enhancement for school resource officer who ran “illegal parking scheme”; defendant held “sensitive position” since

he had power to arrest on school grounds).⁷ Cisneros had arrest authority, which would be enough on its own for a “sensitive” position. *See id.* at 83. He also could initiate immigration parole requests, an authority he was convicted in this case of misusing. Accordingly, Application Note 4 is a reasonable interpretation of § 2C1.1(b)(3) as applied to Cisneros. The district court did not err in applying the enhancement.

III. *Sentencing Explanation*

Cisneros also argues that the district court erred by insufficiently addressing the sentencing factors set forth in 18 U.S.C. § 3553(a) and his arguments for a downward variance. At the resentencing hearing, after calculating the advisory range, the district court gave the following explanation for its sentence:

The court is not going to give any 3553 consideration because the court is not satisfied and is not impressed with the public service that he’s done because that’s exactly

⁷ We do not suggest here that a person *must* hold a sworn position or be entitled to make arrests to fall within the category of law enforcement. For example, the Fourth Circuit has held that a private prison guard held a “sensitive position” despite lacking any general arrest powers. *See Dodd*, 770 F.3d at 312. On the other hand, a parking meter reader might present a more difficult case despite perhaps qualifying as “law enforcement” in the broadest sense of the phrase.

what he violated was that public service to the community.

The court then imposed a sentence of 85 months, 12 months below the low end of the range, and ended the hearing without further explanation relevant to the § 3553(a) factors.

The government calls that explanation “inartful.” Perhaps, but the record, including the prior appeal, makes the district court’s reasoning abundantly clear. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc) (the explanation for the sentence “may . . . be inferred from the [Presentence Report] or the record as a whole”). The panel in *Cisneros II* wrote that, following *Castillo*, it would “vacate the sentence and remand for resentencing so that the district court may determine whether § 2C1.1(b)(3) is genuinely ambiguous in the first instance.” 2024 WL 3770325, at *2. Cisneros’ memorandum on resentencing was chiefly devoted to that question, as well as to his request for a downward departure under § 5K2.23. He spent less than two pages asking for a downward variance, and he incorporated by reference his arguments from the original sentencing about his military and law enforcement service, good behavior since the offense, low risk of recidivism, and personal history and characteristics. His only new argument was that he had been a model inmate for the last year and a half, which he supported with an additional letter of recommendation from a correctional officer. The government also addressed the § 3553(a) factors in its memorandum on resentencing in just a few pages, this time asking for a sentence at the low end of the post-departure range. In other words, both parties focused on the guideline calculation rather than rehashing their positions on the

§ 3553(a) factors, focusing on the reason for this court's remand in *Cisneros II*.

Accordingly, the district court began the resentencing hearing as follows: “In this particular matter, this has been sent down for re-sentencing by the Ninth Circuit. It was really going towards one issue, and that was an enhancement.” The ready inference is that Cisneros’ perfunctory arguments did not persuade the court to go below the low end of the post-departure range, which the government now agreed was appropriate. So all that remained was to calculate the range. “A district court need not explain its reasons in detail where context and the record make clear what reasoning underlies the judge’s conclusion.” *United States v. Treadwell*, 593 F.3d 990, 1010 (9th Cir. 2010) (citation modified), *overruled on other grounds*, *United States v. Miller*, 953 F.3d 1095 (9th Cir. 2020).

The court had already provided ample justification for an in-range sentence at the original sentencing hearing. That explanation had referred to Cisneros’ record of public service as a “two edged sword” and is the same in substance as the briefer explanation at the resentencing. Cisneros does not argue that the first explanation was insufficient. Instead, he pivots to observing that “a person must be sentenced as they stand on the day of resentencing, not as they were at the original sentencing.” Appellant’s Reply Br. at 27. As a changed circumstance, he identifies, his good behavior in custody and the additional letter of support from a correctional officer.

His continued good behavior and the new letter are the only changes Cisneros has identified, both in his memorandum for resentencing and on appeal. For a

defendant who was already by his own account a “model of propriety” since being released from prison following his first set of convictions, these developments were not so significant that the court was obliged to address them specifically. *See Carty*, 520 F.3d at 992–93. These circumstances are a far cry from *Pepper v. United States*, the case Cisneros cites, where the defendant by the time of resentencing had been released from prison for several years, had undergone extensive drug treatment, and had begun attending college, working full time, and supporting his new wife and her child. 562 U.S. 476, 481–85, 493 (2011). The rationale behind the court’s decision here was quite clear and reasonable.

AFFIRMED.

Rawlinson, Circuit Judge, dissenting:

I respectfully dissent because this opinion essentially endorses the district court’s cavalier disregard of our mandate. A mandate from this court is not a suggestion or a recommendation. Rather, it is a command to the district court to perform a specific task or take a particular action. *See United States v. Garcia-Beltran*, 443 F.3d 1126, 1130 (9th Cir. 2006) (explaining that “[t]he rule of mandate requires a lower court to act on the mandate of an appellate court, without variance or examination, only execution”) (citations omitted). District courts are not free to disregard a mandate from this court. *See United States v. Luong*, 627 F.3d 1306, 1309 (9th Cir. 2010) (observing that “[w]hen a case has been decided by an appellate court and remanded, the court to which it is remanded must proceed in accordance with the mandate”) (citation omitted). Indeed,

the proper resolution for the failure of a district court to follow our mandate, is a remand for the district court to comply. *See United States v. Paul*, 561 F.3d 970, 975 (9th Cir. 2009) (remanding to the district court for a second time after it failed to comply with our mandate).

As the majority acknowledges, in the prior appeal we vacated the sentence and remanded for the district court to re-sentence Cisneros. We determined that the district court erred when it relied on the commentary to U.S.S.G. § 2C1.1(b)(3) without first making a determination that the text of the guideline provision was “genuinely ambiguous.” *Majority Opinion*, p. 6 (citing *United States v. Cisneros*, No. 22-50296, 2024 WL 3770325 at *2 (9th Cir. August 13, 2024)). We remanded “so that the district court may determine whether § 2C1.1(b)(3) is genuinely ambiguous.” *Cisneros*, 2024 WL 3770325 at *2. We expressly directed that the district court make this determination “in the first instance.” *Id.* We instructed that the district court “*must exhaust all the traditional tools of construction.*” *Id.* (citation and internal quotation marks omitted) (emphasis added). We expounded on the mandate by requiring the district court to “*carefully consider the text, structure, history, and purpose of a regulation, in all the ways it would if it had no agency to fall back on.*” *Id.* (citation, alteration, and internal quotation marks omitted) (emphasis added). We concluded with: “In other words, the commentary’s reading must come within the zone of ambiguity the [district] court has identified *after employing all its interpretive tools.*” *Id.* (citations and original alteration omitted).

On remand, the district court completely disregarded our mandate. The district court did not “exhaust *all* the traditional tools of construction.” *Id.* (emphasis added). In

fact, the district court did not exhaust, or even mention, any of the tools of statutory interpretation. *See id.* Neither did the district court “*carefully consider* the text, structure, history, and purpose” of § 2C1.1(b)(3). *Id.* (citation, alteration, and internal quotation marks omitted) (emphasis added). Finally, the district court did not employ any of “its interpretive tools.” *Id.* (citations omitted). Instead, the district court completely disregarded our mandate.

The sum total of the district court’s ruling on the ambiguity of § 2C1.1(b)(3) was this statement: “I think that the argument by both sides have [sic] been well put forth and exemplifies in the court’s mind why exactly this guideline level adjustment is ambiguous. I can see arguments on both sides as to why your position should be upheld on it.” With this truncated discussion, the district court found § 2C1.1(b)(3) to be “genuinely ambiguous.”

Even a cursory review of the district court’s statement reveals the glaring failure to comply with our mandate. My colleagues in the majority have stepped up to perform the interpretative analysis that we mandated the district court to perform. They discuss and apply the “series-qualifier canon,” *Majority Opinion*, p. 12, which was never mentioned by the district court. They also consult “grammatical sources,” including “asyndetical coordination,” unlike the district court. *Id.* at 12-14. Whether I agree or disagree with the analysis conducted by the majority, or whether I conclude that the majority employed all available interpretive tools is not the point. The point is that we should not be conducting this analysis in the first instance, especially after we directed the district court to first perform the analysis. As noted on many occasions, “we are a court of review, not of first view.” *Pritchard on behalf of C.P. v.*

Blue Cross Blue Shield, 159 F.4th 646, 672 (9th Cir. 2025) (citation and internal quotation marks omitted); *see also Roth v. Foris Ventures, LLC.*, 86 F.4th 832, 838 (9th Cir. 2023) (“As a federal court of appeals, we must *always* be mindful that we are a court of review, not first view. . . .”) (citation omitted) (emphasis added).¹ Unfortunately, the majority did not adhere to that view of our role. If we expect the district courts to take our mandates seriously, we must first do so ourselves. Because I would remand for the district court to comply with our mandate, I respectfully dissent.

¹ The majority points to de novo review as a basis for “seeing no value in a second remand for a more detailed explanation of its legal conclusion.” *Majority Opinion*, p.10. However, the district court provided *no* “explanation of its legal conclusion.” *Id.* More to the point, the majority does not even attempt to argue that the district court complied with our mandate. Finally, de novo review is still “review, not first view.” *Pritchard*, 159 F.4th at 672.