

07-330 GREENLAW V. UNITED STATES

DECISION BELOW: 481 F3d 601

LOWER COURT CASE NUMBER: 06-1365

QUESTION PRESENTED:

In 1937, this Court described as “inveterate and certain,” the principle that an appellee “may not, in the absence of a cross-appeal ... ‘attack the decree with a view either to enlarging his own rights thereunder or lessening the rights of his adversary.” *Morely Constr. Co. v. Maryland Cas. Co.*, 300 U.S. 185, 191 (1937) (citation omitted). In light of this principle, numerous courts have held that a court of appeals may not order an increase in a criminal defendant’s sentence in the absence of an appeal or cross-appeal by the Government. The Eighth and Tenth Circuits, however, have held that courts of appeals may sua sponte order increases in a defendant’s sentence when the district court has failed to impose a statutory mandatory minimum sentence, even if the Government has not appealed or cross-appealed the sentence. The question presented is:

Whether a federal court of appeals may increase a criminal defendant’s sentence sua sponte and in the absence of a cross-appeal by the Government.

EXPEDITED BRIEFING SCHEDULE

ORDER OF JANUARY 10, 2008:

JAY T. JORGENSEN, ESQUIRE, OF WASHINGTON, D.C., IS INVITED TO BRIEF AND ARGUE THIS CASE, AS *AMICUS CURIAE*, IN SUPPORT OF THE JUDGMENT BELOW.

CERT. GRANTED 1/4/2008