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
CERT. GRANTED 1/4/2008