No. 17-6292

IN THE SUPREME COURT OF THE UNITED STATES

ANTONIO RODRIGUEZ-SORIANO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 6-13) that the lower courts erred in finding him ineligible for a sentence reduction under 18 U.S.C. 3582(c)(2). The lower courts concluded that petitioner was ineligible for such a reduction because he was not "sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission," as required by Section 3582(c)(2). Ibid.; see Pet. App. 3-6, 8-10. Rather, the lower courts held, petitioner was sentenced "based on" a statutory mandatory minimum, see 21 U.S.C. 841(b)(1)(A), with a departure "so as to reflect" his "substantial assistance" to law enforcement, 18 U.S.C. 3553(e). See Pet. App. 3-6, 8-10.

On December 8, 2017, this Court granted certiorari in Koons v. United States, No. 17-5716, to determine whether a defendant in petitioner's position -- that is, a defendant who is subject to a statutory mandatory-minimum sentence that exceeds the advisory guidelines range that would have applied in the absence of the mandatory minimum, but who substantially assisted the government and received a sentence below the mandatory minimum pursuant to 18 U.S.C. 3553(e) -- is eligible for a sentence reduction under Section 3582(c)(2) when the United States Sentencing Commission retroactively lowers the advisory guidelines range that would have applied in the absence of the statutory mandatory minimum. The Court's disposition of Koons may affect the proper disposition of the petition for a writ of certiorari in this case.[1] This petition should accordingly be held pending the Court's decision in Koons and then disposed of as appropriate in light of that decision.[2]

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

DECEMBER 2017

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[1] As in Koons, the government in this case agreed with petitioner's position in the court of appeals. Gov't C.A. Br. 1; see United States v. Koons, 850 F.3d 973, 975 (8th Cir. 2017). But the government has since concluded that the court of appeals' decision in Koons is correct, and that a defendant in petitioner's position is not eligible for a sentence reduction under Section 3582(c)(2). See U.S. Br. at 11-19, Koons, supra (No. 17-5716).

[2] The government waives any further response to the petition unless the Court requests otherwise.