IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

OSCAR RODRIGUEZ, Petitioner, vs. UNITED STATES OF AMERICA, Respondent.	)	No. CR-F-98-5149 OWW ORDER DENYING PETITIONER'S MOTION TO CORRECT SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)(2)

On May 27, 2008, Petitioner Oscar Rodriguez moved for a two-level reduction in his base offense level pursuant to 18 U.S.C. § 3582(c)(2) based on Amendment 715 to the Sentencing Guidelines.

Petitioner's motion is DENIED. Petitioner's conviction and sentence did not involve crack cocaine but, rather, powder cocaine. Amendment 715 only applies if the offense of conviction involved cocaine base/crack cocaine. Petitioner's argument that his sentence may be reduced because the Sentencing Guidelines are now advisory is without merit. Section 3582(c)(2) allows the district court to modify a sentence where the applicable

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guideline range has been lowered by the Sentencing Commission subsequent to the imposition of sentence. *United States v. Booker*, 543 U.S. 220 (2005), did not lower sentencing ranges, nor was *Booker* an action "by the Sentencing Commission." Therefore, Section 3582(c)(2), by its own terms, does not apply to Petitioner's motion. *Carrington v. United States*, 503 F.3d 888, 890-891 (9th Cir.2007).

IT IS SO ORDERED.

Dated: July 24, 2008 **/s/ Oliver W. Wanger**
UNITED STATES DISTRICT JUDGE