

NO. \_\_\_\_\_

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**IN THE UNITED STATES SUPREME COURT**

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**ANDRES COLON-MIRANDA, aka Tuto, aka Tutin,  
Petitioner**

**Vs.**

**UNITED STATES OF AMERICA,  
Respondent.**

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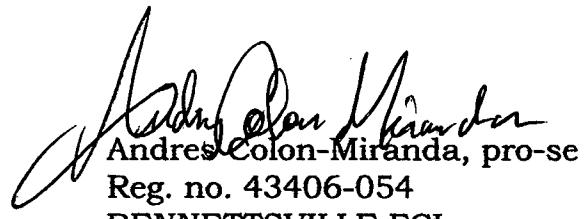
**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT**

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**APPENDIX**

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10/9/2023



Andres Colon-Miranda, pro-se  
Reg. no. 43406-054  
BENNETTSVILLE FCI  
P.O. BOX 52020  
BENNETTSVILLE, SC 29512

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## **APPENDIX A**

# United States Court of Appeals For the First Circuit

No. 21-1864

UNITED STATES,

Appellee,

v.

ANDRES COLON-MIRANDA, a/k/a Tuto, a/k/a Tutin,

Defendant - Appellant.

## MANDATE

Entered: September 1, 2023

In accordance with the judgment of July 10, 2023, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Antonio Juan Bennazar-Zequeira  
Andres Colon-Miranda  
Jennie Mariel Espada-Ocasio  
Alberto G. Estrella  
Timothy R. Henwood  
Jonathan Edward Jacobson  
Thomas F. Klumper  
Francisco M. Lopez-Romo  
Elfrick Mendez Morales  
Antonio Perez-Alonso  
Mariana E. Bauzá-Almonte  
Myriam Yvette Fernández-González

# United States Court of Appeals For the First Circuit

No. 21-1864

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UNITED STATES,

Appellee,

v.

ANDRES COLON-MIRANDA, a/k/a Tuto, a/k/a Tutin,

Defendant - Appellant.

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Before

Kayatta, Howard and Montecalvo,  
Circuit Judges.

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## JUDGMENT

Entered: July 10, 2023

Defendant-Appellant Andres Colon-Miranda appeals from the district court's disposition of his motion pursuant to § 404 of the First Step Act, Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222 (2018). The district court denied the motion by adopting the position expressed in a filing by probation; with that filing, probation expressed the view that appellant was eligible for § 404 relief, because he had a "covered offense," but that certain of appellant's convictions rendered a life sentence inevitable. Appellant noticed this appeal, and, with his opening brief, challenges, *inter alia*, specific aspects of the district court's handling of the § 404 motion. The government has moved for summary disposition, arguing, essentially, that certain of appellant's convictions made a total sentence of life inevitable and that any error in the handling of appellant's motion therefore would be, at worst, harmless.

With his appellate filings, appellant has failed to demonstrate any prejudicial error flowing from the district court's handling of his § 404 motion, nor has he countered the government's assertion that a total sentence of life would be inevitable in this case (in his response to the government's motion, appellant offers an argument based on grouping under the guidelines, but he fails to explain why applicable statutory minimum sentences of life would not eclipse any issues or developments as to grouping under the guidelines). See Pub. L. No. 115-391, § 404(c) ("Nothing in this section [404] shall be construed to require a court to reduce any sentence pursuant to this section."); Concepcion v. United States, 142 S. Ct. 2389 (2022) (examining § 404); United States

v. Gravatt, 953 F.3d 258, 264 n.5 (4th Cir. 2020) ("Of course, statutory mandatory minimum terms remain in effect for certain drug offenses. Even if a defendant's sentence involves a covered offense, *the district court's review of a defendant's First Step Act motion cannot avoid those statutory requirements.*"') (emphasis added); cf. United States v. Ganun, 547 F.3d 46, 47 (1st Cir. 2008) (per curiam) (rejecting appellate challenge to district court's handling of § 3582(c) sentence reduction motion because lack of prejudice was clear).

The government's motion for summary disposition is **GRANTED**, and the ruling of the district court is **AFFIRMED**. See Local Rule 27.0(c). Any remaining pending motions, to the extent not mooted by the foregoing, are **DENIED**.

By the Court:

Maria R. Hamilton, Clerk

cc:

Andres Colon-Miranda  
Jennie Mariel Espada-Ocasio  
Thomas F. Klumper  
Timothy R. Henwood  
Myriam Yvette Fernández-González  
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