

# United States Court of Appeals For the First Circuit

No. 23-1082

UNITED STATES,

Appellee,

v.

ISRAEL SANTIAGO-LUGO, a/k/a El Doctor,

Defendant - Appellant.

Before

Kayatta, Howard and Montecalvo,  
Circuit Judges.

## JUDGMENT

Entered: February 28, 2024

The district court's Orders of October 6, 2022 (denying Israel Santiago-Lugo's motions to reduce sentence under Section 404 of the First Step Act of 2018) and December 20, 2022 (denying his motion for reconsideration) are affirmed essentially for the reasons articulated in the first Order. We assume without deciding that appellant's conviction under 21 U.S.C. § 848(b) constituted a covered offense under the First Step Act. Contrary to appellant's arguments, the retroactive application of the Fair Sentencing Act would not downgrade his covered offense to some lesser offense that no longer involves a continuing criminal enterprise. See Concepción v. United States, 597 U.S. 481, 498 n.6 (2022) ("A district court cannot . . . recalculate a movant's benchmark Guidelines range in any way other than to reflect the retroactive application of the Fair Sentencing Act.") (emphasis added).

Also assuming, without deciding, that the court erred in not restating his Guideline range (which remained life, as the court had previously determined) or explicitly responding to his arguments concerning the 18 U.S.C. § 3553(a) factors, any such error was not prejudicial.

We have considered appellant's remaining arguments and find them to be meritless.

Affirmed. The motion to expedite decision is denied as moot.

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## ORDER OF COURT

Entered: March 22, 2024  
Pursuant to 1st Cir. R. 27.0(d)

Appellant Israel Santiago-Lugo's motion to extend the time to file a petition for rehearing/rehearing en banc is allowed. The time for appellant to file a petition for rehearing/rehearing en banc is hereby extended to **April 11, 2023**.

By the Court:

Maria R. Hamilton, Clerk

cc:

Ibeto G. Estrella  
Israel Santiago-Lugo  
Thomas F. Klumper  
Timothy R. Henwood  
Myriam Y. Fernández-González  
Mariana Bauzá-Almonte  
Cristina Caraballo-Colón  
Jonathan Edward Jacobson  
Elfrick Mendez Morales  
Francisco M. Lopez-Romo  
Antonio Juan Bennazar-Zequeira

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ISRAEL SANTIAGO-LUGO, a/k/a El Doctor,

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Kayatta, Howard,  
Montecalvo and Rikelman,  
Circuit Judges.

ORDER OF COURT

Entered: May 3, 2024

The petition for rehearing is denied by the panel of judges who decided the case, as the petition fails to satisfy the standards for rehearing. See Fed. R. App. P. 35(b)(1).

As it appears that there may be no quorum of circuit judges in regular active service who are not recused who may vote on petitioner's request for rehearing en banc, the request for rehearing en banc is also denied. See 28 U.S.C. § 46(d); 1st Cir. Loc. R. 35.0(a)(1). In any event, a majority of judges in regular active service do not favor en banc review.

By the Court:

Maria R. Hamilton, Clerk

cc:

Alberto G. Estrella, Israel Santiago-Lugo, Thomas F. Klumper, Timothy R. Henwood, Myriam Y. Fernández-González, Mariana Bauzá-Almonte, Cristina Caraballo-Colón, Jonathan Edward Jacobson, Elfrick Mendez Morales, Francisco M. Lopez-Romo, Antonio Juan Bennazar-Zequiera

**Additional material  
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available in the  
Clerk's Office.**