

No. 14-461

In the Supreme Court of the United States

RAUL QUIJADA CORONADO, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner, who was twice convicted of methamphetamine possession in violation of California Health & Safety Code § 11377(a) (West 1998 & Supp. 2014), was inadmissible into the United States for violating a “law or regulation of a State * * * relating to a controlled substance (as defined in section 802 of Title 21),” 8 U.S.C. 1182(a)(2)(A)(i)(II).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-24a) is reported at 759 F.3d 977. The decision of the Board of Immigration Appeals (Pet. App. 25a-29a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 18, 2014. The petition for a writ of certiorari was filed on October 16, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After petitioner sought to enter the United States, an immigration judge determined that petitioner was inadmissible because he had been convicted of unlawful possession of methamphetamine in violation of California Health & Safety Code § 11377(a) (West

1998 & Supp. 2014). The Board of Immigration Appeals (BIA or Board) affirmed the finding of inadmissibility. The court of appeals upheld the Board's ruling with respect to inadmissibility, but remanded the case to the Board for consideration of petitioner's constitutional claims. 759 F.3d 981-982, 988.

1. Under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, an alien seeking admission to the United States must establish that he or she "is clearly and beyond doubt entitled to be admitted and is not inadmissible" to the United States. 8 U.S.C. 1229a(c)(2)(A). An alien is inadmissible if he or she has been "convicted of, or * * * admits having committed, or * * * admits committing acts which constitute the essential elements of * * * a violation of * * * any law or regulation of a State * * * relating to a controlled substance (as defined in section 802 of title 21)." 8 U.S.C. 1182(a)(2)(A)(i)(II). "[C]ontrolled substance" means "a drug or other substance, or immediate precursor" that is "included in" the federal schedules of controlled substances. 21 U.S.C. 802(6).

The Attorney General may, in his discretion, grant cancellation of removal to some inadmissible aliens. An alien who has been a lawful permanent resident for not less than five years and has resided in the United States continuously for seven years after having been admitted in any status may be granted cancellation of removal so long as the alien has not committed one of the narrower class of crimes that constitute aggravated felonies. See 8 U.S.C. 1229b(a); see also, *e.g.*, *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 571 (2010); *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1692 (2013). Exercise of the Attorney General's discretion

with respect to cancellation of removal generally turns on a balancing of factors, including duration of residence, family or business ties, employment history, evidence of good character, the nature and circumstances of the grounds of removal, and whether the alien has committed other crimes or otherwise shown bad character. See *In re C-V-T-*, 22 I. & N. Dec. 7, 11 (B.I.A. 1998).

2. Petitioner, a native and citizen of Mexico who was a lawful permanent resident of the United States, was stopped at the border while seeking to re-enter the United States from Mexico in 2008. Certified Administrative Record (C.A.R.) 338, 342. A database query disclosed that petitioner had been convicted of possessing a controlled substance. C.A.R. 338-339. When interviewed by a U.S. Customs and Border Protection officer, petitioner admitted to having illegally possessed and used methamphetamine, C.A.R. 342-343, which is a federally controlled substance, see 21 C.F.R. 1308.12(d)(2). He also acknowledged that he had been convicted of methamphetamine possession. C.A.R. 342-343.

Immigration officials served petitioner with a notice to appear before an immigration judge, which charged petitioner with being inadmissible based on his methamphetamine conviction and based on his admitted methamphetamine possession and use. C.A.R. 339, 412-414. Petitioner was permitted to enter the country on parole pending an admissibility determination. C.A.R. 339. In 2009, immigration officials filed a superseding charge that specifically alleged that (1) petitioner had been convicted in 2006 of possessing methamphetamine in violation of California Health & Safety Code § 11377(a) (West 1998);

and (2) petitioner had “admitted to committing acts which constituted the essential elements of the crime of Possession of Methamphetamine.” C.A.R. 381. With respect to the 2006 conviction, the Department of Homeland Security (DHS) submitted the complaint charging petitioner with having unlawfully possessed methamphetamine on or about March 16, 1998, in violation of California Health & Safety Code § 11377(a) (West 1998). C.A.R. 346-347. DHS also submitted the docket sheet establishing that petitioner had pleaded guilty. C.A.R. 348-356. The docket sheet reflected that petitioner had received a deferred judgment and then a probationary sentence, before ultimately serving a period of imprisonment after violating the conditions of his probation. C.A.R. 348-356.

While the charge of inadmissibility was pending, petitioner was again arrested for and convicted of methamphetamine possession in violation of Section 11377(a). DHS also presented evidence of that conviction in petitioner’s inadmissibility proceedings. It submitted the complaint that charged petitioner with possessing methamphetamine in violation of Section 11377(a) on September 13, 2009, and court minutes reflecting that petitioner pleaded guilty in 2010 and received a sentence of 90 days’ imprisonment and three years’ probation. C.A.R. 360-364.

In a hearing on inadmissibility before an immigration judge, petitioner denied that he had been convicted of methamphetamine possession but did not contest that he had admitted to possessing methamphetamine. C.A.R. 98; see C.A.R. 381. Based on the conviction records and petitioner’s admissions, the immigration judge found “the allegations [in the notice of removal]

are true”; that petitioner had been convicted of a controlled substance offense; and that petitioner was inadmissible. C.A.R. 100-104.

The immigration judge also declined to grant petitioner cancellation of removal as an exercise of discretion, relying principally on petitioner’s decades of drug abuse. The court noted that petitioner “had [a] 20[-]year unrelenting involvement” with illegal drugs, punctuated only “with sobriety of three or four months.” C.A.R. 62-63. Petitioner’s several convictions for drug offenses, the judge determined, did “not truly reflect the intensity with which he was involved with illicit drugs.” C.A.R. 61-62. The judge further noted that neither familial obligations nor criminal sanctions had “persuade[d] [petitioner] to stop” his drug use. C.A.R. 63. Finding that petitioner’s “long involvement with illicit and illegal drugs” outweighed his positive equities, *ibid.*, the immigration judge denied cancellation of removal and ordered petitioner removed to Mexico. C.A.R. 63-64.

3. The Board of Immigration Appeals dismissed petitioner’s appeal. Pet. App. 25a-29a. Before the Board, petitioner contended that DHS had not shown that he had been convicted of an offense involving a federally controlled substance and that federal law did not permit removal for offenses involving mere “possession” of controlled substances. The Board rejected both contentions. It noted that the record before the immigration judge established that petitioner had been “convicted of possession of methamphetamine under California law,” and that “[m]ethamphetamine is a controlled substance under” the Controlled Substances Act, 21 U.S.C. 801 *et seq.* Pet. App. 27a. The Board also noted that the provision making inadmissi-

ble any alien convicted of violating any law relating to a federally controlled substance “does not make [an] exception for ‘simple possession.’” *Ibid.* In addition, the Board affirmed the denial of cancellation of removal, emphasizing “the number and recency of [petitioner’s] convictions, his admitted addiction, and his lack of rehabilitation over many years.” *Id.* at 28a.

4. The court of appeals upheld the finding of inadmissibility but remanded petitioner’s case to the BIA for consideration of unaddressed constitutional claims. Pet. App. 1a-24a. The court first rejected petitioner’s contention that DHS had failed to show that he had been convicted of a violation of a law relating to a federally controlled substance. The court applied circuit precedent under which an alien is inadmissible because of a conviction for violating “any law or regulation of a State * * * relating to a controlled substance (as defined in section 802 of title 21),” 8 U.S.C. 1182(a)(2)(A)(i)(II), only if the alien’s state drug conviction involved a federally controlled substance. Pet. App. 8a (citing *Ruiz-Vidal v. Gonzales*, 473 F.3d 1072, 1077-1078 (9th Cir. 2007) (construing parallel language in 8 U.S.C. 1227(a)(2)(B)(i))).

The court of appeals concluded that petitioner’s conviction rendered him inadmissible under that approach. It first concluded that convictions under California Health & Safety Code § 11377(a) (West 1998 & Supp. 2014) are not uniformly convictions involving federally controlled substances, because while the drugs prohibited under Section 11377(a) are “nearly identical” to those prohibited under federal law, state law also reaches several additional drugs. Pet. App. 9a, 12a; see also *id.* at 10a & n.2. The court further concluded, however, that Section 11377(a) is a divisi-

ble statute that “list[s] potential offense elements in the alternative.” *Id.* at 12a (brackets in original) (citation omitted). As a result, it reasoned that the “modified categorical approach” could be used “to determine which alternative element . . . formed the basis of the defendant’s conviction.” *Id.* at 12a (quoting *Descamps v. United States*, 133 S. Ct. 2276, 2284, 2293 (2013)).

The court of appeals rejected petitioner’s argument that the modified categorical approach could not be used because Section 11377(a) sets out alternative means of committing an indivisible drug-possession offense, rather than setting out alternative elements. Pet. App. 13a. It agreed that some statutes “list ‘alternative means’ of satisfying an indivisible set of elements,” but concluded that this was “not the case with regard to [Section] 11377(a).” *Ibid.* In reaching that conclusion, the court relied on the statute’s textual structure and on California jury instructions, *id.* at 13a n.4, which treat the identity of the substance involved as a fact to be found by the jury, see Cal. Criminal Jury Instructions (CALCRIM) No. 2304 (2013); Cal. Jury Instructions (CALJIC) No. 12.00 (2013). The court also considered and rejected petitioner’s arguments that state law established that Section 11377(a) was indivisible, concluding that the state cases on which petitioner relied were inapposite. Pet. App. 13a n.4 (discussing *People v. Palaschak*, 893 P.2d 717, 720-721 (Cal. 1995); *People v. Martin*, 86 Cal. Rptr. 3d 858, 861 (Cal. Ct. App. 2008)).

Applying the modified categorical approach, the court of appeals held that the Board had correctly determined that petitioner had been convicted of possessing the federally controlled substance of metham-

phetamine. Pet. App. 14a. The court concluded that the complaint and certified electronic docket concerning petitioner's 2006 conviction and the complaint and court minutes for petitioner's 2010 conviction established that the substance involved in each of those convictions was methamphetamine. *Id.* at 15a-16a. As a result, the court concluded, the Board did not err in finding petitioner inadmissible based on his methamphetamine convictions. *Id.* at 16a.

The court of appeals remanded the case to the Board, however, because it determined that the Board had failed to address some of petitioner's claims. Specifically, the court concluded that the Board had failed to address petitioner's constitutional claims of bias by the immigration judge and ineffective assistance by petitioner's attorney. Pet. App. 16-19a. It concluded that those claims were properly addressed by the Board in the first instance. *Id.* at 18a.

ARGUMENT

Petitioner renews his claim (Pet. 11-12) that his convictions for violating California Health & Safety Code § 11377(a) (West 1998 & Supp. 2014) did not render him inadmissible under 8 U.S.C. 1182(a)(2)(A)(i)(II). The court of appeals' decision rejecting this claim, which rests on its interpretation of state law, does not conflict with any decision of this Court or of another court of appeals. And the instant petition would in any event be a poor vehicle for addressing the divisibility of the California statute under which petitioner was convicted, because the case was remanded to the Board for further proceedings and petitioner admitted an alternative ground of inadmissibility. Further review is unwarranted.

1. The court of appeals' decision does not implicate a division among courts of appeals concerning the application of the modified categorical approach. Some provisions of federal law, including some immigration provisions, impose consequences on persons who have been convicted of particular acts—such as the provisions that impose sentencing enhancements for persons with prior convictions for burglary and other crimes, see *Taylor v. United States*, 495 U.S. 575, 600-602 (1990), and the provisions that impose immigration consequences on aliens convicted of “illicit trafficking in a controlled substance,” see *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1696 (2013). To determine whether a person has been convicted of an act triggering those federal provisions, the “categorical” and “modified categorical” approaches are often employed. See *id.* at 1684-1685, 1701. Under the categorical approach, the court or agency looks to the statutory definition of the offense of conviction to determine whether a defendant was necessarily found guilty of conduct that meets the federal definition. See *Taylor*, 495 U.S. at 600-602 (examining the statutory definition of defendant’s state crime to determine whether the defendant had a prior conviction for “burglary”).

When a statute lists what this Court has described as “potential offense elements in the alternative,” the “modified categorical approach” may be used to determine whether a prior conviction meets a federal definition. *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013). When applying that approach, the court or agency adjudicator consults a limited class of reliable court documents from the earlier prosecution to determine which alternative offense in a single

statute “formed the basis of the defendant’s prior conviction.” *Id.* at 2281. This Court has said that approach may be used only when a statute lists “multiple alternative elements, and so effectively creates ‘several different . . . crimes.’” *Id.* at 2285. The purpose of the inquiry is to determine “which statutory phrase was the basis for the conviction.” *Ibid.* (quoting *Johnson v. United States*, 559 U.S. 133, 144 (2010)). The Court has further explained that whether a statute sets out “multiple, alternative elements” in this sense depends on whether the statute is phrased in the alternative and whether conviction documents reveal the version of the offense of which the defendant was convicted. *Id.* at 2285 & n.2. In response to the dissent’s suggestion that the Court’s approach would require separating state-law elements from state-law means, the Court explained that “a court need not parse state law in the way the dissent suggests: When a state law is drafted in the alternative, the court merely resorts to the approved documents [such as the indictment, jury instructions, and plea colloquy] and compares the elements revealed there to those of the generic offense.” *Id.* at 2285 n.2. As an example, the Court explained that a statute proscribing assault with a deadly weapon would be divisible if the statute proscribed assault using any of eight weapons, listed in the alternative, but not if the statute simply proscribed assault with any weapon. *Id.* at 2289-2290.

Several recent decisions suggest emerging disagreement concerning the circumstances under which the modified categorical approach may be used, but petitioner’s case does not implicate that disagreement. The Tenth Circuit has held that a statute is subject to

the modified categorical approach (or is “divisible”) if it sets out multiple versions of an offense in the alternative, and conviction records establish that the defendant was charged with, and convicted of, one of those alternatives. *United States v. Trent*, 767 F.3d 1046, 1060 (2014).¹ In contrast, the Ninth Circuit has held that a state statute is divisible only if, under state law, jurors must be unanimous as to the version of the offense committed—in other words, only if state courts treat the law as setting out alternative “elements,” in a strict sense, rather than means “on which the jury may disagree yet still convict.” *Rendon v. Holder*, 764 F.3d 1077, 1086 (2014). The Fourth Circuit has also taken this approach, at least in cases where a state statute is textually indivisible and its elements are defined by state decisional law. *United States v. Royal*, 731 F.3d 333, 341 (4th Cir. 2013), cert. denied, 134 S. Ct. 1777 (2014); *Omargharib v. Holder*, No. 13-2229, 2014 WL 7272786 (4th Cir. Dec. 23, 2014).² The BIA has issued a decision that treats

¹ Several other courts of appeals have applied this approach, finding statutes written in the alternative to be divisible without addressing whether state law treated the statute as setting out means or elements, or whether jury unanimity was required in every case. See *United States v. Carter*, 752 F.3d 8, 17-18 (1st Cir. 2014); *United States v. Marrero*, 743 F.3d 389, 395-397 (3d Cir. 2014), cert. denied, No. 14-6571 (Jan. 12, 2015); *Garcia v. Holder*, 756 F.3d 839, 844 (5th Cir. 2014) (per curiam); *United States v. Hockenberry*, 730 F.3d 645, 669 (6th Cir. 2013), cert. denied, 134 S. Ct. 1044 (2014); *United States v. Tucker*, 740 F.3d 1177, 1180-1181 (8th Cir. 2014) (en banc).

² Petitioner contends that the Eleventh Circuit has also held that the modified categorical approach may be applied only when jury unanimity is required by state law on the form of an offense that a defendant committed, but the decision on which petitioner relies

Descamps similarly. See *In re Chairez-Castrejon*, 26 I. & N. Dec. 349 (B.I.A. 2014).

This nascent disagreement is not implicated in petitioner’s case, however, because even if the modified categorical approach applies only to statutes setting out alternative state-law elements that must be found by a jury, the Ninth Circuit has held that petitioner’s conviction is divisible under that standard. The decision below rejected petitioner’s contention that the statute under which he was convicted sets out “alternative means” rather than alternative elements. Pet. App. 13a (“While this may be true as to some statutes, it is not the case with regard to [Section] 11377(a).”). In reaching that conclusion, the court did not “h[old] that any statute that contains a disjunctive list of

does not establish that proposition. In language that petitioner highlights (Pet. 12), the Eleventh Circuit stated that “when confronted with a statute that purports to list elements in the alternative,” a court should ask “[i]f a defendant charged with violating the statute went to trial, would the jurors *typically* be required to agree that their decision to convict is based on one of the alternative elements.” *United States v. Estrella*, 758 F.3d 1239, 1246 (2014) (emphasis added). This statement does not suggest that the court of appeals believed that statutes are divisible only when jury unanimity is required under state law. A focus on what jurors would “typically” find, *ibid.*, rather than what jurors must find in every case, is not a focus on offense elements. And the court’s conclusion concerning the state law before it—that it was “clear from the face of the statute” that the law was divisible, *id.* at 1249—is consistent with *Trent*. A prior decision confirms that the Eleventh Circuit’s treatment of divisibility turns principally on analysis of the statutory text. See *United States v. Howard*, 742 F.3d 1334, 1346 (2014) (explaining that *Descamps* “indicates that sentencing courts should usually be able to determine whether a statute is divisible by simply reading its text and asking if its elements or means are ‘drafted in the alternative’”) (citation omitted).

terms is automatically divisible.” Pet. i; see Pet. 6-8. Rather, the court reached its understanding of state law after examining state jury instructions, which call for jury findings as to substance identity. See Pet. App. 13a n.4; CALCRIM No. 2304 (2013) (“To prove that the defendant is guilty of this crime, the People must prove that: * * * [t]he controlled substance was <insert type of controlled substance>”); CALJIC No. 12.00 (2013) (“In order to prove this crime, each of the following elements must be proved: * * * A person exercised control over or the right to control an amount of (controlled substance), a controlled substance,” and “the name of the controlled substance as alleged in the information” must be inserted).³ The court also considered state cases that petitioner had cited, but found them inapposite. Pet. App. 13a n.4.

The Ninth Circuit’s decision in *Rendon*—which expressly adopted petitioner’s approach to divisibility under the modified categorical approach—reaffirmed that the statute under which petitioner was convicted contains alternative elements, not alternative means. *Rendon* cited the decision below as a reflection of the elements-based approach to divisibility, stating that the decision below “properly looked beyond the statutory text to state case law and jury instructions to evaluate and ultimately reject” petitioner’s claim “that a disjunctive statute contained alternative means,

³ The CALCRIM instructions are promulgated by the Judicial Council of California. The CALJIC instructions are prepared by West’s Committee on California Jury Instructions. Each set of instructions reflects a synthesis of state-law authorities. See CALCRIM No. 2304, cmt. (2013) (citing relevant authorities); CALJIC No. 12.00, cmt. (2013) (same).

rather than alternative elements.” 764 F.3d at 1087 n.11. Because the court of appeals concluded that petitioner was convicted under a statute setting out alternative state-law elements, rather than alternative means, his case does not implicate the recent disagreement concerning whether the modified categorical approach is applicable only when state law treats a statute as setting out alternative elements that must be found by a jury.

Review of this aspect of the modified categorical approach would in any event be premature. There is a pending motion for rehearing concerning the Ninth Circuit’s decision in *Rendon* and a pending motion for reconsideration of the BIA’s decision in *Chairez-Castrejon*. In particular, after the government filed a petition for panel rehearing in *Rendon* that asserted (among other things) that the panel had misapprehended issues of California law, the Ninth Circuit entered a sua sponte order seeking the parties’ positions on whether *Rendon* should be reheard en banc. On December 18, 2014, the government filed a response suggesting that rehearing en banc was appropriate if the panel did not revise its decision. That matter remains pending before the Ninth Circuit. The government also filed an administrative motion for en banc reconsideration by the BIA in *Chairez-Castrejon*, and that motion, too, remains pending. DHS Mot. to Reconsider, *In re Chairez-Castrejon*, *supra* (Aug. 25, 2014). This Court’s intervention would be premature, under these circumstances, even if petitioner’s case implicated the emerging disagreement concerning divisibility.

Insofar as petitioner also challenges the court of appeals’ determination that Section 11377(a) sets out

alternative elements under state law, that determination does not warrant review by this Court. Petitioner identifies no disagreement among courts of appeals concerning whether Section 11377(a) sets out alternative means or elements under state law. And the determination of that state-law question implicates this Court’s “settled and firm policy of deferring to regional courts of appeals in matters that involve the construction of state law.” *Bowen v. Massachusetts*, 487 U.S. 879, 908 (1988).⁴ No further review by this Court is warranted.

2. This case would be a poor vehicle for review of the application of the modified categorical approach in any event. First, the petition is interlocutory, because the court of appeals has remanded petitioner’s case to the Board for adjudication of petitioner’s constitutional claims. That posture “alone furnishe[s] sufficient ground for the denial of” the petition. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see *Virginia Military Inst. v. United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the petition for a writ of certiorari); Eugene

⁴ Petitioner asserts that the court incorrectly understood state law in reliance on cases that did not enumerate substance identity as an element, but he overlooks California decisions that treat substance identity as an element. See, e.g., *People v. Davis*, 303 P.3d 1179, 1182 (Cal. 2013); *People v. Montero*, 66 Cal. Rptr. 3d 668, 671 (Cal. Ct. App. 2007); see also *Padilla-Martinez v. Holder*, 770 F.3d 825, 831 n.3 (9th Cir. 2014) (concluding that conviction for possession of drugs for sale in California was under divisible statute, in reliance on California law treatise, jury instructions, and state judicial decisions). And he does not address the jury instructions on which the court of appeals relied, which call for jury findings as to substance identity. See Pet. App. 13a n.4 (citing CALCRIM No. 2304 (2013); CALJIC No. 12.00 (2013)).

Gressman et al., *Supreme Court Practice* § 4.18, at 282-283 (10th ed. 2013). In the event that the Board rejects petitioner's constitutional claims, petitioner will have the opportunity to raise his current claim, together with any other claims he properly appeals, in a single petition for a writ of certiorari. See *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (stating that this Court "ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from" the most recent judgment).

Second, petitioner's case would be a poor vehicle for addressing inadmissibility based on controlled-substance convictions because petitioner's admissions of methamphetamine possession furnish independent grounds of inadmissibility. Under 8 U.S.C. 1182(a)(2)(A)(i)(II), an alien is removable if convicted of a specified controlled-substance crime or if the alien "admits committing acts which constitute the essential elements of * * * a violation of * * * any law or regulation of a State * * * relating to a controlled substance (as defined in section 802 of title 21)." *Ibid.* DHS charged petitioner with inadmissibility based both on his convictions and on his "admi[ssions] to committing acts which constituted the essential elements of the crime of Possession of Methamphetamine." C.A.R. 381; see C.A.R. 342-343 (record of petitioner's sworn statement that he had used "speed" and had known that its use was illegal). Petitioner did not dispute that he admitted to methamphetamine possession, C.A.R. 98, and the immigration judge found that all the inadmissibility allegations were "true," C.A.R. 104. Because petitioner's admissions independently suffice to establish his inadmissi-

bility, petitioner’s case would be a poor vehicle for considering conviction-based inadmissibility.

Finally, the language of the controlled-substance inadmissibility provision makes it a poor vehicle for consideration of the proper scope of divisibility analysis. Petitioner was found inadmissible under a provision reaching all aliens convicted of violating a particular *law*—in particular, violations of “any law or regulation of a State * * * relating to a controlled substance (as defined in section 802 of title 21).” 8 U.S.C. 1182(a)(2)(A)(i)(II). The United States has argued that this language renders it unnecessary to use the modified categorical approach to determine the type of substance involved in an individual offense. See U.S. Br., *Mellouli v. Holder*, No. 13-1034 (Nov. 20, 2014) (addressing parallel language in removability provision). Since the language of the inadmissibility provision ties immigration consequences to all convictions under *laws* relating to federally controlled substances, so long as petitioner was convicted under a law relating to federally controlled substances, it is not relevant whether the law is divisible, so that the modified categorical approach can be used to identify the substance involved in an alien’s individual offense.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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