

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 29 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JORGE RODRIGUEZ REA,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 17-70229

Agency No. A091-719-640

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 26, 2020**

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Jorge Rodriguez Rea, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying voluntary departure. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law. *Cabantac v. Holder*, 736 F.3d 787, 792 (9th Cir. 2013). We deny the petition for review.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The agency did not err in concluding that California Health and Safety Code (“CHSC”) § 11377(a) is divisible and in applying the modified categorical approach to determine that Rodriguez Rea’s conviction is an offense relating to a controlled substance that makes him ineligible for voluntary departure. *See* 8 U.S.C. §§ 1229c(b)(1)(B), 1101(f)(3), 1182(a)(2)(A)(i)(II); *Coronado v. Holder*, 759 F.3d 977, 984-85 (9th Cir. 2014) (holding that CHSC § 11377(a) is divisible and subject to the modified categorical approach); *United States v. Martinez-Lopez*, 864 F.3d 1034, 1040-41 (9th Cir. 2017) (en banc) (holding that a similar California controlled substance statute is divisible with respect to the listed substances). Rodriguez Rea asks us to reconsider *Martinez-Lopez*, but we are bound by that decision given the absence of any “intervening higher authority” that is “clearly irreconcilable” with it. *See Miller v. Gammie*, 335 F.3d 889, 892-93 (9th Cir. 2003) (en banc).

We deny Rodriguez Rea’s request to remand in light of *United States v. Rodriguez-Gamboa*, 972 F.3d 1148, 1154 (9th Cir. 2020).

On May 17, 2017, the court granted a stay of removal. The stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DENIED.