

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 27 2021

FOR THE NINTH CIRCUIT

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

IVAN DUARTE-LEYVA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 14-71761

Agency No. A086-841-964

MEMORANDUM\*

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

Submitted July 19, 2021\*\*

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Ivan Duarte-Leyva, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision finding him removable and denying his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C.

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\* 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).

§ 1252. We review de novo questions of law. *See Madrigal-Barcenas v. Lynch*, 797 F.3d 643, 643-45 (9th Cir. 2015). We deny in part and dismiss in part the petition for review.

The BIA did not err in determining that Duarte-Leyva failed to establish that his conviction under California Health & Safety Code § 11350(a) is not a controlled substance violation that renders him ineligible for cancellation of removal. *See* 8 U.S.C. §§ 1182(a)(2)(A)(i)(II), 1229b(b)(1)(C); *Pereida v. Wilkinson*, 141 S. Ct. 754, 758, 766 (2021) (an applicant for relief from removal cannot establish eligibility where a conviction record is inconclusive as to which elements of a divisible statute formed the offense); *Lazo v. Wilkinson*, 989 F.3d 705, 714 (9th Cir. 2021) (holding California Health & Safety Code § 11350 is divisible with regard to substance).

We lack jurisdiction to consider Duarte-Leyva's fear of harm in Mexico, which he raises for the first time in his opening brief. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**