

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2023

FOR THE NINTH CIRCUIT

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

BARTOSZ KASINSKI,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 22-1956

Agency No.  
A028-119-063

MEMORANDUM\*

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

Submitted November 17, 2023\*\*  
San Francisco, California

Before: FORREST and MENDOZA, Circuit Judges, and OLIVER, Senior District  
Judge.\*\*\*

Bartosz Kasinski, a native and citizen of Poland, seeks review of the Board of

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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).

\*\*\* The Honorable Solomon Oliver, Jr., United States Senior District  
Judge for the Northern District of Ohio, sitting by designation.

Immigration Appeals’ decision dismissing his appeal from the Immigration Judge’s decision finding him removable under 8 U.S.C. § 1227(a)(2)(B)(i) for having been convicted of a controlled-substance crime. We have jurisdiction under 8 U.S.C. § 1252, but we are limited to considering whether Kasinski’s offense is a controlled-substance violation under 8 U.S.C. § 1227(a)(2)(B)(i). We review this question de novo. *See* 8 U.S.C. § 1252(a)(2)(D); *Romero-Millan v. Garland*, 46 F.4th 1032, 1040 (9th Cir. 2022). We deny Kasinski’s petition for review.

Kasinski argues that his drug paraphernalia conviction under Ariz. Rev. Stat. § 13-3415(A) does not render him removable under 8 U.S.C. § 1227(a)(2)(B)(i) because the Arizona statute is not divisible as to drug type. Our decision in *Romero-Millan* squarely forecloses Kasinski’s argument. 46 F.4th at 1043–44 (“[W]e hold that [Ariz. Rev. Stat.] § 13-3415 is divisible as to drug type.”).

Nonetheless, Kasinski suggests that *Romero-Millan* was wrongly decided because it did not “meaningfully consider[]” the Arizona Court of Appeals’ decision in *State v. Soza*, 464 P.3d 696 (Ariz. Ct. App. 2020). Specifically, he urges us to rely on *Soza* to conclude that his convictions under § 13-3415 are not divisible by drug type and, therefore, cannot sustain his removal charge. We decline Kasinski’s invitation because we are not at liberty to ignore our binding precedent that holds otherwise. *Romero-Millan*, 46 F.4th at 1043; *see also Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (Absent effective overruling by a higher court, “a three-

judge panel may not overrule a prior decision of the court.”)

**PETITION DENIED.**