

# CRIMMIGRATION UPDATE

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## CONTROLLED SUBSTANCES

- *Vazquez v. Sessions*, 885 F.3d 862 (5th Cir. 2018)
- *Lopez Ventura v. Session*, 907 F.3d 306 (5th Cir. 2018)
- *Vetcher v. Barr*, 953 F.3d 361 (5th Cir. 2020)
- *Alexis v. Barr*, 960 F.3d 722(5th Cir. 2020)

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# CONTROLLED SUBSTANCES

- Identifying the issues
- Strictly applying the Categorical Test
  - What are the elements of the statute of conviction?
  - What does the record of conviction show?
  - Is it really a federally controlled substance?
  - Was it a federally controlled substance at the time of the arrest?
- Preserving the issues
- Marshaling your evidence of the statute's overbreadth

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## Realistic Probability

- *Vazquez v. Sessions*, 885 F.3d 862 (5<sup>th</sup> Cir 2018)
  - OK; Possession of a Controlled Substance
  - Categorical Approach
    - OK statute of conviction broader than federal analog
  - Realistic Probability
    - A defendant must point to an actual case

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## Realistic Probability

- *Lopez Ventura v. Sessions*, 907 F.3d 306 (5<sup>th</sup> Cir 2018)
  - LA; Possession of CS (AB-CHMINACA), retroactivity
  - After arrest, but before conviction, drug added to federal schedule of controlled substances
  - Check your drugs and check your dates

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## Realistic Probability

- *Vetcher v. Barr*, 953 F.3d 361(5<sup>th</sup> Cir 2020)
  - TX; controlled substance TX HSC 481.113(d)
  - Not a facial categorical match
  - Failed realistic probability test

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44<sup>th</sup> Annual Conference on Immigration and Nationality Law session  
"Crimmigration Update"