Analog Defense Handout

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Federal courts have found that a California controlled substance is not a controlled substance for federal purposes because, under the categorical approach, the California definition of an analog of the substance is overbroad and indivisible compared to the corresponding federal definition.

> See ***U.S. v. Verdugo,*** 682 F. Supp. 3d 869 (S.D. Cal. 2023), ***U.S. v. Morales-Rodriguez,*** 744 F. Supp. 3d 1036 (S.D. Cal. 2024), both holding that conviction for California methamphetamine is not of a federally-defined controlled substance offense or an aggravated felony due to the disparity in the state and federal definition of analog.

"Under the categorical approach, [courts] compare the elements of the crime to the generic federal offense. A conviction under a state statute is a categorical match only if the state statute—regardless of its exact definition or label—substantially corresponds to or is narrower than the generic federal offense." *U.S. v. Rodriguez-Gamboa*, 972 F.3d 1148, 1152 (9th Cir. 2020) (quotations omitted); *see also U.S. v. Willis*, 795 F.3d 986, 992 (9th Cir. 2015).

The courts in *Verdugo* and *Morales-Rodriguez,* cited above, held that California drug statutes are broader than federal statutes because California defines a controlled substance "analog" (a substance that resembles but does not meet the formal definition of a controlled substance) more broadly than the corresponding federal definition. "California law and federal law both criminalize possession of controlled substances and treat controlled substance analogs equally to controlled substances. *See* Cal. HS&C §§ 11378, 11401(a); 8 U.S.C. § 1101(a)(43)(B); 21 U.S.C. § 812. However, there are noticeable distinctions in the way that California law and federal law define controlled substance analogs." *Morales-Rodriguez* at 1052. Under California law, an analog is defined as a substance that *either* has a similar chemical structure *or* a similar effect on people as the original substance. *See* Cal. H&S § 11401(b). But under federal law, a substance must have *both* of these elements to be an analog. *See* 21 U.S.C. § 802(43)(a). The courts concluded:

> Thus, because 21 U.S.C. § 802(43)(a) requires that the government establish that a substance has a similar effect *in addition to* having a "substantial chemical similarity" while Cal. H&S § 11401(b) only requires that the government prove one of these elements, California law is broader in penalizing possession of controlled substance analogs that would not necessarily qualify as such under federal law." *Morales-Rodriguez* at 1054; *see also Verdugo* at 872.

In *Verdugo* and *Morales-Rodriguez*, the defendants pled guilty to "methamphetamine" without specifying its analogs. The courts found that California drug statutes are not divisible between a substance and its analogs. See *Verdugo* at 872*, Morales-Rodriguez* at 1054. Therefore, the defendant's convictions automatically included the drug analogs and were not federally-defined substances on that basis.

A Ninth Circuit panel has stated that if the issue is presented, it will find that California methamphetamine is not a federally-defined controlled substance due to the difference in definitions of an analog. The panel certified to the California Supreme Court the question of whether a California controlled substance statute is divisible between the substance and its analogs, and has stayed the case pending reply. See *U.S. v. Soto, U.S. v. Reid*, 163 F.4th 1249, 1255 (9th Cir. 2026).