

11-702 MONCRIEFFE V. HOLDER

DECISION BELOW: 662 F.3d 387

LOWER COURT CASE NUMBER: 10-60826

QUESTION PRESENTED:

The Immigration and Nationality Act provides that an alien "who is convicted of an aggravated felony at any time after admission is deportable." 8 U.S.C. §1227(a)(2)(A)(iii). A state law offense may constitute an "aggravated felony" if it is the equivalent of a "felony punishable under the Controlled Substances Act." 8 U.S.C. § 1101(a)(43)(B); 18 U.S.C. § 924(c) (2). Under the Controlled Substances Act, a person commits a felony if he possesses with intent to distribute "less than 50 kilograms of marihuana," 21 U.S.C. § 841, except that a person whose offense involves "distributing a small amount of marihuana for no remuneration" commits only a misdemeanor, id. §§ 841(b)(4), 844.

The Question Presented, which is also pending before the Court in No. 11-79, *Garcia v. Holder*, is:

Whether a conviction under a provision of state law that encompasses but is not limited to the distribution of a small amount of marijuana without remuneration constitutes an aggravated felony, notwithstanding that the record of conviction does not establish that the alien was convicted of conduct that would constitute a federal law felony.

CERT. GRANTED 4/2/2012