BLANCHE V. LAU: THE SUPREME COURT HAS DEGRADED THE RIGHTS OF LAWFUL PERMANENT RESIDENTS

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By Cyrus D. Mehta and Kaitlyn Box*

On April 23, 2025, the Supreme Court heard oral argument in Blanche v. Lau, a case that confronted the issue of whether the government, in seeking to remove a lawful permanent resident (LPR) who was paroled into the United States on the basis that he committed a crime involving moral turpitude (CIMT) under INA 212(a)(2), must prove that it possessed clear and convincing evidence of the crime at the time of the LPR's most recent reentry.

On June 23, 2026, in a 6–3 decision, the Supreme Court answered that question in the government's favor – and in doing so, it sharply degraded the statutory and practical protections that Congress intended LPRs to enjoy when they return from trips abroad. The Court has now authorized the government to do precisely what the Second Circuit in Lau v. Bondi warned against: parole a returning LPR based on suspicion, confiscate the green card, wait for a conviction, and then "travel back in time" to satisfy its heavy burden after the fact.

The facts in Blanche v. Lau illustrate the stakes. Mr. Lau, an LPR who had traveled outside the U.S. with a pending charge of third-degree trademark counterfeiting in New Jersey before being paroled into the country in 2012, argued that there is a presumption LPRs are already admitted when they reenter the U.S. after travel abroad. The government, on the other hand, asserted that Lau falls within an exception to this presumption because he had already "committed" a crime at the time of his reentry, although he had not yet been convicted.

Under INA 101(a)(13)(C) an LPR shall not be regarded as seeking admission in the US unless, among other things, the LPR has committed an offense identified in section 212(a)(2), which includes crimes involving moral turpitude or drug offenses. Congress set a clear default: LPRs returning from abroad are not to be treated as seeking admission, unless the government can show, in one of a few narrow circumstances, that this protection does not apply.

Justice Thomas, writing for the 6–3 majority, took a narrow, text-focused view of the statute. In his reading, INA 101(a)(13)(C) does not impose any "clear and convincing evidence" requirement at the border itself. Instead, it is enough that the government ultimately proves in removal proceedings, by clear and convincing evidence, that the LPR fell within a 212(a)(2) exception and was properly treated as seeking admission.

The majority emphasizes administrative practicality and continuity with past practice. Justice Thomas stresses that border officers routinely act on incomplete information, and he rejects the Second Circuit's insistence that DHS must already possess clear and convincing evidence at the exact moment of reentry. For the Court, the statute regulates the government's burden in removal proceedings, not the evidentiary threshold for front-line CBP decisions.

According to the majority, nothing in the INA's text or structure forbids DHS from initially classifying a returning LPR as an applicant for admission based on an indictment or other non-conviction information, so long as the government later carries its heavy burden in court. In the majority's view, this approach preserves the government's flexibility to police the border while still requiring clear and convincing proof before an LPR is actually ordered removed. One striking omission in Justice Thomas's majority opinion is any engagement with Woodby v. INS, 385 U.S. 276 (1966), the very case in which the Court itself articulated the "clear, unequivocal, and convincing" standard in deportation proceedings. Woodby is not merely background noise; it is the foundational precedent that explains why Congress built a heavy evidentiary burden into removal of lawful residents. The majority's silence on Woodby is telling: by ignoring that history, it becomes easier to recast the clear-and-convincing standard as a backward-looking formality in court, rather than a real constraint on how and when the government may strip an LPR of the protections of admission at the border.

In the run-up to the decision, the conservative justices seemed to largely agree

with the government's position, although Justice Jackson expressed concern about the implications of this position, stating:

"And my concern is that I could actually see a world in which would be in the government's interest. And it's a situation in which people who are lawful permanent residents who have green cards leave the country and, when they return, based on a suspicion or even an indictment that's in the government's control, they flag this person as being returning under parole as opposed to lawful admission. They take this person's green card, which then makes it much, much harder for this person to actually live and work and continue in their life here in the United States, perhaps so much so that this person self-deports because it's really, really difficult without a green card to operate in this country. So you could imagine a world in which a government that really is not interested in immigration and having immigrants here, living and working, could use this kind of thing to inappropriately parole people rather than admit them so that it depresses immigration."

Justice Jackson's dissent in Blanche v. Lau bears out exactly this concern. She squarely recognizes how dangerous it is to allow officers to strip an LPR of the presumption of admission based on allegation or indictment, then let the government justify that downgrade years later once a conviction is in hand. Unfortunately, the majority brushed those concerns aside.

If the Supreme Court had sided with the Second Circuit and with Lau, it would have held that an LPR who is accused of committing a crime and paroled into the U.S. is still treated as already admitted unless the government can clearly and convincingly show, at the time of reentry, that a 212(a)(2) exception applies. Instead, the Court has blessed a regime in which the government can downgrade an LPR now and meet its heavy burden later. It is hard to overstate how much this undermines the security of LPR status at the border.

The Supreme Court's ruling is tailor-made for abuse by any administration that is hostile to immigrants and LPRs. By taking the position that an LPR is "seeking admission" rather than arguing that the individual is deportable, the government can more easily pursue removal. In order to remove an LPR who was admitted, the government would have to show that the individual had been "convicted of a crime involving moral turpitude committed within five years" of the admission. The government must have clear and convincing evidence in order to determine that an LPR is seeking admission after having

committed a crime under INA 212(a)(2), and that burden should only be met if the LPR has actually been convicted of the crime involving moral turpitude, or has admitted to the elements of the crime. Blanche v. Lau now allows the government to pretend that this burden can be fulfilled retroactively.

An LPR can voluntarily admit to the commission of a crime if he or she chooses to, but such an admission needs to meet rigid criteria. The BIA has set forth the following requirements for a validly obtained admission: (1) the admitted conduct must constitute the essential elements of a crime in the jurisdiction in which it occurred; (2) the applicant must have been provided with the definition and essential elements of the crime in understandable terms prior to making the admission; and (3) the admission must have been made voluntarily. See Matter of K–, 7 I&N Dec. 594 (BIA 1957).

The Board of Immigration Appeals also held in Matter of Guevara, 20 I&N Dec. 238 (1990) that an alien's silence alone does not provide sufficient evidence under the standard in Woodby v. INS, which held that the burden was on the government to prove by "clear, unequivocal, and convincing evidence" that the LPR should be deported from the United States. This has also been more recently affirmed by the Board of Immigration Appeals in Matter of Rivens, 25 I&N Dec. 623 (BIA 2011).

As the late Justice Ginsburg observed in Vartelas v. Holder, 566 U.S. 257 (2012), "rdinarily to determine whether there is clear and convincing evidence that an alien has committed a qualifying crime, the immigration officer at the border would check the alien's record of conviction. He would not call into session a piepowder court to entertain a plea or conduct a trial." Piepowder, or "dusty-feet courts," as Justice Ginsburg's decision notes, were temporary mercantile courts quickly set up to hear commercial disputes at trade fairs in medieval Europe while the merchants' feet were still dusty.

Justice Ginsburg's observation was not a historical curiosity; it was a pointed warning. Our immigration system at the border is not supposed to devolve into ad hoc mini-trials run by front-line officers, improvising accusations and extracting admissions from tired travelers. Her admonition should have restricted a CBP officer's ability to simply suspect that an LPR has committed a crime, as opposed to relying on a conviction or a properly obtained admission to the essential elements of the crime. The CBP officer should also not be able to extract a confession.

The U.S. Court of Appeals for the Second Circuit's holding was much more in line with Justice Ginsburg's reasoning. The Second Circuit held that the INA does not permit "DHS to treat a returning LPR as an applicant for admission based on the suspicion that a CIMT has been committed, leaving open whether this suspicion will ever be confirmed by a subsequent conviction." The Second Circuit reasoned that the "INA is unmistakably clear that the default presumption is that LPRs will not be treated as seeking admission unless certain threshold determinations have been made…Allowing DHS to defer such a determination and take a wait-and-see approach contingent on whether a conviction eventually materializes effectively nullifies this clear command." Unlike the merchants of old, a CBP officer cannot set up a piepowder court at the airport to bludgeon a weary LPR traveler into admitting to having committed the elements of a CIMT absent clear and convincing evidence.

The Supreme Court majority has now rejected that common-sense, text-based reading. It has effectively authorized the very "dusty-feet" border justice that Vartelas rejected, and then gone a step further: it has allowed the government to time-shift its burden. Under Blanche v. Lau, the government may:

Treat a returning LPR as seeking admission based on an indictment or suspicion, without clear and convincing proof that the person has "committed" a qualifying offense at the moment of entry.

Parole the LPR into the United States, confiscate the green card, and consign the person to years of "immigration limbo" with only a temporary document.

Wait for a conviction or additional evidence, and only then, at a later removal hearing, attempt to satisfy the clear-and-convincing standard – retroactively justifying the decision that was made at the border long ago.

This is the "time travel" that Justice Jackson's dissent forcefully criticizes. The heavy burden that is supposed to protect LPRs at the very moment their status is being downgraded is no longer doing that work. Instead, the burden has been moved into the future, where it becomes a mere after-the-fact rationalization.

In other words, the majority has converted Congress's protective presumption into a hollow shell. Justice Ginsburg's warning against turning returning LPRs into suspects standing before "pied-powder courts" and "dusty-feet courts" has gone unheeded. Blanche v. Lau makes it easier for the government to suspect

first, punish immediately by stripping the LPR of their status protections and green card, and only later build the evidentiary record needed to defend that choice.

Justice Jackson's dissent is more faithful to the statutory text, to Vartelas, and to basic principles of fairness. She understands that the timing of the government's burden is not a technicality – it is the whole ballgame. If the government can meet its burden years later, based on evidence that did not even exist at the time of entry, then the statutory protection for returning LPRs is illusory. The dissent rightly insists that Congress meant what it said: LPRs "shall not be regarded as seeking an admission" unless and until the government can actually demonstrate that an exception applies.

By allowing the government to meet its heavy burden only after paroling the LPR, waiting for the conviction, and then using that conviction to retroactively justify treating the LPR as seeking admission, the Supreme Court has indeed authorized a form of time travel – and with it, a profound degradation of the rights of lawful permanent residents at our borders.