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BLANCHE V. LAU: WILL THE SUPREME COURT DEGRADE THE RIGHTS OF LAWFUL PERMANENT RESIDENTS?

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On April 23, 2025, the Supreme Court heard oral argument in *Blanche v. Lau*, a case that confronts 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. 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 exemption 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 if they have *inter alia* committed an offense identified in section 212(a)(2), which includes crimes involving moral turpitude or drug offenses.

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."*

If the Supreme Court sides with the government in *Blanche v. Lau* and decides that an LPR who is accused of committing a crime and paroled into the U.S. has not already been admitted, this power could be abused by the Trump administration, which has already evidenced an intent to erode the rights of LPRs. This is exactly the sort of abuse that Justice Jackson appeared troubled by in her colloquy during oral argument. 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.

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 appears to restrict a CBP officer's ability to try to suspect that an LPR has committed a crime rather than been convicted or one or admitted to the elements of the crime. The CBP officer should also not be able to extract a confession. The U.S. Court of Appeals for the 2nd Circuit's holding in *Blanche v. Lau* was much more in line with Justice Ginsburg's reasoning. The 2nd 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 2nd 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.

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