



Practice Alert:

***Blanche v. Lau* and Advising LPRs With Criminal Legal System Encounters About Travel Abroad**

July 2026

I. Introduction and Summary

On June 23, 2026, the Supreme Court issued an opinion in *Blanche v. Lau*, No. 25-429, holding that border agents do not need clear and convincing evidence that a lawful permanent resident (“LPR”) returning to the United States after travel is “seeking an admission” under Immigration and Nationality Act (“INA”) § 101(a)(13)(C)(v) at the point of encounter in order for the government to charge that person with inadmissibility in removal proceedings. The majority opinion leaves many open questions, including what burden, if any, border agents must satisfy before paroling or detaining an LPR as an applicant for admission. However, the *Lau* decision makes plain that a returning LPR who has only a pending criminal charge that would not render them inadmissible at the time they were inspected by a border officer but who is convicted of that charge by the time of removal proceedings can be subjected to the grounds of inadmissibility.¹

This practice alert provides an overview of the facts of the case and the Supreme Court’s decision. *See* Parts II & III. Next, the alert discusses the impact of the *Lau* decision on current law. *See* Part IV. Finally, the alert offers advice to attorneys considering how to respond to this decision in their practice. *See* Part V.

II. Background of Mr. Lau’s Case

Mr. Lau is a Chinese national and LPR of the United States. In 2012, he was arrested and charged with trademark counterfeiting under New Jersey law for allegedly selling counterfeit Coogi shorts. While state charges were pending, Mr. Lau took a brief trip abroad. On his return home, he was stopped at the airport, where a border officer noticed his pending case. Despite Mr. Lau’s statements in an interview denying knowledge of the counterfeit goods, the border officer

¹ Ordinarily, LPRs are subject only to the grounds of deportability at INA § 237, and not the grounds of inadmissibility under INA § 212. Section 101(a)(13)(C) provides narrow exceptions under which a returning LPR may be deemed “seeking an admission” and subject to grounds of inadmissibility. A returning LPR who is subject to inadmissibility may be removable on grounds that would not make them deportable if they had not traveled, for example: a conviction or admission to one crime involving moral turpitude committed more than five years after entry, INA § 212(a)(2)(A)(i)(I); or a conviction or admission to possession of less than 30 grams of marijuana for personal use, *compare* INA § 212(a)(2)(A)(i)(II), *with* INA § 237(a)(2)(B).

paroled him for deferred inspection under INA § 212(d)(5), which allows temporary parole of any noncitizen “applying for admission to the United States.”

Mr. Lau subsequently pled guilty to the counterfeiting offense and was sentenced to two years’ probation. In 2014, nearly two years after his travel, DHS issued a Notice to Appear (“NTA”) charging Mr. Lau as an arriving alien and as inadmissible under INA § 212(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude (“CIMT”).

LPRs are *not* generally considered to be seeking admission at the border or subject to the grounds of inadmissibility. The Immigration Judge (“IJ”) found, however, that Mr. Lau fell into the statutory exception to this rule as an LPR who “has committed an offense identified in INA § 212(a)(2),” including a single CIMT. *See* INA § 101(a)(13)(C)(v). Relying on his subsequent conviction as evidence, the IJ concluded that at the time of his travel in 2012, Mr. Lau had already “committed” a CIMT—the counterfeiting offense—and was therefore “seeking admission” when he returned from China. The IJ further found that Mr. Lau was ineligible for an INA § 212(h) waiver, as he had not resided continuously in the United States for seven years prior to initiation of removal proceedings.

The Board of Immigration Appeals (“BIA”) affirmed. Relying on its precedent decision in *Matter of Valenzuela-Felix*, 26 I&N Dec. 53 (BIA 2012), the BIA concluded that DHS need not make a definitive determination at the border whether a returning LPR like Mr. Lau is seeking admission. It could instead parole him to await the conclusion of his criminal case, and then use the subsequent conviction to meet its burden to establish by clear and convincing evidence that he was seeking admission at the time of re-entry.

But the Second Circuit disagreed and granted Mr. Lau’s petition for review, holding that *Valenzuela-Felix* is “contrary to the INA’s text.” *Lau v. Bondi*, 130 F.4th 42, 48 (2d Cir. 2025). The Second Circuit held that under the explicit language of INA § 212(d)(5), DHS can only parole noncitizens who are “applying for admission.” *Id.* Therefore, DHS had to determine at the border *prior to* granting parole that Mr. Lau fit within one of the § 101(a)(13)(C) exceptions to the returning LPR rule. The court observed that per the BIA’s prior decision in *Matter of Rivens*, 25 I&N Dec. 623, 625 (BIA 2011), DHS carries the burden to establish this exception by clear and convincing evidence. *Id.* And the court held that a pending criminal charge—which was the only evidence DHS had at the time of Mr. Lau’s entry—was insufficient to meet the evidentiary standard. *Id.* The court therefore held that Mr. Lau was not properly charged with inadmissibility. The government sought certiorari.

III. The Supreme Court’s Decision in *Lau*

On June 23, 2026, the Supreme Court reversed the Second Circuit in a 6-3 decision. *Blanche v. Lau*, 609 U.S. __ (2026). Justice Thomas, writing for the majority, held that the INA does not require border officers to have clear and convincing evidence that an LPR committed a CIMT before deeming them an applicant for admission. Slip op. at 5. The majority reasoned that the INA does not explicitly specify such a burden. *Id.* at 6–7. Accepting for purposes of this case the agency’s view that the government bears the burden to establish that an LPR is “seeking an admission” under INA § 101(a)(13)(C), the majority held that the government could satisfy that

burden with later-acquired evidence “produced at the [subsequent removal] hearing.” Slip op. at 7 (citing INA § 240(c)(1)(A)). Given the majority’s finding that Mr. Lau’s post-entry guilty plea “was clear and convincing evidence that, before he attempted to re-enter the country, he had committed the crime in question,” the majority concluded that the government properly charged him as seeking admission. *Id.*

In a footnote, the majority stated that whether the government bears the burden at all (including at the removal hearing) to establish that an LPR is seeking admission was not before the Court and it was not deciding this question. Slip op. at 7 n.2. Additionally, it stated that the Court need not decide whether an officer had to apply some lesser standard of proof at the border. *Id.* Instead, the Court held only that the Second Circuit’s imposition of the clear-and-convincing burden based on the evidence before the border officer was incorrect. *Id.* The Court also rejected the argument, advanced in the [Brief of Amici Curiae Immigration Law Professors in Support of Respondent](#), that INA § 101(a)(13)(C)(v) only applies if an LPR was convicted or made a qualified admission to an inadmissible offense, finding that the word “committed” in the statute precluded this interpretation. *Id.* at 8–9. While the majority claimed not to decide whether there is “any burden at the border,” *id.* at 7 n.2, the consequence of the majority’s holding is that for purposes of the removability determination, a border officer need not have evidence beyond a pending charge, as long as the government later presents conclusive evidence of commission of the crime in removal proceedings. The majority did not directly address the general statutory command that an LPR “shall not be regarded as seeking an admission,” § 101(a)(13)(C), nor the “applying for admission” limitation of the parole statute at INA § 212(d)(5).

Having found that Mr. Lau could be properly charged with grounds of inadmissibility, the Supreme Court remanded to the Second Circuit to consider Mr. Lau’s argument that his trademark counterfeiting conviction does not actually involve moral turpitude. *Id.* at 9. Justice Jackson dissented, joined by Justices Kagan and Sotomayor. In her view, the Court’s holding that the government can “deem an LPR to be ‘seeking an admission’ first and justify the applicability of a [statutory] exception later undermine[s] the statutory scheme as well as the benefits and security that come with having a green card.” Dissent, at 2. Justice Jackson worried that the government could now “merely *assume* at the border” that a § 101(a)(13)(C) exception applies and either detain or parole LPRs while it amasses any evidence. *Id.* at 8. Citing the [Brief for Asian American Legal Defense and Education Fund et al. as Amici Curiae](#), she noted the serious consequences this imposes on LPRs, including revocation of their physical green card which makes it harder to work, open bank accounts, secure housing, and enroll in school. *Id.*

IV. Impact on Current Law

1. How Does the Court’s Holding Impact the Current Legal Landscape?

- For individuals in most circuits, *Lau* does not have immediate impact as the decision is consistent with *Matter of Valenzuela-Felix*, 26 I&N Dec. 53 (BIA 2012), which was already binding before the agency. *Lau* upholds the BIA’s rule that later-acquired evidence may be used to satisfy the government’s burden regarding the “seeking an admission” determination *at the time of the removal hearing*. And while *Lau* does not decide what the government’s burden must be, it permits application of the BIA’s clear

and convincing evidence standard at the removal hearing, for purposes of this case. Slip op. at 7.

- *Lau* leaves in place decisions in the Fifth and Ninth Circuits, which had allowed the government to rely on post-entry convictions to establish that an LPR was seeking admission at a prior entry. See *Luz Munoz v. Holder*, 755 F.3d 366, 370 (5th Cir. 2014); *Vazquez Romero v. Garland*, 999 F.3d 656, 664 (9th Cir. 2021).
- In the Second Circuit, the Supreme Court’s decision reverses the circuit court’s binding rule in *Lau v. Bondi*. Under that now-overruled decision, the government was required to establish applicability of § 101(a)(13)(C) by clear and convincing evidence *at the border*, before it could parole an LPR.
- In the Third Circuit, *Lau* arguably does not overrule longstanding circuit precedent that the government must establish probable cause at the border that a § 101(a)(13)(C) exception applies, before paroling an LPR. See *Doe v. Attorney General*, 659 F.3d 266, 272 (2011). The *Lau* majority explicitly declined to decide whether the government bears any burden regarding § 101(a)(13)(C)—whether at the border or in proceedings—and, if it does, what that burden would be. Slip op. at 7, n.2. Moreover, the fact of Mr. Lau’s pending charge arguably provided probable cause under the reasoning in *Doe*. As a result, *Lau* leaves open the possibility that the government must meet some standard of evidence at the time of entry. In the Third Circuit, advocates may argue that *Doe*’s probable cause requirement at the border remains the law until overruled by the Supreme Court or abandoned by the Third Circuit.

2. *Under Lau, What Must the Government Show to Subject a Returning LPR to Grounds of Inadmissibility?*

- The decision leaves unclear what standard of proof applies at the border. The government may read *Lau* as allowing it to detain or parole returning LPRs based on any evidence whatsoever that one of the exceptions at § 101(a)(13)(C)(i)–(vi) applies. As explained below, we encourage practitioners to push back on this and explore arguments that the government must still have sufficient evidence at the border to meet some standard of proof, albeit lower than the clear and convincing standard. See Point V, 2, below.
- Under current agency precedent, at the time of removal proceedings the government must still prove by clear and convincing evidence that the LPR is subject to a § 101(a)(13)(C) exception. See *Matter of Rivens*, 25 I&N Dec. at 625; *Matter of Valenzuela-Felix*, 26 I&N Dec. at 54. While the majority appeared to question the statutory basis for the clear and convincing standard, it left the BIA’s standard in place such that it remains governing law in removal proceedings. See Slip. op. at 6–7 & n.2.²

² *Matter of Rivens* noted the BIA’s “longstanding case law” placing the burden of proof on DHS to establish in removal proceedings that a returning LPR is to be treated as seeking admission. *Rivens*, 25 I&N Dec. at 625. *Rivens* and prior BIA cases on this issue relied on the Supreme Court’s holding that, in the absence of a statutory standard, “no deportation order may be entered unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true.” *Id.* at 625–26 (citing, *inter alia*, *Matter of Huang*, 19 I&N Dec. 749, 754 (BIA 1988) (citing *Woodby v. INS*, 385 U.S. 276, 286 (1966))); see also *Landon v. Plasencia*, 459 U.S. 21, 35 (1982) (discussing the constitutional due process protections owed a returning LPR and recognizing that BIA precedent placed the burden on DHS). In *Rivens*, the BIA left unresolved the question whether the “clear, unequivocal, and convincing” standard from *Woodby* is more demanding than the “clear and convincing” standard it was adopting for the “seeking an admission” determination. *Rivens*, 25 I&N Dec. at 626 n.3. Cf. *Rosa v. Bondi*, 144

- The government will be permitted to use later-acquired evidence to make its case in immigration court that an LPR was “seeking admission” at the time of return, including evidence that materializes after the LPR’s reentry (e.g., a subsequent conviction) and evidence that previously existed but is discovered by the government following reentry.

3. *Does Lau Impact Other Exceptions to § 101(a)(13)(C)?*

- While Mr. Lau’s case only implicated INA § 101(a)(13)(C)(v), the majority’s holding rejecting the clear and convincing evidence standard at the border is likely to be applied to all the exceptions in § 101(a)(13)(C)(i)–(vi).
- However, as discussed, the Supreme Court did not overturn BIA precedent requiring the agency to prove by clear and convincing evidence in removal proceedings that an LPR is “seeking an admission” nor did it discuss what evidence might be sufficient to meet that standard of proof for the other exceptions.

4. *What Does the Decision Say About the Government’s Detention Authority?*

- In describing the statutory scheme, the majority noted that if DHS determines an LPR is seeking admission at the border, the LPR would be subject to mandatory detention if not paroled. Slip op. at 3 (citing 8 U.S.C. § 1225(a), (b)(2)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)). However, as noted above, the Court did not decide the evidence a border officer must have to make that determination. It also did not adopt the government’s argument that DHS’s parole decision is entirely unreviewable. See Slip op. at 7 n.2; [Br. of Pet’r](#), *Blanche v. Lau*, at 25. Rather, the majority opinion focused exclusively on whether the government had properly charged Mr. Lau in his subsequent removal proceedings. See below for ideas on challenging the detention or parole decision outside of removal proceedings. See Point V.3, *infra*.
- The decision also did not opine on the precise contours of detention under 8 U.S.C. § 1225(b)(2)(A), INA § 235(b)(2)(A), nor its application to undocumented individuals in the interior of the United States, an issue which is currently being heavily litigated around the country.

V. **Advice for Practitioners**

1. *How Should I Advise LPRs Who Wish to Travel Abroad?*

- LPRs with pending criminal charges that could be considered CIMTs or other inadmissible offenses identified in INA § 212(a)(2) should be advised that travelling internationally will subject them to a risk of parole or detention upon return to the United States, and removal proceedings based on inadmissibility.

F.4th 37, 41–43 (1st Cir. 2025) (finding in the context of the government’s burden to prove alienage that “clear, unequivocal, and convincing” is the proper standard and is a distinct and higher standard than “clear and convincing”); *Ward v. Holder*, 733 F.3d 601, 605 (6th Cir. 2013); *but see Mondaca-Vega v. Lynch*, 808 F.3d 413, 420–22 (9th Cir. 2015) (en banc) (finding the standards equivalent). Advocates may consider arguing that the proper standard is the one provided by *Woodby*.

- Before travel, advocates and LPRs should consider whether there is evidence other than pending charges the government might rely on to argue that the person has “committed” a crime and is subject to the grounds of inadmissibility. This could include encounters with law enforcement that have not resulted in charges, open investigations, social media posts, and other sources. If there is such evidence, advocates should consider whether to advise the LPR not to travel.
- At oral argument, the Solicitor General stated there was no reason to believe the government would act arbitrarily or in bad faith in subjecting returning LPRs to parole. [Oral Argument Tr.](#), *Blanche v. Lau*, at 21–22, 57. However, given this administration’s draconian enforcement efforts, LPRs and their advocates should keep abreast of any new trends or developments on this issue.

2. *After Lau, How Can an LPR in Removal Proceedings Challenge DHS’s Allegation That They Were “Seeking an Admission” and Subject to Inadmissibility After Travel Abroad?*

- In appropriate cases advocates should continue to argue that the record before the Immigration Judge—including any post-entry evidence—does not provide clear and convincing evidence that the returning LPR committed an offense under § 212(a)(2) prior to their re-entry to the United States, as required by binding Board precedent.
- If DHS attempts to argue that it has no statutory burden regarding the “seeking admission” determination, advocates should argue that the contrary holdings in *Matter of Rivens* and *Matter of Valenzuela Felix* remain binding on immigration judges (“IJs”) unless and until they are overruled by the Board or Attorney General. See 8 C.F.R. § 1003.10(d). Advocates may also argue that prior Supreme Court precedent in *Woodby v. I.N.S.* and *Landon v. Plasencia* and constitutional due process principles require the government to bear the burden. See fn. 2, *supra*.
- Advocates may also consider continuing to make arguments that irrespective of the evidence before the IJ, the border officer must have had some quantum of proof regarding the commission of an offense under INA § 212(a)(2) for DHS to charge the returning LPR with grounds of inadmissibility. The *Lau* majority’s decision did not reach this issue, see slip op. at 7 n.2, and held only that the proof at the border need not establish “clear and convincing evidence” and that under the specific facts in Mr. Lau’s case—where a pending charge at the time of travel resulted in conviction prior to removal proceedings—he was “properly” charged with inadmissibility grounds. With different factual circumstances, advocates may consider arguments that:
 - The burden of proof that applies at the border is at least probable cause. See *Doe v. Att’y Gen.*, 659 F.3d 266, 272 (3d Cir. 2011); see also Point IV.1, *supra*.
 - Given the liberty-limiting consequences of the “seeking admission” determination, including parole and detention, courts should apply a burden at the border higher than probable cause. Elsewhere, the BIA has interpreted statutory language requiring an officer to have “serious reasons for believing” a noncitizen committed a crime to be equivalent to “probable cause.” See, e.g., *Matter of E-A-*, 26 I&N Dec. 1, 3 (BIA 2012) (interpreting serious non-political crime bar to asylum) (“We interpret ‘serious reasons for believing’ to be equivalent to probable cause, as have the circuits that have considered this question.”). Section 101(a)(13)(C)(v) applies only to a

noncitizen who “committed” an offense, which must require greater proof than merely “reasons for believing” a crime was committed.

- Advocates may argue that the evidence before the border officer should establish commission of the offense by a preponderance of the evidence, the standard generally used to prove the commission of a crime in civil contexts. *See, e.g., Herman & MacLean v. Huddleston*, 459 U.S. 375, 389–90 (1983) (“Where Congress has not prescribed the appropriate standard of proof and the Constitution does not dictate a particular standard, we must prescribe one we have required proof by clear and convincing evidence where particularly important individual interests or rights are at stake. By contrast, imposition of even severe civil sanctions that do not implicate such interests has been permitted after proof by a preponderance of the evidence.” (citations omitted)).
- In cases where there was no evidence of pending charges before the border officer, advocates can distinguish *Lau* on the facts.

3. *Can a Returning LPR Challenge Their Detention or Parole?*

- Nothing in *Lau* prevents seeking a *Matter of Joseph* bond hearing and/or filing a habeas petition if an LPR client is detained at the border. *See Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999).³ The majority opinion addressed only whether the government properly charged Mr. Lau with inadmissibility in his removal proceedings. It did not address separate challenges to the detention or parole of LPRs determined to be seeking an admission.
- LPRs detained upon return based on a pending charge that did not yet result in “admission” or “conviction” of a crime might consider seeking a *Matter of Joseph* hearing on the grounds that they are not “seeking an admission” and/or are not actually inadmissible.
- LPRs detained upon return can also consider making constitutional due process arguments in habeas proceedings that, notwithstanding *Lau*, the government must still have clear and convincing evidence that they fall under a § 101(a)(13)(C) exception to detain them, given the fundamental liberty interest at stake. This issue was not explicitly addressed in *Lau*.
- At oral argument, Justice Gorsuch suggested that there may or should be alternative avenues to challenge a border officer’s parole decision, without waiting for removal proceedings to be initiated or completed. *See Oral Argument Tr., Blanche v. Lau*, at 44–45, 70–72. As in Mr. Lau’s case, the government often paroles LPRs for months or years before deciding whether or not to initiate removal proceedings, resulting in significant harm as the *Lau* dissent identified. Justice Gorsuch mentioned the Administrative Procedure Act as one possible avenue, but did not flesh out how one might challenge parole nor the impact of the INA’s various jurisdictional bars. *Id.* Whether and on what

³ Although *Matter of Joseph* specifically addresses the process to challenge a noncitizen’s alleged inclusion in a mandatory detention category under INA § 236(c), advocates may argue that there is or should be a comparable administrative process to challenge a returning LPRs classification as “seeking an admission” and their detention under INA § 235(b)(2)(A). *See* OCIJ Immigration Court Practice Manual, ch. 8.3(b) (“[A]n immigration judge has jurisdiction to rule on whether he or she has jurisdiction to conduct a bond hearing”). Advocates report that some IJs have held *Joseph* hearings to determine whether an individual is properly subject to detention under INA § 235.

basis a returning LPR could bring an independent federal court action to challenge their parole is beyond the scope of this advisory.

4. *What If the Pending Charge or Conviction Relied Upon by the Border Officer is Dismissed or Vacated Following the LPR's Reentry?*

- Where the evidence relied upon by the border officer does not result in a subsequent conviction for an offense identified in INA § 212(a)(2), the LPR may argue the government cannot meet its burden in removal proceedings and therefore cannot pursue other inadmissibility charges. For example, where a returning LPR is deemed to be “seeking an admission” at the border based on a pending charge for an inadmissible offense, that criminal charge could be dismissed prior to removal proceedings or could result in conviction for a different offense not identified in § 212(a)(2). In such cases, the LPR should argue that the subsequent dismissal means the government cannot establish the § 101(a)(13)(C)(v) “seeking an admission” exception at the time of removal proceedings. Under current agency precedent, the charge alone—without subsequent conviction—cannot meet the government’s burden of clear and convincing evidence at removal proceedings.
- A criminal court vacatur prior to removal proceedings similarly should eliminate the basis for the “seeking an admission” exception, where the determination at the border was made solely based on a pending charge or the now-vacated conviction.
- Nevertheless, in certain circumstances DHS may try to rely on verbal admissions made to border officers or in immigration proceedings to meet their burden of proof on the “seeking an admission” exception and/or establish inadmissibility. Advocates should advise LPRs accordingly, and should familiarize themselves with the case law governing such admissions. *See, e.g., Matter of K-*, 9 I&N Dec. 715 (BIA 1962); *Matter of E.V.*, 5 I&N Dec. 194 (BIA 1953); *Matter of Winter*, 12 I&N Dec. 638 (BIA 1967, 1968).⁴

5. *What About LPRs Who Are Deportable Under INA § 237?*

- Lau does not change anything for LPRs who have convictions that may make them deportable under INA § 237. LPRs who may be deportable should be advised of the risks of travel and/or other activities that may flag their case for immigration authorities. For these individuals, advocates may consider strategies such as seeking post-conviction relief, if warranted.

⁴ For further discussion of the rules regarding “admissions” to offenses that constitute a CIMT, see Kathy Brady, Immigrant Legal Resource Center (ILRC), *All Those Rules About Crimes Involving Moral Turpitude*, at 13–15 (June 2021), https://www.ilrc.org/sites/default/files/resources/all_those_rules_cimt_june_2021_final.pdf.