



# SUPREME COURT HOLDS LPRS WITH PENDING CRIMINAL CHARGES MAY BE DEEMED APPLICANTS FOR ADMISSION WHEN RE-ENTERING THE UNITED STATES

*Blanche v. Lau*

By Aruna Sury

## I. Holding of the Case

On June 23, 2026, the U.S. Supreme Court issued a 6-3 decision in *Blanche v. Lau*,<sup>1</sup> in which it held that a border officer<sup>2</sup> can determine that a lawful permanent resident (LPR) returning to the United States after a trip abroad is an applicant for admission based on the commission of a crime, even without clear and convincing evidence to support that finding. The Court concluded that CBP officers did not violate the immigration statute by denying the noncitizen entry as an LPR, and instead regarded him as an applicant seeking admission, based on a pending criminal charge against the noncitizen for a crime involving moral turpitude (CIMT). Even though the pending criminal charge did not constitute clear and convincing evidence, the Court held that it was sufficient to support an initial determination of inadmissibility by immigration agents at the airport. Mr. Lau could, therefore, be found to be inadmissible in later removal proceedings even though his conviction for the crime did not occur until after he re-entered the United States.

Justice Thomas wrote the majority opinion, and was joined by Justices Roberts, Alito, Gorsuch, Kavanaugh, and Barrett. Justice Jackson wrote a dissenting opinion, joined by Justices Sotomayor and Kagan.

## II. Legal Framework

A person in removal proceedings can either be charged as *deportable or inadmissible*. How that person is charged depends on whether they have already been admitted into the United States or have not been admitted to the United States. If a noncitizen has already been admitted to the United States, they will be subject to grounds of deportability under INA § 237.

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<sup>1</sup> *Blanche v. Lau*, No. 25-429, 2026 WL 1791339 (U.S. June 23, 2026).

<sup>2</sup> Border officers are employees of Customs and Border Protection (CBP) of the Department of Homeland Security (DHS).

If the person is present in the United States without ever having been admitted, they will be subject to the grounds of inadmissibility under INA § 212.

There is a significant advantage to being charged with deportability rather than inadmissibility in that *DHS* bears the burden of proving a person’s deportability in removal proceedings by clear and convincing evidence, whereas the *noncitizen* bears the burden of proving their own admissibility.<sup>3</sup>

With respect to CIMTs, a person can be found to be inadmissible for having a single CIMT conviction (or if they admit to committing a CIMT), regardless of when the conviction occurred.<sup>4</sup> On the other hand, a noncitizen charged with deportability can only be found deportable if the commission of the CIMT that led to a conviction (admitting to the conduct isn’t sufficient) was committed within five years of their date of admission into the United States, and the maximum sentence for the offense was one year or more.<sup>5</sup> Therefore, the question of whether an LPR, such as Mr. Lau, was properly charged with inadmissibility rather than deportability, is one with important ramifications.

The legal concept of “admission” is distinct from the idea of “entry.” A person can enter the United States without having been formally “admitted.” The terms “admission” and “admitted” are defined in INA § 101(a)(13). Section 101(a)(13)(A) defines admission as “the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.”

When LPRs travel abroad and then come home to the United States, they will not be considered to be “seeking an admission” at the border and will not be subject to the grounds of inadmissibility. There are six exceptions to this rule. Under INA § 101(a)(13)(C), an LPR returning from a trip outside the United States is seeking admission if they:

- i. Have abandoned or relinquished permanent resident status;
- ii. Have been absent from the United States for a continuous period of more than 180 days;

<sup>3</sup> INA §§ 240(c)(2), (3); 8 CFR § 1240.8(a). For noncitizens found within the United States without being admitted or paroled, the government bears the burden of proving “alienage,” meaning that the person is not a citizen or national of the United States. 8 CFR § 1240.8(c); see also *Murphy v. INS*, 54 F.3d 605, 608 (9th Cir. 1995) (holding that the burden of proving alienage always remains on the government because it is a jurisdictional matter). The ILRC strongly condemns the derogatory and xenophobic connotations of the word “alienage” and “alien,” and only uses the terms to be explicit about the government’s statements and actions and to reference specific sections of the law.

<sup>4</sup> INA § 212(a)(2)(A)(i)(I). There are certain exceptions for a first-CIMT for certain offenses committed when the noncitizen was under 18 years of age or where the noncitizen was not sentenced to more than six months for the offense and the maximum possible sentence was not more than one year. INA §§ 212(a)(2)(A)(ii)(I), (II). These are known as the “youthful offender” and “petty offense” exceptions. For a detailed discussion about the CIMT ground of deportability and inadmissibility, see, ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (Jun. 2021), <https://www.ilrc.org/resources/all-those-rules-about-crimes-involving-moral-turpitude-june-2021>.

<sup>5</sup> INA § 237(a)(2)(A)(i).

- iii. Have engaged in illegal activity after departing the United States;
- iv. Have left the United States while under removal or extradition proceedings;
- v. Have committed an offense identified in INA § 212(a)(2) (grounds of inadmissibility relating to crimes), unless the person was granted INA § 212(h) relief or INA § 240A(a) cancellation of removal to forgive the offense; or
- vi. Are attempting to enter or has entered without inspection.

Lawful permanent residents who come within any of these six exceptions will be in the same position as other noncitizens seeking admission and will be regarded as “arriving aliens.” However, for LPRs in removal proceedings based on a charge of inadmissibility after a trip abroad, DHS still bears the burden of proving by clear and convincing evidence that the LPR falls under one of the six exceptions under INA § 101(a)(13)(C).<sup>6</sup>

The relevant provision of INA § 101(a)(13) in Mr. Lau’s case was subsection (v), relating to offenses identified in INA § 212(a)(2). Section 212(a)(2), in turn, includes:

- A conviction of, or qualifying admission of committing, a single CIMT, unless it comes within the petty offense or youthful offender exceptions.
- A conviction of, or qualifying admission of committing,<sup>7</sup> a controlled substance (CS) offense, including a small amount of marijuana, even if recreational use is permitted under state law.
- Conviction of two or more offenses of any kind, other than purely political offenses, with a lifetime total sentence imposed of at least five years.
- Whether or not there is a conviction, the person is found to have engaged in prostitution.
- Whether or not there is a conviction, immigration authorities know or have reason to believe that the person ever aided or participated in, or intended to aid or participate in any of the following:
  - Trafficking in a controlled substance (plus certain family members who benefited from this);

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<sup>6</sup> *Matter of Rivens*, 25 I&N Dec. 623, 626 (BIA 2011) (“we hold that the respondent - whose lawful permanent resident status is uncontested - cannot be found removable under the section 212(a) grounds of inadmissibility unless the DHS first proves by clear and convincing evidence that he is to be regarded as an applicant for admission, in this case by having committed an offense identified in section 212(a)(2).”) (internal quotation marks and citation omitted).

<sup>7</sup> Strict rules control what kinds of statements by a noncitizen constitute an “admission” of a CIMT or controlled substance offense. The conduct must be a crime under the laws of the place where it allegedly was committed. The person must admit to commission of facts that constitute the essential elements of that offense. General admissions to broad and/or divisible statutes will not qualify. Where the noncitizen does not admit sufficient facts, DHS officials cannot use inferences. The DHS official must provide the noncitizen with an understandable definition of the elements of the crime at issue - this “informed admissions” rule is to ensure that noncitizens receive “fair play.” The noncitizen’s admission must be free and voluntary. See, ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (Jun. 2021), <https://www.ilrc.org/resources/all-those-rules-about-crimes-involving-moral-turpitude-june-2021>.

- Severe trafficking in persons (plus certain family members who benefited from this);
- Money laundering.
- Asserting diplomatic immunity from criminal prosecution in the United States.
- Being a foreign government official who committed severe violations of religious freedom.

If a border officer determines that an LPR is seeking an admission because they fall under one of the above categories, DHS has the power to detain the individual or to “parole” them into the United States. “Parole . . . allows the Government to pause the inspection at the border and defer it to a later time without having to detain the alien pending a final admissibility decision, as would otherwise be required.”<sup>8</sup> Whether to parole the individual is entirely within DHS’ discretionary authority, however, and applicants for admission (including LPRs) required to be detained unless they are paroled.

### III. Facts and Procedural History

Mr. Lau is a Chinese citizen who was admitted to the United States as an LPR in 2007. In May 2012, Mr. Lau was charged in New Jersey with trademark counterfeiting.<sup>9</sup> While that charge was pending, Mr. Lau left the United States for a trip to China.

In June 2012, he returned to the United States. When he arrived at the airport in New York and presented himself for immigration processing, the Customs and Border Protection (CBP) officer decided that Mr. Lau should not be allowed entry to the United States as an LPR. Instead, the officer determined that Mr. Lau was seeking an admission because the pending criminal charge in New Jersey indicated that he had committed an offense that made him inadmissible.

The CBP officer paroled Mr. Lau into the United States so that his inspection could be deferred to a later date, until resolution of his criminal case. In June 2013, Mr. Lau pleaded guilty to the charge pending against him for trademark counterfeiting. In March 2014, DHS initiated removal proceedings against Mr. Lau under INA § 212(a)(2), alleging that his recent conviction was a CIMT that made him inadmissible.

The CBP officer paroled Mr. Lau into the United States so that his inspection could be deferred to a later date, until resolution of his criminal case. In June 2013, Mr. Lau pleaded guilty to the charge pending against him for trademark counterfeiting. In March 2014, DHS initiated removal proceedings against Mr. Lau under INA § 212(a)(2), alleging that his recent conviction was a CIMT that made him inadmissible.

<sup>8</sup> *Lau*, 2026 WL 1791339, at \*3 (citing INA §§ 235(a), (b)(2)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)). See also, INA 212(d)(5)(A) (allowing parole of any applicant for admission on a discretionary basis for urgent humanitarian reasons or significant public benefit).

<sup>9</sup> Mr. Lau was accused of selling counterfeit Coogi shorts in New Jersey. *Lau*, 2026 WL 1791339, at \*14 (Jackson, J., dissenting). He was charged under N.J. Rev. Stat. § 2C:21-32(c) in the third degree, which carries sentence of three to five years. *Lau v. Bondi*, 130 F.4th 42, 44 (2d Cir. 2025). See also, N.J. Rev. Stat. § 2C:43-6.

Mr. Lau argued to the immigration judge (IJ) that he was not properly charged with inadmissibility because, even assuming his eventual conviction was for a CIMT, he should have been granted entry as an LPR when he returned to the United States in 2012. He argued that there was not sufficient evidence that he had committed a CIMT when he arrived at the airport, since the conviction had not yet occurred.<sup>10</sup>

The IJ disagreed with Mr. Lau and found him removable as charged, as a person who is inadmissible under the CIMT ground. Mr. Lau appealed, and the Board of Immigration Appeals (BIA) agreed with the IJ, finding that DHS had proved by clear and convincing evidence that Mr. Lau fell within the exception for LPRs who had committed CIMT before re-entering the United States.

Mr. Lau appealed the BIA's decision to the Second Circuit Court of Appeals. The court vacated the removal order against Mr. Lau.<sup>11</sup> While acknowledging that an LPR seeking re-entry can be deemed an applicant for admission to the United States based on the commission (not necessarily a conviction) of an inadmissible offense such as a CIMT, the court stated that DHS must have clear and convincing evidence that the crime was committed at the point in time when the LPR re-enters the U.S. The court found that the criminal charge that was pending against Mr. Lau did not constitute clear and convincing evidence that Mr. Lau had committed the offense. The court therefore concluded that Mr. Lau was not properly paroled, and that instead, he should have been allowed entry as an LPR. The court remanded the case to the BIA, with instructions to terminate the removal proceedings against Mr. Lau.

Because the Second Circuit's decision conflicted with those of the Fifth and Ninth Circuits, the Supreme Court granted certiorari.<sup>12</sup>

## IV. The Majority's Legal Reasoning

Importantly, the Supreme Court did not find that the pending criminal charge against Mr. Lau when he re-entered the country in June 2012 was sufficient to meet the clear and convincing evidence standard. Rather, the Court's primary reasoning for siding with the government was that "[n]othing in the INA required the border officer to have clear and convincing evidence that Lau had committed a crime involving moral turpitude before deeming him an applicant for admission."<sup>13</sup>

<sup>10</sup> Mr. Lau also argued that his conviction was not for a CIMT, but that issue was not before the Supreme Court because the Second Circuit did not reach it.

<sup>11</sup> *Lau v. Bondi*, 130 F.4th 42 (2d 2025).

<sup>12</sup> See, *Luz Munoz v. Holder*, 755 F.3d 366, 370 (5th 2014); *Vazquez Romero v. Garland*, 999 F.3d 656, 664 (9th 2021). See also, *Doe v. Atty Gen of U.S.*, 659 F.3d 266 (3d Cir. 2011) (imposing a probable cause standard for border determinations regarding inadmissibility of LPRs); *Matter of Valenzuela-Felix*, 26 I&N Dec. 53 (BIA 2012).

<sup>13</sup> *Blanche v. Lau*, 2026 WL 1791339, at \*4. The government had not raised the issue of whether border officials need clear and convincing evidence to make an inadmissibility finding in the proceedings below or in its certiorari petition. Instead, it had only argued that decisions by border officials were unreviewable. Yet, the Supreme Court decided not to address the non-reviewability issue and, instead announced a rule that border officials did not need to rely on clear and convincing evidence to deem an LPR an applicant for admission. See Nancy Morawetz, Just Security, *In Blanche v. Lau, the Supreme Court Rewards the Solicitor*

According to the Court, the INA “nowhere says that the Government has the burden to establish by clear and convincing evidence that the alien is an applicant for admission.”<sup>14</sup> The Court stated that removing an LPR on a charge of inadmissibility involves two steps: “[W]hile only commission [of the crime] is required at step one” (to show that the noncitizen could be regarded as seeking to be admitted), “conviction (or admission) is required at step two” (to show that the noncitizen seeking to be admitted is inadmissible).<sup>15</sup> The Court reasoned that at step one, the border officials regarded him as a person seeking admission because he had committed a CIMT before attempting to reenter the country. That took Mr. Lau’s case to step two, where he could not be found to be inadmissible and therefore removable, unless there was clear and convincing evidence that he had been convicted of, or admitted to committing, a CIMT.

In Mr. Lau’s case, the government was able to produce evidence of Mr. Lau’s guilty plea, which constituted “clear and convincing evidence that, before he attempted to reenter the country, he had committed the crime in question.”<sup>16</sup> But the Court did not address what standard of proof the border officer must meet in order to regard a returning LPR as an applicant for admission.

The Court remanded the matter to the Second Circuit to determine whether Mr. Lau’s conviction is a CIMT.

## V. The Dissent’s Legal Reasoning

Justice Jackson wrote a dissenting opinion, joined by Justices Sotomayor and Kagan. The dissent framed the case as only about one question: sequencing, namely, whether the government must determine if an LPR has committed a CIMT before refusing to recognize them as already admitted to the United States. According to the dissenting justices: “The Government needs to have the requisite certainty about the applicability of the crime-involving-moral-turpitude exception *at the border*, before it decides that the statute’s default requirement for admission of LPRs does not apply.”<sup>17</sup>

First, the dissent pointed out that INA § 101(a)(13)(C) provides “a clear directive” that an LPR re-entering the United States shall not be regarded as an applicant for admission, and “[i]n

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*General’s Bait-and-Switch at Green Card Holders’ Expense* (Jun. 2026) (criticizing the majority opinion as “highly disingenuous”).

<sup>14</sup> *Id.* at \*5.

<sup>15</sup> *Id.* at \*4 (quoting *Barton v. Barr*, 590 U.S. 220, 233 (2020)) (internal quotation marks omitted). In *Barton*, the Supreme Court held that an LPR who is in the United States and not seeking re-admission could be “rendered inadmissible” for the purposes of the stop-time rule for LPR cancellation of removal eligibility under INA § 240A(d)(1). The case did not involve an LPR, such as Mr. Lau, who had departed the United States after commission of a criminal offense. The “step one” referred to in *Barton* was the commission of the crime for purposes of triggering the stop-time rule, and the application of burdens of proof. The applicability of *Barton* to Mr. Lau’s case is, therefore, questionable. For a detailed discussion about *Barton* and its implications, see ILRC, IDP, NIPNLG, *Practice Advisory: Avoiding the Stop-Time Rule after Barton v. Barr* (Jun. 2020),

[https://www.ilrc.org/sites/default/files/resources/avoiding\\_the\\_stop\\_time\\_rule\\_after\\_barton\\_v.\\_barr.pdf](https://www.ilrc.org/sites/default/files/resources/avoiding_the_stop_time_rule_after_barton_v._barr.pdf).

<sup>16</sup> *Lau*, 2026 WL 1791339, at \*5.

<sup>17</sup> *Id.* at \*7 (Jackson, J., dissenting).

practical terms, it means that a border officer “shall not” require an LPR to (re)prove that he satisfies the standard admission criteria upon his return to the United States.”<sup>18</sup> “So, as a matter of logic, the statute is definitive on the question of sequence: [The border officer] must determine whether an LPR is an applicant for admission as a threshold matter before [he] is authorized not to admit that LPR. It really is that simple.”<sup>19</sup> The majority’s mistake, according to Justice Jackson, is that it allows the government to “satisf[y] its burden for the initial decision (which, logically, must happen at the border) with later-acrued evidence, *i.e.*, backfill its justification.”<sup>20</sup> The dissent found the majority’s conclusion that nothing in the statute requires the government to prove that an LPR is an applicant for admission to be “puzzling” in light of 101(a)(13)(C)’s clear language that without such evidence, the LPR shall not be regarded as an applicant for admission.

Second, the dissent considered the serious consequences to an LPR who is deemed at a border or port of entry to be an applicant for admission, since upon such a determination, the LPR can be detained or paroled (and cannot be allowed to enter as an LPR).<sup>21</sup> While the negative impacts of detention are obvious, being paroled in, as in Mr. Lau’s case, also has negative repercussions. In Mr. Lau’s case, his LPR card was confiscated, and he was issued only an I-94 arrival/departure paper indicating his parole status, placing him in “immigration limbo” during the 14 years this case has been pending. Without an LPR card, it is more difficult for noncitizens, even LPRs whose removal proceedings are pending, to obtain work, open bank accounts, secure housing, obtain health insurance, and enroll in school.

The dissent also explained that an LPR who is deemed to be seeking admission is charged with inadmissibility under INA § 212, not deportability under INA § 237. Even if the LPR who is paroled is later acquitted, therefore making it impossible for the government to carry its burden in removal proceedings,<sup>22</sup> “that is likely cold comfort to the LPR, who by then might have spent years in legal limbo (with only the protection of a temporary green card) or worse, in detention.”<sup>23</sup>

## VI. Practical Impact and Advice

**LPRs with criminal charges pending against them when they leave the United States could face a finding of inadmissibility when they attempt to re-enter.** Although there are seven general categories of offenses that are covered by INA § 212(a)(2), the CIMT and CS grounds are the only ones that need a conviction or admission of guilt.<sup>24</sup> Therefore, LPRs who

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at \*8 (internal quotation marks and citations omitted).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at \*10.

<sup>22</sup> Even in section 212 proceedings, where the noncitizen generally bears the burden of proving their admissibility, in cases involving LPRs, it is the government that bears the burden of proving of proving inadmissibility by clear and convincing evidence. *See, Matter of Rivens*, 25 I&N Dec. 623, 626 (BIA 2011).

<sup>23</sup> *Id.* at \*14.

<sup>24</sup> Under INA § 212(a)(2)(B), a noncitizen convicted of any two offenses for which the aggregate sentences to confinement totaled five years or more, is inadmissible. The Supreme Court’s decision in *Lau* is unlikely to implicate this provision since it would be nearly impossible for a border officer to determine whether an LPR

have pending charges that may be interpreted as CIMTs or CS offenses are at risk being labeled as “seeking admission” by DHS officers when they try to re-enter the country.

Because the term CIMT is inherently vague and can include a wide range of offenses, it may be difficult to identify what types of pending charges would risk an inadmissibility finding by border officers. Criminal defenders and immigration practitioners should, therefore, advise LPRs not to travel if there are pending criminal charges against them that could be interpreted as CIMTs or CS offenses (and as always, assess any convictions for inadmissibility before the LPR travels).

Importantly, removal defense practitioners must remember that in *Lau*, the Supreme Court did not change the rule that in removal proceedings, it is still DHS’ burden to prove by clear and convincing evidence that the LPR falls under an exception to INA § 101(a)(13).<sup>25</sup> If the charge of inadmissibility is based on the LPR’s conviction or qualifying admission of a CIMT or CS offense before their departure from the United States, DHS must present clear and convincing evidence of that at the removal hearing.

**More LPRs may be interviewed by border agents regarding any criminal history. Prepare your clients to avoid making an “admission” to a CIMT or CS offense and consider providing them a written legal explanation for why any past conviction or conduct does not make them an applicant for admission.** Because the Supreme Court’s decision has greatly loosened the standards applicable to border agents inspecting returning LPRs, we might expect more questioning by agents of LPRs at ports of entry. Before traveling, even LPRs who do not have pending criminal charges should be prepared to respond to questioning about their *commission* of criminal offenses. First, admitting to the commission of an offense can trigger a finding that there is sufficient evidence to deem the LPR an applicant for admission. Second, if the offense is a “qualifying admission,” for CIMT or CS offense purposes, it could, even without a conviction, result in a finding of removability in removal proceedings under INA § 212.<sup>26</sup> Practitioners should advise their clients about the requirements of a “qualifying admission” in the CIMT and CS contexts.<sup>27</sup> Practitioners should also advise their clients not to answer questions about arrests or criminal convictions and ask

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has *committed* offenses for which the sentences will total five years or more, if no conviction and sentence has occurred. The remaining provisions of INA § 212(a)(2) are also similarly not likely implicated by the decision, since they do not require a conviction or admission of guilt in order to be triggered. For example, INA § 212(a)(2)(C) renders inadmissible any noncitizen whom an immigration official has “reason to believe” is or has been a drug trafficker. However, no conviction (or qualifying admission to committing the offense) is required for this finding. So the decision in *Lau* does not impact prior practice, where border officials can make a “reason to believe” finding even without a conviction or qualifying admission.

<sup>25</sup> The Court did state in a footnote, however, that the government argued in the case that the LPR should bear the burden at the border of proving their status (and presumably their ability to enter as an LPR). The Court declined to address that argument in light of its finding that border officers had sufficient evidence in Mr. Lau’s case to deem him an applicant seeking an admission. *Lau*, 2026 WL 1791339, at \*5 n. 2.

<sup>26</sup> See, ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (Jun. 2021), <https://www.ilrc.org/resources/all-those-rules-about-crimes-involving-moral-turpitude-june-2021>.

<sup>27</sup> See Part II., Legal Framework.

to speak with a lawyer before answering any further questions if a border official is asking these kinds of questions.

If an LPR client wishes to travel despite pending criminal charges or prior arrests or convictions, consider providing the client with a written explanation for why they do not fall under an exception under INA § 101(a)(13)(C). The client can then share that written explanation if they are questioned by border agents at a port of entry when they re-enter the United States.<sup>28</sup>

**LPRs who have not been charged, but who have been arrested, have warrants for arrest against them, or other accusations, may also face a finding of inadmissibility at the time of re-entry.** Because the Supreme Court did not state the standard of proof that would be required at the border to sustain a finding of inadmissibility, practitioners should also assess whether the LPR has arrests, warrants for arrest, or other accusations, such as civil cases, pending against them. For example, if an LPR has been arrested but not charged with a CS offense, they may now be at risk of being deemed to be “seeking an admission” if they attempt to re-enter the United States. Similarly, if an LPR has a civil order against them, such as a stay away order, that could trigger a border officer to find that the findings in support of that order indicate that the LPR committed a CIMT before their departure from the United States. Although ultimately the civil order may not be sufficient for DHS to meet its burden of proof in removal proceedings, the initial finding by border officials can cause the LPR to be detained or paroled, either of which would cause significant hardship to the noncitizen and their families and communities.

**There will likely be an increase in the number of LPRs who are detained when they attempt to re-enter the United States.** As explained, the Supreme Court’s decision in *Lau* will cause more LPRs to be deemed applicants for admission when they attempt to re-enter the United States. That finding will cause them to be treated as “arriving aliens,” which, in turn, will require them to be detained or paroled. If DHS chooses to detain the individual, they will be ineligible for bond during the lifespan of their removal proceedings.<sup>29</sup> The serious consequences of an inadmissibility finding at the border makes it imperative that LPRs be advised not to travel abroad if they have any pending charges or accusations that could be interpreted as CIMTs or CS offenses.

**DHS will still need to present clear and convincing evidence at the LPR’s removal hearing that the LPR was convicted of, or admitted to committing, a CIMT or controlled substance offense.** While the Court did not clarify what standard of proof border officers must meet in making the “seeking an admission” determination, it did not change the rule that in

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<sup>28</sup> Such a written explanation may be especially helpful where it is clear under the law that a prior conviction or pending charge is not a CIMT or CS conviction. Providing legal citations to support the argument might help the client avoid an inadmissibility finding by border agents.

<sup>29</sup> The dissent pointed to INA § 236(a) as the authority under which border officers might detain or parole an LPR after an inadmissibility determination. *Lau*, 2026 WL 1791339, at \*10 (Jackson, J., dissenting). However, the government generally claims that noncitizens deemed to be “arriving aliens,” including LPRs such as Mr. Lau, are detained or paroled under the authority of INA § 235(b)(1). This is significant, because noncitizens detained under INA § 236(a) may qualify for release on bond, whereas “arriving aliens” are not eligible for release on bond and, instead, may only be detained or “paroled.”

removal proceedings, DHS bears the burden of proving by clear and convincing evidence that an LPR properly falls under one of the exceptions in INA § 101(a)(13)(C).

**Criminal defense counsel should, if at all possible, avoid a conviction for a potential CIMT or CS offense, even if it will not trigger deportability.** The Supreme Court’s decision in *Lau* does not change prior best practices regarding avoiding convictions that trigger inadmissibility, even for LPRs. Even LPRs who do not travel while criminal charges are pending are susceptible to a charge of inadmissibility if they travel after a conviction for a CIMT or CS offense. But now, after the Supreme Court’s decision in *Lau*, if an LPR has already traveled after commission of the alleged offense, it is even more important to avoid the problematic conviction. For instance, had Mr. Lau not been convicted of the trademark counterfeiting charge, the charge of inadmissibility would not have been ultimately sustainable, since the government would have lacked clear and convincing evidence of a CIMT conviction (or admission of a conviction).<sup>30</sup>

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<sup>30</sup> It is particularly important to avoid a CIMT or CS conviction for LPRs who might become deportable if convicted of the charged offense. A CIMT conviction must be committed within five years of an LPR’s admission and carry a maximum penalty of a year or more in order to trigger deportability. Unlike the inadmissibility grounds, a conviction is required, not merely an admission by the noncitizen, to sustain a charge of deportability. In Mr. Lau’s case, had the government been unable to justify its charge of removal against Mr. Lau under INA § 212’s inadmissibility provision, it could have charged him with deportability under INA § 237, if he committed the offense within five years of his admission into the United States (since the New Jersey statute he was convicted under carried a maximum sentence of five years). However, it appears that although Mr. Lau committed the offense within five years of his admission as an LPR, he may have been previously admitted as a nonimmigrant, thus making the commission date of the offense more than five years of his “date of admission” as required under INA § 237(a)(2)(A)(I)(i).



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