

# Court sides with government in dispute over rights of green card holders accused of committing a crime

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(Stefani Reynolds/AFP via Getty Images)

The Supreme Court on Tuesday in [Blanche v. Lau](#) cleared the way for immigration officers to more freely deny lawful permanent residents – also known as green card holders – admission into the United States. By a vote of 6-3, the court, in an [opinion](#) from Justice Clarence Thomas, held that federal immigration law does not require border officers to have “clear and convincing evidence” that green card holders have committed a disqualifying crime before preventing them from reentering the country for an indefinite stay.

Justice Ketanji Brown Jackson dissented, in an opinion joined by Justices Sonia Sotomayor and Elena Kagan. Jackson asserted that the court’s opinion undermines “the benefits and security that come with having a green card” and wrote that she is worried that the court has “handed the Government a massive blank check” to put lawful permanent residents in “immigration limbo.”

The case stemmed from a June 2012 encounter between immigration officers and Muk Choi Lau, a Chinese citizen and lawful permanent resident of the United States who, one month earlier, had been charged under New Jersey law for allegedly selling nearly \$300,000 worth of counterfeit shorts. Under the Immigration and Nationality Act, lawful permanent residents such as Lau are typically admitted into the country –

that is, allowed to enter and stay indefinitely – after a short trip abroad. They are only to be treated as “[seeking an admission](#)” under a few exceptions, such as when they have “committed” “a crime involving [moral turpitude](#)” – that is, a dishonest or immoral act, such as fraud or theft. Because of this exception, immigration officers paroled Lau rather than admitting him. He could enter the U.S. to face prosecution, but the officers deferred consideration of his eligibility for admission.

One year later, Lau pleaded guilty to trademark counterfeiting, and he was convicted and sentenced to two years’ probation. The Department of Homeland Security then began removal proceedings on the ground that Lau’s conviction made him [ineligible for admission](#) under the INA. Lau fought his removal, contending that he had been “[improperly classified](#)” by immigration officers in June 2012 and should have been admitted, which would have forced the government to treat him as a lawful permanent resident and seek to remove him on the ground that he was [deportable](#).

An immigration judge and the Board of Immigration Appeals rejected that argument, but the U.S. Court of Appeals for the 2nd Circuit agreed with Lau. Immigration officers, the 2nd Circuit [held](#), must have “clear and convincing” evidence that a disqualifying crime has been committed to decline to admit a lawful permanent resident into the country, and the immigration officers considering Lau’s reentry did not.

On Tuesday, the Supreme Court vacated the 2nd Circuit’s decision, holding that border officers do not need to meet the “clear and convincing evidence” standard to treat a lawful permanent resident who has been charged with a crime of moral turpitude as a candidate for admission. “Nothing in the INA imposes” that burden, Thomas wrote in the nine-page majority opinion. It came, instead, “from inapposite Board of Immigration Appeals precedent.”

That BIA precedent, Thomas continued, addressed the evidence the

government must have during a removal hearing, not during an encounter at the border. He rejected Lau's assertion "that the Government 'expressly' conceded" that this evidence standard applied at the border, explaining that the government had made that concession only with regard to removal proceedings. The court was also unconvinced, Thomas explained, by Lau's claim that a lawful permanent resident cannot be found to have committed a crime involving moral turpitude until he is convicted of such a crime. "A straightforward reading of the text contradicts Lau's interpretation," Thomas wrote, because "the Government may regard a lawful permanent resident as seeking admission as soon as he '*committed a*' crime involving moral turpitude 'even if (as in [Lau's] case) the *conviction* occurred' later."

"We decline to read into the INA an additional clear-and-convincing-evidence burden on border officers entrusted with making 'quick judgments on the spot' when that burden is nowhere in the statute or even Board precedent," Thomas concluded.

In her 17-page dissent, Jackson argued that the "text, structure, and context" of the INA should have led the court to a different conclusion. "[U]nder the plain terms of the statute," she wrote, the government has "no discretion" to deny a lawful permanent resident admission into the country when it does not yet have evidence to justify that decision. "[T]he removal hearing—which can come months, or even years, after the LPR is demoted to 'seeking an admission' status and paroled in—is too late for the Government to carry its burden," according to Jackson.

Jackson emphasized what was at stake for lawful permanent residents, asserting that "[a] demotion to the status of 'seeking an admission' is not costless," because it makes it possible for them to "be immediately detained or paroled." "The downsides of detention are obvious," Jackson continued, and parole can also lead to "serious negative repercussions," including a loss of one's permanent green card and the ability to work.

“It is a fundamental maxim in our country that all are innocent until proven guilty,” Jackson wrote. And yet, “Lau was divested of his already-admitted status, deemed an applicant for admission, and paroled solely on the basis of” an indictment. “Congress could not have meant for the guarantees” afforded to lawful permanent residents “to be so cavalierly swept aside,” Jackson concluded.

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