

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOEL LOPEZ-LOERA, aka Loera Lopez Joel, <i>Petitioner,</i>	No. 07-71613 Agency No. A090-559-166
v.	
ERIC H. HOLDER JR., Attorney General, <i>Respondent.</i>	ORDER

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted
December 9, 2011—San Francisco, California

Filed February 9, 2012

Before: Diarmuid F. O’Scannlain, Robert E. Cowen,* and
Marsha S. Berzon, Circuit Judges.

COUNSEL

Michael J. Proctor, Caldwell Leslie & Proctor, PC, Los Angeles, California, argued the cause and filed the briefs for the petitioner. With him on the briefs were Andrew Esbenshade, Albert Giang, and Tina Wong, Caldwell, Leslie & Proctor, PC, Los Angeles, California, as well as Mathew L. Millen, Law Offices of Mathew L. Millen, Los Angeles, California.

*The Honorable Robert E. Cowen, Circuit Judge for the Third Circuit, sitting by designation.

Liza S. Murcia, United States Department of Justice Office of Immigration Litigation, Washington, D.C., argued the cause and filed the brief for the respondent. With her on the brief were Tony West and David V. Bernal, Department of Justice Civil Division, Washington, D.C.

ORDER

The government has moved to remand this case in light of the Supreme Court's decision in *Judulang v. Holder*, 132 S. Ct. 476 (2011). Because the Board of Immigration Appeals' decision rested solely on *Matter of Blake*, 23 I. & N. 722 (BIA 2005), we agree with the government that "remand of this case to the Board for further proceedings concerning Lopez-Loera's eligibility for relief under former 8 U.S.C. § 1182(c) (1994) in accordance with *Judulang v. Holder* . . . is warranted."

We also agree with the government that the Petitioner waived any claim that this matter should have been processed as a question of inadmissibility rather than deportability when he admitted that he was deportable.

Under the circumstances, we take no position on any decision of the BIA that rests on *Abebe v. Mukasey*, 554 F.3d 1203 (9th Cir. 2009) (en banc).

The government's motion to remand is therefore GRANTED and the case is REMANDED.