PROTECTION OVER PROCEDURE: WHY THE LAW REQUIRES DIVERGENT BURDENS OF PROOF IN ASYLUM AND WITHHOLDING OF REMOVAL CLAIMS

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ABSTRACT

In the whirlwind that is asylum and withholding of removal petitions, interpretations of the standards of proof in each statute can mean a matter of life or a lifetime of harm. Nowhere is this axiom more demonstrated than in the Fourth Circuit's interpretation of the withholding of removal statute's standard of proof in *Diaz-Hernandez v. Garland*. The asylum statute's standard of proof is logically more stringent than that of withholding of removal; the former requires petitioners to demonstrate that their membership in a protected group is the "central reason" behind their persecution, while withholding of removal requires petitioners to demonstrate slightly less: the petitioner's membership in a protected group is a "reason" behind threats to their lives and freedoms. The Fourth Circuit joined a nationwide circuit split on the interpretation of the standard of proof in both statutes, requiring petitioners to demonstrate the stronger nexus in asylum *and* withholding of removal. Conversely, the Sixth and Ninth Circuits followed a more correct interpretation of the standard of proof: asylum petitioners must demonstrate a stronger "central reason" behind persecution than withholding of removal petitioners.

Despite the varied textual interpretations between the Fourth and the Sixth & Ninth Circuits, petitioners and concerned organizations alike are at a loss. How can lawyers and petitioners prepare evidence and demonstrate

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the proper connections between their persecution and their membership in protected groups? Concerned organizations have demanded that different burdens for each form of relief be respected, calling attention to the varied benefits and procedural barriers to citizenship that each statute professes. How can petitioners face threats to their lives and still be beholden to a stringent standard of proof when the benefits of the statute are marginal in comparison? Considering the increase in hostility towards immigrants in the United States, this Note analyzes and evaluates the circuit split on the standard of proof interpretation of asylum and withholding of removal, critiques the Fourth Circuit's application of the standard of proof to its petitioners, and evaluates the social, political, and policy implications of a proper holding in these cases.

INTRODUCTION

On June 10th, 2024, the United States Court of Appeals for the Fourth Circuit decided *Diaz-Hernandez v. Garland*, further dividing a circuit split implicating the burden of proof in asylum and withholding of removal cases.[1] Two prevailing standards have been presented, and the split remains unresolved—with the Fourth Circuit's analysis highlighting a clear separation from the standard that the Sixth and Ninth Circuits have employed. The Fourth Circuit was later joined by the Second Circuit, which concurred with its holding in *Diaz-Hernandez*.

Elsy Diaz-Hernandez and Isai Diaz-Hernandez unlawfully entered the United States and applied for asylum, withholding of removal, and relief under the Convention Against Torture (CAT).[2] The brother and sister fled El Salvador—their country of origin—from their maternal uncle, Joe Enoc Hernandez Avalos.[3] Joe Enoc Hernandez Avalos abused the siblings because he blamed their mother for his own deportation from the United States. The siblings sought relief under the aforementioned immigration avenues as members of the particular social group, 'children of their mother,' claiming that the harm they suffered at the hands of their uncle

1. *See* Bernie Pazanowski, *Circuit Splits Reported in U.S. Law Week–June 2024*, BLOOMBERG L., https://news.bloomberglaw.com/us-law-week/circuit-splits-reported-in-u-s-law-week-june-2024 [https://perma.cc/9FWA-CJBC].

2. Diaz-Hernandez v. Garland, 104 F.4th 465, 467 (4th Cir. 2024).

3. *Id.*

occurred because of this identity.[4]

During their initial asylum application proceedings, implicating withholding of removal and relief under CAT, the Immigration Judge held that Elsy Diaz-Hernandez and Isai Diaz-Hernandez "failed to establish the required nexus between their harm and a protected ground and therefore the requirements for either asylum or withholding of removal."[5] The Immigration Judge stated that Jose Enoc Hernandez Avalos's abuse of Elsy Diaz-Hernandez and Isai Diaz-Hernandez as children of their mother was not the "central reason" for their abuse—at most being a "tangential reason" for their harm.[6] This was because the Judge considered evidence that Jose was an "aggressive person," and that his abuse—which was "triggered because of his drug, alcohol, and mental health issues"—was directed towards a general range of people rather than just towards Elsy and Isai.[7] Specifically, the Court "d[id] *not find a nexus between the harm experienced* by at least one of the respondents, [Elsy Diaz-Hernandez or Isai Diaz-Hernandez], *and the particular social group*."[8] Instead, the Court found a general propensity for violence by the uncle when under the influence of alcohol or due to mental health issues.[9]

Unsatisfied with this holding, Elsy Diaz-Hernandez and Isai Diaz-Hernandez appealed to the Board of Immigration Appeals (BIA), which then affirmed the Immigration Judge's holding and dismissed their appeal.[10] The BIA stated that the brother and sister's relationship to their mother was not "at least one central reason" for their uncle's abuse.[11] Unsatisfied again, Elsy and Isai filed a motion for reconsideration, stating that the Immigration Judge and BIA's use of the "central reason" standard was improper. They asserted that, instead, the Immigration Judge and BIA should have used a lesser standard which requires that "the protected ground was merely 'a reason' for the uncle's harm, not 'one central reason,'" specifically in regard to their withholding of removal claims.[12]

4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* at 473.
9. *Id.*
10. *Id.* at 473.
11. *Id.*
12. *Id.* at 467.

Elsy Diaz-Hernandez and Isai Diaz-Hernandez filed their motion for reconsideration in the United States Court of Appeals for the Fourth Circuit. Based upon their petitions, the Court held that Elsy and Isai failed to provide substantial evidence that there was a connection between the harm that they feared and the familial tie.[13] Additionally, the Court held that the BIA did not err in its application of the standard of review for the withholding of removal claim.

Part I of this Comment examines the legislative history of both asylum and withholding of removal statutes. This discussion includes the evaluation of the three other circuit court opinions implicated in *Diaz-Hernandez v. Garland*—one in support and two in opposition. Part II of this Comment provides an analysis of the Fourth Circuit's opinion. It discusses the Court's rationale and provides a critique of its decision. Looking to history, this Comment enunciates the proper interpretation of relevant sections of asylum and withholding of removal statutes, evaluating whether the Fourth Circuit erred in its reasoning. Part III concludes by evaluating the social, political, and policy implications that a proper holding may create.

I. HISTORY

The relevant statutes in cases regarding asylum and withholding of removal procedures are set out by the Immigration and Nationality Act (INA) under United States Code Title 8, "Aliens and Nationality."[14] Asylum procedures are governed by 8 U.S.C. § 1158 (the Asylum Statute), and withholding of removal procedures by 8 U.S.C. § 1231 (the Withholding of Removal Statute). For each statute, the critical inquiry for relief turns upon the burden of proof that is required to prevail on these claims and is part of the nexus requirement. Asylum claims point to 8 U.S.C. § 1158(b)(1)(B)(i), which states that:

> The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality,

13. *Id.*
14. 8 U.S.C. §§ 1101–1537.

> membership in a particular social group, or political opinion was or will be **at least one central reason** for persecuting the applicant.[15]

Withholding of removal claims point to 8 U.S.C. § 1231(b)(3)(A) for establishing the burden of proof, which states that:

> Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.[16]

Subsection (C) sets forth the criteria that can establish valid claims and explains in the Withholding of Removal Statute how to sustain this burden of proof.

> In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for **a reason** described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 1158(b)(1)(B) of this title.[17]

Upon review of each, the two statutes use differing language regarding the burden of proof for relief. From a strict textual evaluation, the Asylum Statute uses a "central reason" standard, while the Withholding of Removal Statute requires only "a reason" to grant relief. However, it is clear from *Diaz-Hernandez v. Garland* that some courts disagree with a textual interpretation—instead applying the heightened standard of "central reason" for withholding of removal claims. Thus, it is essential to look to legislative history to understand why the Withholding of Removal Statute lacks the "central" reason designation.

15. 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added).
16. 8 U.S.C. § 1231(b)(3)(A).
17. 8 U.S.C. § 1231(b)(3)(C) (emphasis added).

The Asylum Statute was codified on June 27, 1952, and has gone through several revisions, the latest of which occurred in December 2008.[18] It's 1952 version contained no mention of a central reason standard. Such phrasing did not appear until May 11, 2005 when legislators made several statutory revisions pursuant to the REAL ID Act.[19] The Act went into effect at the "9/11 Commission's recommendation that the Federal Government 'set standards for the issuance of sources of identification, such as driver's licenses.'"[20] In the bill presented by the House of Representatives for approval, the title highlights that the Asylum Statute's amendments were efforts to protect against terrorist entry.[21] This has far-reaching impacts on asylum seekers, heightening their burden of proof. The American Immigration Lawyers Association (AILA) has expressed strong concern with the text of the REAL ID Act, arguing that these amendments do little to enhance national security.[22]

The Withholding of Removal Statute was also codified on June 27, 1957, and amended by the REAL ID Act on May 11, 2005.[23] This amendment added subparagraph (C), which created the "a reason" standard. Textually, this amendment explicitly states that an alien needs only to demonstrate that their life or freedom was threatened by "a reason" described in subparagraph (A). The House and Senate discussed the Asylum and Withholding of Removal Statutes together during debates on the Real ID Act, yet enacted them with differing language. Many articles, even those published by the AILA, seem to concede without any inquiry that the Asylum and Withholding of Removal Statutes are to be applied the same, even though they differ textually.

A. Supporting Case Law

In *Diaz-Hernandez v. Garland*, the Fourth Circuit referenced several

18. 8 U.S.C. § 1158.

19. Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, § 101, 119 Stat. 231, 302–23 [*hereinafter* Real ID Act].

20. U.S. DEP'T OF HOMELAND SEC., REAL ID FREQUENTLY ASKED QUESTIONS, https://www.dhs.gov/real-id/real-id-faqs [https://perma.cc/UP4C-56AJ] (last visited Sep. 17, 2025).

21. 8 U.S.C. § 1231; REAL ID Act § 101.

22. *The REAL ID Act of 2005: Summary and Analysis of Provisions*, AM. IMMIGR. LAWS ASS'N (Jan. 27, 2005) https://www.aila.org/library/the-real-id-act-of-2005-summary-and-analysis [https://perma.cc/8MME-DNNF].

23. REAL ID Act § 101; H.R. 1268, 109th Cong. (2005).

cases in support of its conclusion and several in disagreement, further expanding the circuit split.

First, the Fourth Circuit discussed *Quituizaca v. Garland*, heard in the Second Circuit, to bolster interpretation of both the Asylum and Withholding of Removal Statute to include the "central reason" standard.[24] Here, a native citizen of Ecuador entered the United States unlawfully in 2006, and the government commenced removal proceedings for him in 2018. He sought relief because he was attacked twice by the "Morocha Kigwas," a gang in Ecuador that targeted him for his Quechua ethnicity.[25] The Immigration Judge denied all of his requests for relief because "'individuals who refuse to pay gangs or [who are] subject to their will'—was 'too diffuse.'"[26]

Xavier Pucha Quituizaca appealed to the BIA, arguing that the Immigration Judge failed in properly evaluating his claim based on ethnicity. The BIA found that he was not targeted based upon this reason; and regardless, the alleged particular social group was not "socially distinct and particular."[27] Xavier Pucha Quituizaca appealed once again, claiming that the BIA applied the incorrect legal standard to his withholding of removal claim. In evaluating this claim, the Second Circuit conceded that "[t]he REAL ID Act amendments do not expressly provide that § 1158(b)(1)(B)(i)'s 'one central reason' motive language also applies to withholding of removal claims."[28] Additionally, the Act did not amend the statutory language regarding withholding of removal. The Second Circuit evaluated this claim by following the two-step process set forth in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc*.[29] Under the Court's reasoning, the administration of the INA shall be left to the hands of the BIA, which Xavier Pucha Quituizaca appealed from. The court applied a two-step methodology, saying: (1) "if the statute is clear, we must carry out Congress's stated intent,"[30] and (2) "if provisions in the INA are ambiguous,

24. *See generally* Quituizaca v. Garland, 52 F.4th 103 (2d Cir. 2022).

25. *Id*. at 106; Quechuans are an indigenous group of the Andean mountains, mainly residing in Peru, Bolivia, and Ecuador. *Quechua*, BRITANNICA, https://www.britannica.com/topic/Quechua [https://perma.cc/NJH5-ZBRM] (last visited Sep. 19, 2025).

26. *Quituizaca*, 52 F.4th at 106.

27. *Id.* at 107.

28. *Id.* at 108.

29. *Id*. (applying Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984)).

30. *Quituizaca*, 52 F.4th at 108.

the BIA's interpretations of those provisions, if reasonable, are entitled to deference."[31]

Under the first step, the Second Circuit found that the statute's language "because of" was "somewhat opaque," reasoning that plain meaning considers the context in which the term is used.[32] The Court considered several interpretations and ultimately concluded that there was no clear answer, apart from requiring only "some degree of causation."[33] The Court then turned to statutory context, stating its belief that a harmonious reading of the Asylum and Withholding of Removal Statute would make sense for the INA as the statutes are "a symmetrical and coherent regulatory scheme."[34] The Court was unconvinced that the omission of the 'central reason' standard in the Withholding of Removal Statute was deliberate, stating that Xavier Pucha Quituizaca's reading of the statute was incorrect and unnatural.[35]

The Court then moved to the second step of its analysis, looking to whether the agency's interpretation and application were fitting. Here, the Second Circuit found that the "the BIA provides a reasonable explanation to resolve the ambiguity, which relies on statutory interpretation principles and is supported by practical considerations and the agency's prior decisions."[36] The Court showed the BIA massive deference and further explained that there was sufficient evidence that the BIA was correct in denying Xavier Pucha Quituizaca's requests for relief. Ultimately, the Fourth Circuit and Second Circuit (Supporting Circuits) upheld the 'central reason' standard, deferring to the BIA.

B. Dissenting Case Law

The Ninth Circuit and Sixth Circuit's (Dissenting Circuits) reasoning

31. *Id.* at 108–09.
32. *Id.* at 109.
33. *Id.* at 109–10.
34. *Id.* at 110 (citing to FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000)).
35. *Id.* at 110–11.
36. *Id.* at 113–14.

> Prior to the REAL ID Act's enactment, the BIA applied the same motive standard to asylum and withholding claims. The BIA's current interpretation maintains this consistency absent clear congressional intent to the contrary. In such a situation, it is reasonable to 'borrow[ ]' a motive standard that already appears in the INA and with which litigants, the BIA, and courts are already familiar.

Id.

evidently conflicts with the approach that the courts took in *Diaz-Hernandez v. Garland* and *Quituizaca v. Garland*. The Supportive Circuits have not been forgiving to the Dissenting Circuits, dismissing their arguments as "merely 'persuasive' authority."[37] Ultimately, the Dissenting Circuits hold that the textual, "a reason" standard is proper.

In 2017, the Ninth Circuit decided *Barajas-Romero v. Lynch*, holding that the BIA erred in applying the 'central reason' standard in a withholding of removal proceeding.[38] Here, a Mexican citizen resided lawfully in the United States as a child but was deported for a felony drug possession charge.[39] Back in Mexico, he was the subject of several attacks by the cartel. One instance included several days of being trapped in his own home and tortured by corrupt Mexican policemen.[40] Left with permanent scars, he fled to the United States by entering the country illegally with a false passport. Law enforcement caught him and he was convicted of illegal reentry; Immigration and Customs Enforcement (ICE) commenced proceedings to reinstate his previous deportation order.[41] Both the Immigration Judge and BIA asserted that his persecution: (1) was merely incidental to corrupt officers' extortion of money, (2) had nothing to do with his political views, and (3) separate from that of a government action.[42] Upon review, there is no debate that the police escalated their torture upon learning about his anti-corruption views,[43] which Raul Barajas-Romero asserted as the political

37. *Id.* at 119 (citing to Charles W. v. Maul, 214 F.3d 350, 357 (2d Cir. 2000)).
38. Barajas-Romero v. Lynch, 846 F.3d 351, 352 (9th Cir. 2017).
39. *Id.* at 354.
40. *Id.*
41. *Id.* at 355.
42. *Id.* at 356.

> The Immigration Judge denied Barajas-Romero's withholding of removal claim on the ground that the persecution 'was solely an effort to extort money by rogue police officers and not because of an expressed or implied [or imputed] political opinion' and the threat came 'solely from the off-duty, rogue officers themselves and not the government.' . . . The BIA agreed. While the BIA did not disagree that Barajas-Romero's testimony was credible, the BIA held that Barajas-Romero's withholding of removal claim failed because he failed to prove that the harm he suffered 'was fueled by any political motives, even though . . . [Barajas-Romero] expressed to his attackers that he was against police corruption. Rather, the attacks were designed to extort money.

Id.

43. *Id.*

> There is ample evidence in the record that the local police and the local drug cartel targeted him without knowing anything about his political opinion, merely

view he was seeking relief under.

The Court examined the language controlling these proceedings to determine "the extent to which political opinion must be the basis for the threat for the threat to be 'because' of the political opinion."[44] It noted that the decision by Congress to amend the Asylum Statute to include the 'central reason' standard (but not for the Withholding of Removal Statute), was "the product of a deliberate choice, rather than a mere drafting oversight."[45] The Court highlighted how this approach permits a mixed-motive analysis. Additionally, it offered reasons as to why Congress may have intentionally left the Withholding of Removal Statute unamended in this way, stating that, "Since in withholding the petitioner must show a probability, not just a well-founded fear, of persecution, Congress may have diluted the nexus requirement in order to afford more protection against mistaken deportations where a protected ground played into that likelihood."[46] The Court ultimately remanded to the BIA to apply the correct, lesser standard.

In 2020, the Sixth Circuit decided *Guzman-Vazquez v. Barr*, coming to the same holding as the Ninth Circuit—a claimant need only demonstrate that a "protected ground was at least one reason for the persecution to support a withholding of removal claim."[47] Here, a Mexican citizen appealed the rejection of his application for withholding of removal.[48] The BIA had affirmed the Immigration Judge's decision.[49] Manuel Guzman-Vazquez had lived in the United States for over twenty years, leaving Mexico at age seventeen and never returning.[50] As a child, his father and grandfather were murdered. He later suffered mistreatment by his mother and stepfather, including physical abuse.[51] Manuel Guzman-Vazquez feared

> because they thought they could get money from him. There is also ample evidence that the police escalated their torture considerably, from confinement, beatings, and cigarette burns, to scorpions, slashing with a machete, and permanent conspicuous facial disfigurement, after he voiced his opposition to police corruption.

Id.

44. *Id.* at 356–57.
45. *Id.* at 358.
46. *Id.* at 360.
47. Guzman-Vazquez v. Barr, 959 F.3d 253, 253 (6th Cir. 2020).
48. *Id*. at 256.
49. *Id.*
50. *Id.*
51. *Id.* at 256–57 ("In his hometown, his family faced violence at the hands of another family,

returning because his stepfather—who had strong connections to local law enforcement—may set up his killing for abandoning his family when he left. Additionally, he feared that the individuals who killed his father and grandfather may target him. This belief was founded in the killing of Manuel Guzman-Vazquez's cousin a few months prior to Manuel's hearing before the Immigration Judge. The protected class for which Manuel Guzman-Vazquez sought protection under asylum and withholding of removal was his identity as a stepchild.

The BIA asserted that Manuel Guzman-Vazquez did not demonstrate that his stepchild status was a 'central reason' for the harm that he suffered, nor would it cause him harm if he returned to Mexico.[52] Here, the Court affirmed the Ninth Circuit's view in *Barajas-Romero*, discussed above. The BIA noted that the application "requires the applicant to establish that he is a 'refugee,' 8 U.S.C. § 1158(b)(1)(B)(i), a requirement that is inapplicable to a withholding claim."[53] However, this argument overlooks the fact that Congress previously linked terms in the Withholding of Removal Statute to standards in the Asylum Statute.[54] Particularly, subsection (b)(1)(B)(ii) of the Withholding of Removal Statute requires proof that the applicant is a refugee, a rule that is linked to the Asylum Statute.[55] Because of Congress's deliberate connection, the Court reasoned that not incorporating the 'central

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who murdered both his father and grandfather.") ("[H]is mother cared more about her stepchildren, and that 'she can't worry about her kids with her relationship with her husband.' Guzman testified that his stepfather regularly subjected him to physical abuse.").

52. *Id.* at 259.

> [T]he BIA rejected Guzman's argument that he could satisfy the nexus requirement by demonstrating that his stepchild status was 'at least' one factor causing his persecution, explaining that 'that lower burden of proof for nexus has not been adopted by the United States Court of Appeals for the Sixth Circuit.' Instead, Guzman was required to demonstrate that his stepchild status was a 'central reason' for the harm he suffered.

Id.

53. *Id.* at 272.

54. *Id.* at 273. Section 1231(b)(3)(C) of the Withholding of Removal Statute reads:

> In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in *clauses (ii)* and (iii) of section 1158(b)(1)(B) [the asylum statute].

Id.

55. *Id.*

reason' test is not a mere oversight.[56]

C. Articles

There are several articles that comment on the standards for asylum and withholding of removal. They provide important insight into both public and expert opinion, as well as other movements to resolve the splits.

The Congressional Research Service published its discussion of the issue in 2017.[57] The organization noted that the government has still not asked the Supreme Court to resolve this issue,[58] further delaying its resolution. Due to this delay, they evaluated alternative resolutions on the backburner. For example, "the 115th Congress has been considering legislation that seeks to clarify the scope and application of the 'one central reason' standard." Specifically, after the decision in *Barajas-Romero*, "the House Judiciary Committee approved an amended version of the Asylum Reform and Border Protection Act of 2017 (H.R. 391), which, among other things, imposes the 'one central reason' standard on withholding of removal applications."[59] The proposed amendments made it no further than the Judiciary Committee. No additional Congressional action was taken to clarify the issue. A letter statement, published by the Human Rights Watch and joined by several national and state organizations, vehemently opposed the amendments in H.R. 391, potentially contributing to its demise.[60] The letter asserted that the changes would disproportionately impact Central American refugees[61] and make it more challenging to establish meritorious cases for both asylum and withholding of removal by imposing "overly burdensome standard[s]."[62] As asylum and withholding of removal become more politicized issues, rather than humanitarian ones, it will become more

56. *Id.*

57. *See generally* HILLEL R. SMITH, THE APPLICATION OF THE "ONE CENTRAL REASON" STANDARD IN ASYLUM AND WITHHOLDING OF REMOVAL CASES (2017).

58. *Id.*

59. *Id.*

60. Joint Letter to the House Committee on the Judiciary on the "Asylum Report and Border Protection Act" (H.R. 391) (July 26, 2017), https://www.hrw.org/news/2017/07/26/joint-letter-house-committee-judiciary-asylum-reform-and-border-protection-act-hr [https://perma.cc/N8HN-VPNP] [hereinafter Human Rights Watch].

61. *See generally id.*

62. *Id.*

difficult to make strides in the political process.

Later, the American Immigration Council developed a fact sheet in 2020 to explain the difference between asylum and withholding of removal.[63] The document describes asylum as a "foreign national" in or arriving at the United States who meets the "international law definition of a 'refugee.'"[64] In differentiating the two, the American Immigration Council labelled withholding of removal as "a form of protection that is less certain than asylum, leaving its recipients in a sort of limbo."[65] In these cases, a person that is granted withholding of removal cannot leave the United States, petition to bring their family to the United States, nor gain any fast track to citizenship. In contrast, asylum offers all of these opportunities.[66]

The American Immigration Council further details withholding of removal and its "limbo" characteristics in explaining that the United States government can freely revoke withholding of removal status and seek deportation of an individual if conditions in their home country improve.[67] This lesser form of protection is contingent upon the government refraining from executing the deportation order that was "withheld," but nevertheless entered against the individual.[68] It is most common for individuals to dually seek asylum and withholding of removal, with a small subset facing only withholding of removal proceedings. "In 2019, 543,997 cases were filed in immigration court, of which 3,652 (0.6%) were withholding-only proceedings."[69]

This introduces arguments for both consolidation and consistency—or, conversely, redundancy. As to consolidation and consistency, petitioners often concurrently complete applications for both asylum and withholding of removal. Using the same nexus standard would streamline the evaluation process, promoting efficiency. And for redundancy, using the same standard undermines the purpose of having two separate applications. The two protections serve distinct purposes yet are evaluated without this in mind. It

63. *See generally The Difference Between Asylum and Withholding of Removal*, AM. IMMIGR. COUNCIL (2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_difference_between_asylum_and_withholding_of_removal.pdf [https://perma.cc/4YMZ-3FR2].

64. *Id.* at 1.

65. *Id.* at 2.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 4.

is critical to recognize that asylum and withholding of removal are often understood in the same breadth, but a closer look at their protections and purposes reveals compelling distinctions.

The Federal Register also provided descriptions on procedures for asylum and withholding of removal in 2020.[70] It uses asylum and withholding of removal almost interchangeably, rarely distinguishing between the two protections.[71] Moreover, the Federal Register dismissed public comments criticizing the extension of asylum standards to withholding of removal claims (in the report's sections on the nexus requirement).[72] Section 4.4 noted several commenters' concerns over conflating the two statutes' standards, replying that these are misstatements of the rules with "erroneous reasoning."[73] The Federal Register's response stated that the nexus provisions, together, do not eliminate the mixed motive analysis or violate the 'central reason' standard.[74] The Federal Register blatantly lumps the two provisions into one, blurring the avenues of protection. Its report effectively collapses the two into one pathway for individuals seeking safety in the United States.

Ultimately, the REAL ID Act caused confusion and created a multiplicity of interpretations of the asylum and withholding of removal

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70. Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80274 (Dec. 11, 2020) [*hereinafter* Fed. Reg. Comments and Response].

71. *See id*. at § 2.6.

> [T]he Departments are adopting the following eight non-exhaustive circumstances, each of which is rooted in case law, that would not generally support a favorable adjudication of an application for asylum or statutory withholding of removal due to the applicant's inability to demonstrate persecution on account of a protected ground.

Id. See id. at § 4.4 (describing the non-exhaustive list again and conflating the two statutes).

72. *Id.* at § 4.4.

73. *Id*.

> As an initial point, to the extent commenters' points misstate the rule, address issues not raised by the rule, are rooted in erroneous reasoning, are contrary to facts or law, or reflect unsubstantiated and exaggerated melodramatic views of the rule, the Departments decline to adopt those points.

Id.

74. *Id*.

> [T]he rule did not state, nor was it meant to be construed, that it precluded mixed motive analysis if the situation involved one of the five protected grounds in addition to one of the listed circumstances that would generally not be harm on account of a protected ground.

Id.

statutes. There are several forms of logic utilized by the Circuit Courts, immigration experts, United States reporters, and humanitarian organizations, but the debate remains unsettled.

II. ANALYSIS

A. The Court's Analysis

In *Diaz-Hernandez v. Garland*, the Fourth Circuit discussed Elsy Diaz-Hernandez and Isai Diaz-Hernandez's claim that the BIA erred in applying the 'central reason' standard to their withholding claim after previously denying their asylum claim on the same grounds.[75] The Court reviewed the record, asserting that the Immigration Judge "found that the uncle's revenge for his deportation was at most a 'tangential' reason for his harm to the siblings and thus that they had not established the requisite nexus."[76] Because of this, the Court questioned the relevance of the standard used given that "no nexus" was found at all.[77] It further detailed the BIA's reasoning in *Matter of C-T-L-* to explain the BIA's adoption of the same standard in both asylum and withholding of removal claims.[78] The Asylum Statute uses the phrase "on account of" as causation language to construct the nexus requirement.[79] The Withholding of Removal Statute uses the phrase "because of."[80] There, the BIA was convinced that the "*similar causation language*" in the Withholding of Removal Statute—compared to the Asylum Statute—indicated Congress's desire to "harmonize" the burden of proof requirements.[81]

The Fourth Circuit adopted the BIA's reasoning in its opinion, finding it persuasive.[82] The Court contended that, even if it were to adopt the 'a reason' standard for withholding of removal, the conclusion would remain

75. Diaz-Hernandez v. Garland, 104 F.4th 465, 474 (4th Cir. 2024).
76. *Id.*
77. *Id.*
78. *Id.* at 475. In *Matter of C-T-L-*, the BIA held that "an applicant for *withholding of removal* must demonstrate that race, religion, nationality, membership in a particular social group, or political opinion was or will be '*at least one central reason*' for the claimed persecution." *Id*. (internal citation omitted); This is an influential, precedential case in which many of the circuits either dissent or align with.
79. *Diaz-Hernandez*, 104 F.4th at 475.
80. *Id.*
81. *Id.*
82. *Id.* at 476.

the same. Proposition of just any reason would not suffice to hold that "the persecution or fear of persecution was *because of* the protected grounds."[83] The Court essentially stated that Elsy Diaz-Hernandez and Isai Diaz-Hernandez's 'reason' was nevertheless tangential or incidental to their claim, failing both the 'a reason' and 'central reason' standards. In adopting the BIA's logic, the Court attributed their use of deference to *Chevron* but did not state it as the deciding factor. Despite deference, the Court "[is] not plowing new ground."[84] The Court stated that it had treated the two statutes the same for many years, citing several cases decided since the 2005 amendment to the asylum provision.[85] The Court characterized petitioners' argument as requesting that the burden of proof for withholding of removal be established by "any reason — however incidental, tangential, or superficial"[86] and dismissed that request. The Fourth Circuit held that the statutory requirement requires more, affirming the BIA and upholding the 'central reason' standard for both asylum and withholding of removal claims.[87]

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83. *Id.*

84. *Id*.

85. *Id.*

> [sic] In *Quinteros-Mendoza*, where we addressed both asylum and withholding of removal claims, we recognized that the 2005 amendment did not 'radically alter the standard in mixed motive cases,' noting that the nexus *in both* reasonably must be more than 'incidental, tangential, superficial, or subordinate.' 556 F.3d at 164 (cleaned up). Again, in *Salgado-Sosa*, which also involved asylum and withholding of removal claims, we noted: The primary issues on appeal involve Salgado-Sosa's applications for asylum and withholding of removal. Both asylum and withholding of removal are based on an applicant's showing of persecution, or, more specifically persecution on account of a statutorily protected status, a list that includes 'membership in a particular social group' as well as race, religion, nationality, and political opinion. . . . *[T]he core condition of eligibility — that there be a nexus between threatened persecution and protected status — is the same.* 882 F.3d at 456–57 (emphasis added). Then we applied the same 'at least one central reason' standard in resolving the nexus requirements. *Id.* at 457. And in *Madrid-Montoya*, while addressing applications for both asylum and withholding of removal, we observed that the 'nexus requirement' was the same for the two claims.

Id.

86. *Diaz-Hernandez*, 104 F.4th at 476.

87. *Id.*

> The statutory requirement of causation — 'because of' and 'on account of' — requires more, and Congress's exposition of that more in the context of asylum claims was as good a definition as any for construing 'a reason' in connection with withholding of removal claims. Accordingly, we affirm the BIA's

B. The Court Erred in Its Analysis

Because asylum and withholding of removal provisions have a prolific and tumultuous history of multiple interpretations, it is difficult to conclude which standard is the right one: 'a reason' or 'central reason.' However, a closer look at the reasoning behind the Supporting Circuits' decisions, which require the same nexus standard (the Asylum Statute's "central reason") reveals many flaws.

i. The Court Refused to Acknowledge a Textual Interpretation

A textual interpretation indicates that there are two distinct burdens of proof for the nexus requirement. The Withholding of Removal Statute uses the language, 'a reason,' and later points the trier of fact to subsections (ii)[88] and (iii)[89] of the Asylum Statute, sections which describe how to sustain the

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application of the 'one central reason' standard for proving the nexus element in both asylum claims and withholding of removal claims.

Id.

88. 8 U.S.C. § 1158(b)(1)(B)(ii).

Sustaining burden. The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

Id.

89. 8 U.S.C. § 1158(b)(1)(B)(iii).

Credibility determination. Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility

burden and make credibility determinations. Many scholars and courts find that this connection to the Asylum Statute indicates intent to parallel the burden as set forth therein.

However, this argument is flawed. In already mentioning relevant subsections in the Withholding of Removal Statute, Congress could have directly pointed to the entirety of section (B) for the burden of proof for asylum, which would include the "central reason" standard. Instead, Congress explicitly referred solely to subsections (ii) and (iii), which are simply procedural and direct the trier of fact on sufficiency of evidence and credibility.

In *Diaz Hernandez v. Garland*, the Fourth Circuit stated that the use of the language 'because of'[90] in the Withholding of Removal Statute and 'on account of'[91] in the Asylum Statute reflected Congress's intent to create the same nexus requirement for both claims. While this argument appears compelling on its face, this language is found in the general discussions of its purpose. It is not until the separate sections on conditions required to grant either asylum or withholding of removal that the statutes specify the burdens of proof. Using language intended to describe what the two provisions entail and the coverage they protect is an error. When courts look to the application of the statutes to find the appropriate sufficiency

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> determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

Id.

90. 8 U.S.C. § 1231(b)(3)(A)(1).

> Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country **because of** the alien's race, religion, nationality, membership in a particular social group, or political opinion.

Id. (emphasis added).

91. 8 U.S.C § 1158(a)(2)(A).

> Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened **on account of** race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

Id. (emphasis added).

requirement, they need to look to the exact provision that sets out these requirements.

While similar, the text of the subsections that impact the burden is markedly different. On its face, the Asylum Statute and Withholding of Removal Statute lay out distinctly diverging nexus requirements.

The basic principles of statutory construction elucidate that when Congress uses different language in different parts of a statute, it intends different meanings. Here, the fact that Congress chose 'a reason' in the Withholding of Removal Statute, and 'central reason' in the Asylum Statute, is a clear indication that they intended different standards to apply. Courts have long held that statutory distinctions must be given meaning, and the Fourth Circuit's refusal to do so undermines and contravenes this principle.

ii. Circuit Court Support

Differentiating the standard in the Withholding of Removal Statute as requiring the less demanding 'a reason' standard is supported by case law from other circuits. As discussed, the Dissenting Circuits reason that the Withholding of Removal Statute denotes a "less demanding standard."[92] The logic employed by these courts is sound and consistent in upholding the key goals of the statutes, while simultaneously refraining from inserting its own perceptions regarding the purpose of the statutes in its application.

The Ninth Circuit in *Barajas-Romero v. Lynch* reasoned that the language 'on account of' and 'because of' merely address the prosecutor's motive.[93] Additionally, the fact that Congress referenced only certain sections of the Asylum Statute in the Withholding of Removal Statute was a "deliberate choice" to only include those sections, and not a "mere drafting oversight."[94] Because the statutory language is unambiguously different, the

92. Barajas-Romero v. Lynch, 846 F.3d 351, 360 (9th Cir. 2017) ("We hold that 'a reason' is a less demanding standard than 'one central reason.'"). *See generally* Guzman-Vasquez v. Barr, 959 F.3d 253 (6th Cir. 2020).

93. *Barajas-Romero*, 846 F.3d at 357.

94. *Id.* at 358.

> When Congress amended the withholding of removal statute to clarify the applicable burden of proof, it cross-referenced clauses (ii) and (iii) of the asylum statute's burden-of-proof provision, but not clause (i). Clause (i) is the provision that imposed the 'one central reason' standard for asylum claims. Congress's express incorporation of two of the three asylum burden-of-proof provisions into the withholding of removal statute, but not the provision including the 'one

Court stated that there is "no reason to assume that Congress meant for them to be the same."[95] Additionally, because there is no ambiguity in the language of the statute, there is no justification for giving deference to the administrative agency's contrary view.[96]

The Sixth Circuit in *Guzman-Vazquez v. Barr* indicated that there is no need to look any further than the text of the statutes.[97] Building upon the logic of the Ninth Circuit, the Sixth Circuit stated that the government's argument was insufficient to link the 'central reason' standard to the Withholding of Removal Statute.[98] The government's argument referred to the link of the term 'refugee' in the Withholding of Removal Statute to the definition in the Asylum Statute.[99] This link, the government purported, was enough for the burden in the Asylum Statute to extend to the Withholding of Removal Statute.[100] However, the Court rightfully held that the differing language was indicative of an intent to *not* link the two statutes regarding the burden of proof.[101]

Additionally, the government and dissent argued that applying the lower standard for withholding of removal would have the implication of making it asynchronous with asylum considerations.[102] The Court replied that this claim, while true, lowers the standard and ignores the fact that a withholding of removal applicant bears the burden of a separate, higher requirement on the question of proving the likelihood of persecution.[103] Compared to the Asylum Statute, the Withholding of Removal Statute bears a higher burden of proof as to the likelihood of persecution.[104] Maintaining the textually grounded 'a reason' standard, therefore, does not significantly impact the overall burden of proof in a withholding of removal application. The likelihood of persecution burden is not impacted by this decision,

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central reason' language, indicates that Congress did not intend for the 'one central reason' standard to apply to withholding of removal claims.

Id.

95. *Id* at 360.
96. *Id.*
97. *Guzman-Vazquez*, 959 F.3d at 272.
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.* at 274.
103. *Id.*
104. *Id.*

meaning that there are still significant differences in burdens of proof between the Asylum Statute and Withholding of Removal Statute. Again, synchrony between the two statutes was not Congress's goal.

Ultimately, the courts in support of the 'a reason' standard for withholding of removal applications take a simple, textualist approach in their decision-making. The idea underlying these arguments is that it is not the role of the courts to inject their own views of the statutes into their decisions; instead, they should read the statutory language and apply it as it is written before them.

iii. Public Policy and Sentiment

These conclusions also have received wide support via public sentiment. First, the House Judiciary Committee's failure to push forward an amended version of the Asylum Reform and Border Protection Act indicates a lack of support for the revisions. The committee was unable to gather enough internal support for the amendments, which demonstrated a resistance to adopting such a policy. Additionally, the pushback from state and national organizations denotes a plain opposition to the proposed amendment. The public rallied to publish the Human Rights Watch statement, calling out the harmful impacts of the proposed amendments.[105] The letter was signed by 46 national organizations and 25 state organizations.[106] This public outcry revealed a call to uphold "the United States' proud history and tradition of protecting and welcoming victims of persecution, oppression, and torture,"[107] values which would diminish by unjustly heightening the burden of proof to require a 'central reason.'

Further, the American Immigration Council's fact sheet discusses the roles of asylum and withholding of removal within the immigration system. Because withholding of removal is "less certain"[108] than asylum, public policy considerations support application of a lower burden of proof. Withholding of removal offers fewer benefits than asylum, as it does not provide a pathway to permanent residency or citizenship. Although it may seem logical to equate the procedures for evaluating asylum and

105. Human Rights Watch, *supra* note 60.
106. *Id.*
107. *Id.*
108. AM. IMMIGR. LAWS ASS'N, *supra* note 22, at 2.

withholding of removal claims, given that applications are often submitted together, the differences in their protections underscore why this approach is flawed. Given these diminished protections, it makes little sense to impose an equally stringent burden of proof. Thus, it becomes unjust to hold that a heightened burden of proof standard is required to secure a protection that is faint in comparison to that of asylum, especially when the text of the statute reflects a lower burden.

It is also becoming increasingly difficult for applicants to win asylum and withholding of removal claims. Immigration policies passed by the Trump administration have caused a decline in the number of asylum and withholding of removal applications being granted.[109] The Supportive Circuits' imposition of a "central reason" standard in the Withholding of Removal Statute, where it is not permitted, creates an unnecessary and unjustified hurdle.

With increasing hostility toward migrants in the United States, it is not the judiciary's role to reflect this sentiment by imposing harsher standards not elucidated in the statutes themselves. If public sentiment has such conviction to create this higher burden and reduce the number of asylum and withholding of removal applications granted, it is the role of Congress to do so by amending the statutes to directly state the 'central reason' standard (as they refrained from with the REAL ID Act).

Again, the Federal Register erred in using asylum and withholding of removal interchangeably. While an official journal of the United States government, these legal notices are not free from error. Instead, such a document is a summary of propositions published in notices by the Department of Homeland Security and Department of Justice (the Departments).[110] The nexus section of the *Procedures for Asylum and Withholding of Removal* document lists comments submitted by the public, noting their concerns with the notice of rules made by the Departments. These responses aim to clarify the Departments' interpretations of the statutory provisions, but do not independently establish any legal obligations. The Federal Register's response to commentators was dismissive, misunderstood statutory interpretation itself, and offered weak explanations as to their policy justifications.[111] While important to consider

109. *Id.* at 4, 6.
110. Fed. Reg. Comments and Response, *supra* note 70 (summary).
111. The Federal Register offers meritless statements in response to commentators' concerns. *Id.*

the Departments' interpretations, they are not legally binding nor true to statutes. As evidenced in the AIC's fact sheet, withholding of removal and asylum are vastly different in the amount of protection they provide to successful applicants. The Federal Register advocated for clarity and uniformity—qualities that, while admirable, cannot outweigh the literal text of the statutes.

While the applications are most frequently submitted and reviewed together, it does not make their processes and protections the same. This is a common misunderstanding that has permeated the public and seeped its way into the judiciary. Blurring the two provisions into one diminishes the roles that withholding of removal and asylum were designed to address as two distinct avenues of protection. However, the public has nonetheless made clear that this misunderstanding should and will not override the plain meaning of the statutes as supported by the AIC, public organizations like Human Rights Watch, and commenters on the Federal Register.

iv. Case Law Supporting BIA Deference has Been Overturned

The case law supporting a heightened standard in withholding of removal claims relied upon the *Chevron* doctrine, which required courts to defer to agency interpretations of ambiguous statutes.[112] The Supreme Court overturned this doctrine in 2024 with *Loper Bright Enterprises v. Raimondo*.[113] There, the Court held that it is not the administrative agencies' role to interpret statutory language, this decisions rests with the judiciary.[114]

As argued, the Withholding of Removal Statute's language is not ambiguous at all. However, even if the language is found to be ambiguous, *Loper Bright Enterprises* limits agency power and returns this interpretive authority to the judiciary to apply the law as written, not as understood by agency common practices. Administrative practices themselves are not the law. Therefore, the BIA's understanding or goal in heightening this burden is not to be valued by courts in reviewing the BIA's decisions. Instead,

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at § 4.4 ("As with all regulations or policy changes, the Departments considered the effect this rule will have; accordingly, the Departments reject commenters' allegations that such implications were not considered.") ("While the Departments did consider expediency and fairness, the Departments disagree that expediency is prioritized over and above due process.").

112. *See generally* Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984).

113. *See* Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 412 (2024).

114. *Id*. at 384–412.

courts must comply with the statutes' language, and only this.

III. SOCIAL, POLITICAL, AND POLICY IMPLICATIONS

There are real-world consequences of the holding in *Diaz-Hernandez v. Garland*—many of which impact the lives of vulnerable individuals fleeing harm. Using a 'central reason' standard adds a higher barrier to protection, denying individuals access to safety that they would otherwise qualify for. This interpretation precludes a mixed motive analysis, which would recognize that, often, persecution is not happening for one reason alone. An applicant's claim may rest upon both protected and non-protected grounds underlying their fear of persecution.

To acknowledge these complexities, mixed motive analyses permit an inquiry into whether the protected ground is sufficient to satisfy a grant of protection under the Asylum or Withholding of Removal Statutes. It is not always clear that persecutors are targeting these victims for one primary purpose, but rather for a myriad of reasons.[115] Being unable to identify or advocate for a primary reason for persecution means that more individuals are denied withholding of removal, resulting in higher rates of deportation for applicants that need relief the most—to countries where they face serious, life-threatening danger.

Mixed motive analyses are precluded from a "central reason" standard because of the difficulty in proving that one reason for persecution was more of a motivating factor than any other reason that is not a protected ground. However, case law and other sources assert that mixed motive analyses are not entirely extinguished, as the applicant "need not show that the protected ground was the *only* reason for persecution."[116] But, this fails to acknowledge the steep burden that is implemented in the REAL ID's

115. U.S. CITIZENSHIP & IMMIGR. SERVS., NEXUS AND THE PROTECTED GROUNDS 9 (2025), https://www.uscis.gov/sites/default/files/document/lesson-plans/Nexus_minus_PSG_RAIO_Lesson_Plan.pdf [https://perma.cc/ZP2P-Y6PB].

> The persecutor may have several motives to harm the applicant, some of which may be unrelated to any protected ground. There is no requirement that the persecutor be motivated *only* by the protected belief or characteristic of the applicant.

Id.

116. Garcia v. Wilkinson, 988 F.3d 1136, 1143–44 (9th Cir. 2021) (citing Parussimova v. Mukasey, 555 F.3d 734, 741–42 (9th Cir. 2009)).

inclusion of a "central reason" standard to asylum cases. Therefore, in cases where individuals may have already experienced, or expect to experience persecution due to several reasons, the extension of the 'central reason' standard may prove to be fatal to a claim.

Nonetheless, it remains unclear whether such language should be extended to the Withholding of Removal Statute. United States Citizenship and Immigration Services (USCIS) stated that, "This 'one central reason' standard was added to the statute by the REAL ID Act and applies only to asylum adjudications." Yet, we have noted that the Federal Register and several circuits have deemed otherwise. This uncertainty must be resolved in favor of applicants, offering them a reasonable avenue for protection as the Withholding of Removal Statute textually compels.

Withholding of removal is not a permanent protection, yet the judiciary, as evidenced by the Supportive Circuits' decisions, has bolstered these barriers to protection. The outcome of these decisions disproportionately impacts vulnerable groups, as detailed in the Human Rights Watch letter.[117] Additionally, because a higher burden is coupled with lower protection, applicants face even more uncertainty in a process that is already overtly complex and worrisome. These individuals have primarily applied out of fear and may have already faced trauma. This higher burden disproportionately impacts applicants who already have difficulty accessing necessary documentation to prove their claims. Making an already difficult process more uncertain is unfair, especially when the statute is not read in favor of applicants. The denial of this textual interpretation is an injustice.

The 'central reason' standard also reinforces a broader trend of judicial restriction towards asylum and withholding of removal, aligning with a systemic push to curtail relief for refugees. There have been increasing attempts to erode humanitarian protections established by Congress, developing a highly adversarial landscape for individuals seeking protection. Heightening the burden of proof to be granted protection effectively limits protection that is otherwise available, creating a chilling effect. This effectively deters individuals from seeking asylum or withholding of removal. Such a shift could lead to an increase in undocumented migration as individuals fear that legal avenues for relief are

117. Human Rights Watch, supra note 60 ("This provision will likely disproportionately impact thousands of Central American refugees who flee to the United States on the basis of gang violence, as well as women and children who have been victims of domestic abuse.").

insurmountable. This unintended consequence is contrary to the initial goals of these amendments—keeping more individuals out of the country. Rather, it may open the door to more individuals traveling and entering the United States illegally.

The decision in *Diaz-Hernandez* also has serious political consequences. The partisan divide on immigration issues was already stark, and this circuit split has only widened the gap. There is also an increased risk of public backlash. High-profile cases hitting headlines may raise calls for litigation or policy reversals. As the Human Rights Watch letter illustrates, public sentiment calling for change and acceptance of migrants fleeing dangerous home countries is unmistakable.[118] Even if public sentiment was to shift towards equating the withholding of removal burden with that of asylum, such a reconstruction is the role of the legislature, not the judiciary. Further, relations amongst our own constituents are at risk, as are relationships across the world. This decision may impact diplomatic relations if foreign governments object to the return of denied applicants.

With *Diaz-Hernandez v. Garland*'s holding also comes policy impacts upon the immigration system. Immigration Judges are likely to deny more withholding of removal applications as applicants become increasingly unable to prove that they are deserving of protection. As rejections increase, the number of appeals will also rise, exacerbating an already backlogged system. This inefficiency contradicts the Court's purported goal of uniformity and efficiency in application decisions. Instead of promoting clarity, the heightened burden creates additional legal complexities, increased litigation, and prolonged uncertainty for applicants. Ultimately, there are serious risks that followed the holding in *Diaz-Hernandez v. Garland*. It is up to the public to decide if they are willing to accept them.

CONCLUSION

The decision in *Diaz-Hernandez v. Garland* perpetuates a circuit split on a very important issue. It serves as another attempt at valuing procedure over the spirit of the law underlying asylum and withholding of removal claims. The holding perpetuates a troubling trend in immigration law jurisprudence—the valuing of procedural efficiency over justice and protection of human lives. The Fourth Circuit reasoned that the legislature

118. *See id*.

used 'harmonizing' language in the Withholding of Removal Statute in order to conflate it with the burden of proof required in the Asylum Statute, searching for meaning in a different statute rather than confining its analysis to the Withholding of Removal statute's self-contained language. A separate link to the Asylum Statue does not facilitate other connections.

Additionally, the Court deferred to the BIA's findings, relying on the now overturned *Chevron*. The law now says that courts should not adopt agencies' assertions. With *Chevron* no longer binding, courts are empowered to independently interpret the Asylum and Withholding of Removal Statutes without needing to defer to the BIA's harmful and overly strict practices.

Lastly, the Fourth Circuit held that applying the same burden of proof for the two statutes would increase efficiency. However, improving efficiency in cases in which real people's lives are in jeopardy should not be the primary goal. Instead, there are several circuits and legal authorities that suggest the two burdens of proof are not the same. They reason that a simple textual interpretation provides clarity to this issue. Authorities acknowledging the validity of the distinctions between the two statutes provide a more textually faithful approach—one that aligns with the spirit of United States asylum law and practices of humanitarianism. Courts must revisit the burden of proof issue with these goals in mind, rather than procedural expediency. Applicants for asylum and withholding of removal deserve due care in the evaluation of their claims.

Beyond the legal implications of *Diaz-Hernandez*, its practical consequences demand reevaluation. There are grave risks to the lives of individuals seeking protection, a weight that should not be diminished or overlooked. The spirit of asylum and withholding of removal is to promote humanitarian relief, which necessitates a proper textual interpretation—one that respects Congressional intent rather than restrictive administrative practices.