William & Mary
Law Review Online

VOLUME 67 NO. 2, 2025

AN UNCLEAR CONNECTION: THE ASYLUM SYSTEM'S "ONE CENTRAL REASON" TEST

TABLE OF CONTENTS

INTRODUCTION

A parent's first concern is protecting their family. So, imagine the fear Ana Orellana-Recinos must have felt when she received a phone call from members of MS-13 telling her to "convince her son to sell drugs for the gang" and threatening "that '[i]f [her] son refuse[d], the two of [them] w[ould] pay.'"[1] Consider further how she must have felt when, following this call, "[f]ive gang members 'stood outside [her home] and held weapons for approximately a half an hour.'"[2] Finally, consider how she must have felt when she was denied asylum because the court adjudicating her claim did not accept that she was persecuted because she was Kevin's mother.[3]

Ms. Orellana-Recinos' story is not an uncommon one. To qualify for asylum, an applicant must prove that they are "unable or unwilling" to return to their country due to persecution or a well-founded fear of persecution.[4] In satisfying this burden, applicants were traditionally required to show that their persecution was based "at least in part" on their "membership in a protected class."[5] However, in the REAL ID ACT of 2005 (REAL ID Act), Congress altered this "at least in part" standard to require applicants to prove instead that their membership in a protected class "was or will be *at least one central reason*" for their persecution.[6] This change from "at least in part" to "one central reason," has caused a circuit split as courts struggle to define how connected an applicant's persecution must be to their membership in a protected class to qualify for asylum.[7]

---

1. Orellana-Recinos v. Garland, 993 F.3d 851, 853 (10th Cir. 2021).

2. *Id.*

3. *See id.*

4. 8 U.S.C. § 1101(a)(42)(A) (2023).

5. Chicas-Machado v. Garland, 73 F.4th 261, 287 (4th Cir. 2023) (Agee, J., concurring in part and dissenting in part). Protected classes include an applicant's race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1158(b)(1)(B)(i).

6. *Id.* (emphasis added).

7. *See* Olivia Ilgar, *Navigating Asylum: The Standards in Establishing Persecution*, EMORY L. SCH. SUP. CT. ADVOC. PROGRAM: SUNDAY SPLITS (Feb. 25, 2024), https://www.sundaysplits.com/blog/olivia-ilgar-navigating-asylum-the-standards-in-establishing-persecution [https://perma.cc/2DRN-9FBG].

The split has situated the Fourth Circuit as a fairly permissive jurisdiction—requiring a less rigid nexus between the applicant's persecution and membership in a protected class, while the Tenth and Eleventh Circuits have been more restrictive.[8] This variance poses a significant problem for Immigration Judges (IJs) adjudicating asylum cases and, more significantly, for asylum applicants themselves.[9] This Note considers the different rulings between these circuit courts and argues that the Fourth Circuit offers the approach most consistent with Congressional intent.

Part I of this Note will provide relevant background information on the asylum system in the United States and the significant changes made in the REAL ID Act.

Part II will analyze the current requirements that asylum applicants must meet to succeed in their asylum petitions, including a brief explanation of each element and the legislative history of the REAL ID Act. Part II will assert that based on the legislative history, the "one central reason" standard is best understood as only slightly elevating an applicant's burden of proof to further protect against threats to the U.S. without becoming overly exclusive.

Part III of this Note will analyze the emerging circuit split. Divided into three subdivisions, this Part will analyze the Tenth, Eleventh, and Fourth Circuit decisions in detail while considering the different facts of each case that led to three different conclusions on how to interpret the same Congressional standard.

Part IV will contemplate how this issue should be resolved. Primarily, it will argue that the proper next step is for either the Supreme Court or Congress to explicitly conclude that the Fourth Circuit offers the best understanding of the "one central reason" standard. This section will also consider counterarguments asserted by those who believe that Congress did intend for the "one central reason" standard to act as a strong barrier to asylum.

---

8. *Id.*

9. Cases before an immigration court are decided by IJs who "must be attorneys" and are "appointed by the Attorney General." KEVIN R. JOHNSON, RAQUEL ALDANA, BILL ONG HING, LETICIA M. SAUCEDO & ENID TRUCIOS-HAYNES, UNDERSTANDING IMMIGRATION LAW 235 (2d ed. 2015).

I. BACKGROUND INFORMATION

This Part will provide a brief overview of how the U.S. immigration system works as well as how the REAL ID Act altered the requirements asylum applicants must meet to have their applications approved.

A. The Path to Asylum: American Immigration Policy

The American immigration system is deeply complex. Governed by the Immigration and Nationality Act (INA), U.S. immigration law offers many different pathways to admission.[10] These paths include employment, family relationships, refugee or asylee status, the diversity visa program, temporary protected status, and other "humanitarian protections," all requiring their own distinct qualifications.[11] Beyond establishing these pathways, the INA also regulates the number of immigrants permitted access to the U.S. through the establishment of a cap of 675,000 permanent immigrant visas annually.[12] This cap does not apply to refugees or asylum seekers.[13] The numerical cap for refugees is decided each year through consultation between the President and Congress.[14] As

10. *See* AM. IMMIGR. COUNCIL, HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS: FACT SHEET 1 (June 24, 2024), https://www.americanimmigrationcouncil.org/fact-sheet/how-united-states-immigration-system-works-fact-sheet/ [https://perma.cc/5GCA-HS3V].

11. *See generally id.* (describing the different paths open to immigrants seeking to enter the U.S.). The U.S. Department of Homeland Security defines a refugee as "a person outside his or her country of nationality who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." *Refugees*, OFF. HOMELAND SEC. STAT. (Aug. 20, 2025), https://ohss.dhs.gov/topics/immigration/refugees-and-asylees [https://perma.cc/U2QC-ZGXR]. It defines an asylee as "a person who meets the definition of refugee and is already present in the United States or is seeking admission at a port of entry." *Id.*

12. AM. IMMIGR. COUNCIL, *supra* note 10, at 1.

13. *Id.*

14. *Id.* These caps can vary widely from administration to administration. After taking office, President Donald Trump "reduced the refugee admissions cap several times, to a historical low of 15,000 for [fiscal year (FY)] 2021." Nicole Ward & Jeanne Batalova, *Refugees and Asylees in the United States*, MIGRATION POL'Y INST. (June 15, 2023), https://www.migrationpolicy.org/article/refugees-and-asylees-united-states-2022 [https://perma.cc/54GR-DFZY]. "President Joe Biden reversed course and raised the cap to 62,500 for the remainder

for asylum seekers and those entering the U.S. through other humanitarian protections, there is no numerical cap, though there are other limitations.[15]

For individuals seeking asylum in the United States, there are three methods: affirmative asylum, defensive asylum, or an asylum merits interview.[16] For any asylum application, the applicant must be "physically present in the United States."[17] The categorical differences between these systems is that affirmative asylum is used for applicants who are not currently facing removal; defensive asylum arises when an applicant "request[s] asylum as a defense against removal"; and an asylum merits interview takes place for individuals who express the intent to apply for asylum and have been "placed in expedited removal proceedings."[18]

To qualify for asylum, applicants must establish that they are refugees as defined under the INA.[19] Specifically, each applicant must prove that they are "unable or unwilling to return to ... [the country they are fleeing] because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[20] Further, they must prove that one of these five bases for persecution "was or will be at least one central reason for" their persecution.[21]

Asylum applicants face a number of significant challenges to asserting a successful claim. Applicants typically must submit applications to the U.S. Citizenship and Immigration Services

---

of FY 2021 and then to 125,000 for FY 2022 and FY 2023." *Id.*

15. *See* AM. IMMIGR. COUNCIL, *supra* note 10, at 1; *Temporary Protected Status*, U.S. CITIZENSHIP IMMIGR. SERV., https://www.uscis.gov/humanitarian/temporary-protected-status [https://perma.cc/HW5E-72F2]. Other forms of humanitarian protection include temporary protected status, deferred enforced departure, deferred action for childhood arrivals, and humanitarian parole; for a brief description of each and the restrictions applied to them, see AM. IMMIGR. COUNCIL, *supra* note 10, at 12.

16. *Obtaining Asylum in the United States*, U.S. CITIZENSHIP & IMMIGR. SERV., https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states [https://perma.cc/YS5C-JZM4].

17. *Id.*

18. *Id.*

19. 8 U.S.C. § 1158(b)(1)(A).

20. *Id.* § 1101(a)(42)(A).

21. *Id.* § 1158(b)(1)(B)(i).

(USCIS) within one year of their last arrival in the United States.[22] The burden of proof rests with the applicant to prove that their persecution was sufficiently connected to one of these five protected categories, yet these applicants are not granted access to government-appointed counsel.[23] The application process itself can last for years.[24] By the end of December 2024, "there were 1,446,908 affirmative asylum applications pending with USCIS," and by the end of fiscal year 2024, "1,478,623 defensive asylum applications were pending in immigration courts."[25] Further, applicants who may be otherwise eligible can have their applications denied if they do not file in time, had a previous asylum application denied, have themselves persecuted others, have been convicted of a "particularly serious crime," or fall into a number of other barred categories.[26]

If an applicant for affirmative asylum has their application rejected by USCIS, removal proceedings will begin against that individual and they will be required to appear in immigration court.[27] Defensive asylum applicants make their initial requests before an IJ during removal proceedings.[28] If an IJ denies an individual's asylum application, the applicant may appeal to the Board of Immigration Appeals (BIA).[29] In 2002, the Department of Justice implemented reforms to the BIA that now require most cases before the BIA to be decided by a "single board member rather than a

22. *See* AM. IMMIGR. COUNCIL, ASYLUM IN THE UNITED STATES: FACT SHEET 4 (2025), https://www.americanimmigrationcouncil.org/research/asylum-united-states [https://perma.cc/Z84G-RCPR]; *Obtaining Asylum in the United States, supra* note 16 and accompanying text.

23. Diana Roy, *How the U.S. Asylum Process Works*, COUNCIL ON FOREIGN RELS. (Feb. 19, 2025, at 13:10 ET), https://www.cfr.org/backgrounder/seeking-protection-how-us-asylum-process-works [https://perma.cc/ET65-A3B3]. For a more detailed explanation of why the Sixth Amendment right to counsel does not attach to immigration proceedings, see Amanda Kavita Sewanan, *The Right to Appointed Counsel: The Case for Unaccompanied Immigrant Children*, 41 CARDOZO L. REV. 317, 324-25 (2019).

24. *See* AM. IMMIGR. COUNCIL, *supra* note 22, at 6.

25. *Id.*

26. JOHNSON ET AL., *supra* note 9, at 365.

27. *See Immigration*, WOMENSLAW.ORG, https://www.womenslaw.org/laws/federal/immigration/asylum/asylum-process [https://perma.cc/THR5-K8GW].

28. *See Obtaining Asylum in the United States*, *supra* note 16. Facing massive caseloads and a lack of administrative support, IJs have historically been subject to substantial criticism. JOHNSON ET AL., *supra* note 9, at 235-37 (explaining the perpetual issue of backlogged immigration courts despite attempts at streamlining procedures).

29. *Id.* at 238-39.

three-member panel."[30] Applicants who are denied asylum by the BIA have their final chance to be heard through appeal to a federal circuit court, and sometimes through further appeal to the Supreme Court.[31]

In all, the path to asylum is complex and lengthy for individuals to navigate, especially without an attorney. With such massive caseloads and so much on the line for those seeking asylum, it is imperative that IJs, the BIA, and federal courts have clear guidance on the requirements for establishing asylum eligibility.

B. The REAL ID Act of 2005

Prior to 2005, BIA and circuit court precedent required asylum applicants to prove their "persecution was caused 'at least in part' by the applicant's membership in a protected class."[32] This "at least in part" standard was put in place by the BIA and federal circuit courts because Congress had not yet established a standard for "an asylum applicant's burden of proof in cases ... where the applicant was persecuted on account of both protected and unprotected grounds."[33] However, in 2005, Congress enacted the REAL ID Act and inserted a new nexus standard that still governs today.[34]

In 2005, Congress articulated its intent behind the Real ID Act: "to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence."[35] As part of the passage of the REAL ID Act, there was a proposal to change the language of the INA's persecution

30. *See* Eleanor Acer & Anwen Hughes, *The Post-September 11 Asylum System*, 32 LITIG. 41, 43 (2006). The 2002 reforms opened the BIA to substantial criticism for "undermin[ing] the ability of asylum seekers to obtain a full and fair hearing on their claims" and "leading essentially to the board's rubber-stamping of immigration judges' denials in many asylum cases." *See id.*

31. *See* JOHNSON ET AL., *supra* note 9, at 242-44.

32. Chicas-Machado v. Garland, 73 F.4th 261, 287 (4th Cir. 2023) (Agee, J., concurring in part and dissenting in part).

33. *Id.*

34. *See Id.*

35. H. Res. 71, 109th Cong., 151 CONG. REC. 1891 (2005) (enacted).

requirement.[36] The proposal initially changed the standard to require applicants prove that their membership in one of the five protected classes "was or will be *the* central motive for persecuting the applicant."[37] This language was revised several times before Congress settled on requiring that the applicant's membership in a protected class "was or will be *at least one* central reason for persecuting the applicant."[38]

This change was hotly debated. Proponents defended the new wording, claiming it aligned with the original intent of the provision and that it would effectively prevent terrorists from using the asylum system to gain access to the United States.[39] Those opposed to the revision argued that it set too high a bar, violated international law, and would not be any more effective at keeping terrorists out since the requirements then in place already explicitly excluded terrorists.[40] Ultimately, Congress passed the REAL ID Act, and a circuit split later emerged regarding Congress's intent behind the new wording.[41]

With vast numbers of immigrants requesting asylum every year,[42] it is imperative to resolve this split and clearly define the requirements of the "one central reason" standard. This Note argues that either the Supreme Court or Congress should establish that the correct standard is articulated by the Fourth Circuit's interpretation. Such a reading would mirror the arguments levied in the legislative history of the REAL ID Act and ensure that the new standard has not made gaining asylum an insurmountable goal.

---

36. *See* H.R. REP. NO. 108-724, pt. 1, at 58 (2004); H.R. REP. NO. 109-4, at 4 (2005); H.R. REP. NO. 109-72, at 73 (2005).

37. H.R. REP. NO. 108-724, pt. 1, at 58 (2004) (emphasis added).

38. H.R. REP. NO. 109-72, at 73 (2005) (emphasis added); *see* H.R. REP. NO. 109-4, at 4 (2005).

39. *See* 151 CONG. REC. 1897 (2005) (statement of Mr. Royce); 151 CONG. REC. 1908 (2005) (statement of Mr. Sensenbrenner).

40. *See* 151 CONG. REC. 2008-09 (2005) (statement of Mr. Berman); 151 CONG. REC. 1911 (2005) (statement of Mr. Nadler).

41. *See* Chicas-Machado v. Garland, 73 F.4th 261, 287-90 (4th Cir. 2023) (Agee, J., concurring in part and dissenting in part).

42. *See* AM. IMMIGR. COUNCIL, *supra* note 22, at 2.

II. ELEMENTS OF ESTABLISHING ASYLUM IN THE UNITED STATES

Having discussed the pathway to asylum and the current circuit split, it is important to discuss elements of an asylum claim and where the "one central reason" standard fits. There are four parts to a successful asylum claim: (1) past persecution or a well-founded fear of future persecution; (2) on account of; (3) a protected group; and (4) unable or unwilling to return. This Part of the Note will explain the first three elements.[43]

A. Fear of Persecution

To establish the persecution requirement, an applicant may rely on evidence of past persecution or future persecution. To meet the requirement through a showing of past persecution, the applicant must show that "an incident ... of persecution ... is on account of one of the statutorily-protected grounds" and "is committed by the government or forces the government is either 'unable or unwilling' to control."[44] If an applicant satisfies the past persecution test, a "presumption that the applicant has a well-founded fear of future persecution" is created and the government must carry the burden of proving either that circumstances have changed enough to "mitigate against the applicant's fear" or that internal relocation within the applicant's home country would prevent future persecution.[45]

The well-founded fear of future persecution requirement has evolved over time. The BIA initially defined this standard in the 1985 case, *Matter of Acosta*.[46] The BIA looked to Webster's Dictionary and the United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee*

---

43. The fourth element is less intertwined with the nexus requirement and consequently is beyond the scope of this Note; it requires the applicant to show that "the threat of persecution exists for [them] country-wide." *Acosta*, 19 I.& N. Dec. 211, 235 (B.I.A. 1985).

44. JOHNSON ET AL., *supra* note 9, at 356.

45. *Id.* at 356-57; *see* RAIO DIRECTORATE: WELL-FOUNDED FEAR TRAINING MODULE, 9 (Jan. 30, 2025), https://www.uscis.gov/sites/default/files/document/lesson-plans/Well_Founded_Fear_LP_RAIO.pdf [https://perma.cc/3PEE-KHM8].

46. *See* 19 I.& N. Dec. at 219-32; *see* JOHNSON ET AL., *supra* note 9, at 355.

Status ("UNCHR Handbook") for guidance on what was meant by the term "fear."[47] The BIA defined fear as "a genuine apprehension or awareness of danger in another country" and elaborated that applicants seeking asylum must establish fear as their "primary motivation for requesting refuge in the United States."[48] While this definition is still useful, the actual standard the BIA enunciated for applicants to demonstrate a "well-founded fear" in that case was deemed too harsh by the Supreme Court two years later; the Court clarified that an applicant's fear could be well-founded even when there was as little as a "10% chance of" persecution.[49] This baseline left to IJs, the BIA, and circuit courts the task of developing various tests for proving a well-founded fear of persecution.[50]

The "well-founded fear" test developed into its modern form in 1987 in *Matter of Mogharrabi* in which the BIA considered an appeal as to whether an asylum seeker from Iran had properly established a well-founded fear of persecution by the Iranian government.[51] The BIA acknowledged that the Ninth, Sixth, Seventh, and Fifth Circuits had each developed their own tests with slight differences for how to identify a well-founded fear.[52] Ultimately, the BIA adopted the Fifth Circuit's test, which held "that the concept of a well-founded fear was at least partially a subjective one ... and partially an objective one, because the fear is required to be well founded."[53] The BIA further clarified that the test requires applicants for asylum to "show[ ] that a reasonable person in his circumstances would fear persecution."[54]

After enunciating its preferred test, the BIA went on to address a few more of the ambiguities that remained in the application of the new standard. First, the BIA made clear that the test is meant

47. *See Acosta*, 19 I.& N. Dec. at 221.

48. *Id.* at 221.

49. INS v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987). The Court explained that different standards govern in asylum and deportation cases and stated that the BIA had conflated the two in *Acosta*. *Id.* at 430-31. This mixing of standards resulted in an objective analysis being applied to the "well-founded fear" standard when the test should have used a subjective analysis of the applicant's mental state. *Id.* at 431.

50. *See id.* at 448.

51. *See* 19 I.& N. Dec. 439, 447-48 (B.I.A. 1987).

52. *See id.* at 444-45.

53. *Id.* at 445.

54. *Id.*

to be "a qualitative, not a quantitative, one" and that "the lack of [corroborative] evidence will not necessarily be fatal to the application."[55] Second, the BIA added that a nation's history should be considered and if "others who are similarly situated" have been persecuted, that could be a basis for an applicant's well-founded fear.[56] And finally, it stated that a portion of its analysis from *Matter of Acosta* remained good law.[57] Specifically, the BIA was referring to its requirement that the evidence establish

> (1) the alien possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) the persecutor is already aware or could easily become aware, that the alien possesses this belief or characteristic; (3) the persecutor has the capability of punishing the alien; and (4) the persecutor has the inclination to punish the alien.[58]

The standard established in *Matter of Mogharrabi* is still used today.[59]

B. On Account of: The Nexus Requirement

Applicants seeking asylum must further establish that their persecution was "on account of" one of the five protected statuses.[60] Following the implementation of the REAL ID Act, Congress codified the standard to require applicants show their claimed protected status "was or will be at least one central reason for persecuting the applicant."[61] This was a notable change by Congress, and

---

55. *Id.* at 445-46.

56. *Id.* at 446.

57. *See id.* The BIA clarified that its previously enumerated requirements were still good law, but that the word "easily" should be omitted from the second factor. *Id.*

58. *Id.*

59. *See* Maritza Black, Comment, *Adjudicating the Religious Beliefs of an Asylum Seeker: When the "Well-Founded Fear" Standard Leads Courts Astray*, 5 CONCORDIA L. REV. 191, 200-01 (2020).

60. 8 U.S.C. § 1101(a)(42)(A). This is commonly referred to as the "nexus" requirement. *See* Karen Musalo, *Aligning United States Law with International Norms Would Remove Major Barriers to Protection in Gender Claims*, 36 INT'L J. REFUGEE L. 20, 21 (2024).

61. 8 U.S.C. § 1158(b)(1)(B)(i); *see also* JOHNSON ET AL., *supra* note 9, at 357 (explaining that "[t]he applicant's protected characteristic ... does not have to be the central reason for the persecutor's motivation").

addressed their disapproval of the prior standard set by precedential cases that required applicants to prove their persecution was or will be "'at least in part' on account of a protected ground."[62]

However, the change codified in the REAL ID Act was not the first attempt to clarify the standard of the nexus requirement. For years, circuit courts were divided on whether to analyze the nexus between an applicant's persecution and protected status through a lenient or restrictive lens, forcing the Supreme Court to settle the issue in *INS v. Elias-Zacarias*.[63] The Court considered whether an asylum applicant was persecuted on account of his political opinion based on a guerrilla group's attempts to force him into military service.[64] The Court ultimately concluded the applicant failed to meet his burden of proof, and further established that applicants for asylum must provide "*some* evidence of [their persecutor's motives], direct or circumstantial."[65]

The Court's ruling in *Elias-Zacarias* imposed an important and surprising precedent: asylum seekers face a restrictive rather than lenient standard when proving the nexus between their persecution and their protected status.[66] What makes the Court's requirement restrictive is that "the very nature of asylum claims makes proof extremely challenging: 'Even under the best of circumstances, the motivation and state of mind of another individual are difficult to ascertain and even more difficult to

62. JOHNSON ET AL., *supra* note 9, at 357; *see, e.g.*, J-B-N- & S-M-, 24 I.& N. Dec. 208, 211 (B.I.A. 2007); S-P-, Applicant, I.& N. Dec. 486, 489-90, 494 (B.I.A. 1996).

63. *See* Musalo, *supra* note 60, at 22.

64. *See* INS v. Elias-Zacarias, 502 U.S. 478, 479 (1992).

65. *Id.* at 483-84. Elias-Zacarias testified that he was threatened by guerrillas because he refused their requests to join them, claiming this showed persecution on account of his political opinions. *Id.* at 479-80. After initial dismissal of his case by the BIA, Elias-Zacarias tried to supplement the record with evidence that "the guerrillas had twice returned to his family's home in continued efforts to recruit him." *Id.* at 480. The Court rejected this evidence as insufficient because it did not clearly "compel[ ] the conclusion that he ha[d] a 'well-founded fear' that the guerrillas w[ould] persecute him *because of* that political opinion, rather than because of his refusal to fight with them." *Id.* at 483.

66. *See* Musalo, *supra* note 60, at 22-23. The Court's decision was surprising in that it was "an opinion interpreting a statutory term derived from treaty obligations" and "not once [did the Court] refer to the [Refugee] Convention, respond to the UNCHR's arguments [(which had been supplied in an amicus brief)], or discuss how other States parties interpret the nexus requirement." *Id.*

prove.'"[67] Beyond the increased burden imposed by the Supreme Court, Congress made clear via the REAL ID Act that the "at least in part" test used by many courts in asylum cases was too permissive a standard in assessing the nexus requirement. However, settling on a new standard was not a simple task.[68] For starters, the provision of the REAL ID Act that established the "one central reason" standard went through three separate iterations.[69] The first proposed wording would have required applicants to prove that their protected status "was or w[ould] be *the* central motive for persecuting the applicant."[70] This harsh standard was eased over time as later drafts lowered the requirement to proving the protected status would be "a central reason" for persecution, and finally to its modern form of "at least one central reason" for persecution.[71]

Together, the Court's ruling in *Elias-Zacarias* and the passage of the REAL ID Act created a heightened standard for applicants seeking asylum that has resulted in the denial of cases with seemingly strong claims.[72] While the standard can seem almost insurmountable, clarifications over time have revealed the nexus requirement to be slightly lower than it facially appears. Specifically, the Supreme Court clarified that the standard does not require the applicant to prove the persecutor's intent, but rather they must show that their protected status was a "but for caus[e]" of their persecution.[73] So, asylum applicants "need not establish exact motive" of their persecutors, but they are still obligated to present some evidence that their persecution was directly tied to

67. *Id.* at 23 (quoting Karen Musalo, *Irreconcilable Differences? Divorcing Refugee Protections from Human Rights Norms*, 15 MICH. J. INT'L L. 1179, 1202 (1994)). Musalo further clarifies the difficulties asylum applicants face by explaining that in asylum cases, "'[t]he victim may not know the exact motivation of his or her persecutor ... [and] [t]he persecutor can neither be put on the stand and questioned as to his motivation nor deposed or required to answer interrogatories.'" *Id.* In all, there is often minimal evidence available to asylum applicants to prove their case. *Id.*

68. *See supra* note 39 and accompanying text.

69. *See* H.R. REP. NO. 108-724, at 66 (2004); H.R. REP. NO. 109-72, at 73 (2005); H.R. REP. NO. 109-4, at 4 (2005).

70. H.R. REP. NO. 108-724, at 66 (2004) (emphasis added).

71. H.R. REP. NO. 109-4, at 4 (2005); H.R. REP. NO. 109-72, at 73 (2005).

72. *See* Musalo, *supra* note 60, at 23 n.23.

73. *See id.* at 22 n.15.

their protected status.[74] Despite numerous debates, revisions, and clarifications, circuit courts still lack clear guidance on how to apply the nexus requirement, resulting in the circuit split that is the focus of this Note.

C. One of Five Protected Statuses

The third requirement in an asylum application is proving membership in a protected status.[75] There are five protected statuses: (1) race, (2) religion, (3) nationality, (4) membership in a particular social group, or (5) political opinion.[76]

Race, religion, and nationality are each fairly simply defined. Race is understood broadly "to include all kinds of ethnic groups that are referred to as 'races' in common usage."[77] Religious persecution typically involves preventing the practice or teaching of religion.[78] Nationality "includes membership in an ethnic or linguistic group in addition to citizenship" and also commonly coincides with claims grounded in race, religion, and political opinion.[79]

Political opinion is one of the most commonly claimed grounds for persecution.[80] These claims require applicants to "show that [they] held, or that [their] persecutor's believed that [they] held, a political opinion."[81] However, even if a specific political opinion is not clearly expressed, courts may alternatively consider claims of persecution based on "political neutrality [or] imputed political opinion."[82]

Finally, membership in a particular social group (PSG) offers a fairly broad range of claims to asylum seekers. Refugees claiming persecution on account of their membership in a PSG are required to show they "share a common, immutable characteristic ... that the

---

74. *See* JOHNSON ET AL., *supra* note 9, at 357.

75. *See* 8 U.S.C. § 1101(a)(42)(A).

76. *Id.*

77. HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES ¶ 68 (U.N. Doc. HCR/IP/4/Eng./REV.1 January 1992).

78. *See* JOHNSON ET AL., *supra* note 9, at 358.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 359.

members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences."[83]

III. HOW COURTS HAVE INTERPRETED "ONE CENTRAL REASON"

Having briefly explained the U.S. immigration system, the requirements asylum seekers are required to prove, and the altered nexus requirement following the REAL ID Act, this Note now moves on to discussing the emerging circuit split. Three circuits have clearly split on how to apply the "one central reason standard." The Tenth Circuit has emerged as using a particularly restrictive interpretation (seeming practically to require applicants be able to show that their persecution was caused *solely* by their protected status), the Fourth Circuit has a particularly lenient interpretation, and the Eleventh Circuit appears to be somewhere in-between. This Part analyzes the major cases that have raised the split and the courts' reasoning in each.

A. Tenth Circuit: Orellana-Recinos v. Garland

In 2021, The Tenth Circuit considered whether an asylum applicant's claim of persecution on account of their membership in a PSG satisfied the requirements of the INA.[84] In that case, Ana Orellana-Recinos fled El Salvador with her son, Kevin Rosales-Orellana, after constant efforts by MS-13 to recruit Kevin into the gang.[85] MS-13 members twice "approached Kevin at school and pressured him to sell drugs for the gang"; called his mother instructing her to convince Kevin to sell their drugs, threatening her

83. Matter of Acosta, 19 I.& N. Dec. 211, 233 (B.I.A. 1985). This category has even been expanded to recognize "that an applicant's body has immutable qualities, as in the context of an applicant's fear that she will be forced to undergo female genital mutilation." *See* JOHNSON ET AL., *supra* note 9, at 359. One point of conflict in application is whether the claimed PSG must be "social[ly] visib[le]." *Id.* at 360. This issue has not been uniformly resolved and is handled differently by various circuits. *Id.* ("To date, the First, Second, Fourth, Eighth, and Ninth Circuits all take into account visibility in varying degree. In contrast, the Third, Sixth, and Seventh Circuits have found the BIA's new approach inconsistent with the previous approach stressing immutability." (internal citations omitted)).

84. Orellana-Recinos v. Garland, 993 F.3d 851, 853 (10th Cir. 2021).

85. *Id.*

if he did not; and, on another occasion, stationed gang members outside of Ms. Orellana-Recinos' house with weapons "for approximately a half an hour."[86]

The PSG in which Ms. Orellana-Recinos claimed membership was the "immediate family of Kevin Rosades-Orellana."[87] She believed the only reason she was threatened by MS-13 was because she was Kevin's mother.[88] The IJ believed that this was "a cognizable social group," but denied her application for asylum because she failed to satisfy the nexus requirement.[89] On appeal, both the BIA and the Tenth Circuit affirmed the ruling of the IJ.[90]

When assessing the merits of Ms. Orellana-Recinos' case, the Tenth Circuit acknowledged "a persecutor can have multiple motives for targeting someone," but emphasized that "the protected ground cannot play a minor role in the [applicant's]" claim of persecution.[91] Factoring heavily into the Tenth Circuit's ruling was the belief that MS-13 was merely pursuing an objective, and Ms. Orellana-Recinos was not targeted because of her familial relationship with Kevin, but because of the influence that she had over him.[92]

In further asserting its position, the Tenth Circuit acknowledged that the Fourth Circuit had ruled the opposite way in a case bearing strikingly similar facts.[93] Despite the Fourth Circuit finding that the applicant's maternal relationship to her son *was* one central reason for her persecution, the Tenth Circuit was "unpersuaded."[94] This rejection of the Fourth Circuit's analysis means that asylum applicants in the Tenth Circuit will have a harder time fulfilling the nexus requirement than applicants in other parts of the country.

This ruling in the Tenth Circuit is a narrow approach to the nexus requirement and raises questions as to what degree of connectedness is required to satisfy the "one central reason"

---

86. *Id.*
87. *Id.* at 854.
88. *Id.*
89. *Id.*
90. *Id.* at 855, 858-59.
91. *Id.* at 855 (quoting in part J-B-N-, 24 I. & N. Dec. 208, 214 (B.I.A 2007) (alteration in original)).
92. *Id.* at 856-58.
93. *Id.* at 858.
94. *Id.*

standard.[95] This ruling has led some to conclude that the Tenth Circuit is willing to consider only "*the* central reason for an applicant's persecution" as opposed to recognizing that there can be more than one.[96]

B. Eleventh Circuit: Azurdia-Hernandez v. United States Attorney General

In an unpublished opinion, the Eleventh Circuit issued a ruling that indicated that its approach to analyzing the "one central reason" standard could be more lenient than that offered by the Tenth Circuit. In *Azurdia-Hernandez v. United States Attorney General*, Kenneth Azurdia-Hernandez appealed a BIA decision denying his request for asylum.[97] Kenneth and his mother, Orquidia, were targeted by a gang called "El Cartel del Golfo" in Guatemala.[98] The gang allegedly staged a robbery of Kenneth and his mother in which other gang members arrived to scare off the robbers, making Kenneth feel indebted to the gang.[99] Then, some members of the gang visited Kenneth and Orquidia at their home where they returned the stolen goods and demanded that Orquidia—a bank manager—"launder $10,000 a day for them."[100] Orquidia gave into the threats and agreed to launder money for the gang.[101] The cartel acknowledged that they trusted Kenneth and Orquidia not to steal from them because of their religious beliefs.[102] As a result of the gang's forced labor, Orquidia lost her job in 2013, and over the next two years she and her son were threatened by gang members on a number of occasions; Kenneth was beaten at least once in order to keep the pair working for the gang.[103]

---

95. *See* Ilgar, *supra* note 7.

96. *See* Bernie Pazanowski, *Gang's Threats May Have Been Religious Persecution (Correct)*, BLOOMBERG LAW (July 13, 2023, 13:24 ET), https://www.bloomberglaw.com/bloomberglawnews/us-law-week/XB0CNE2C000000?bna_news_filter=us-law-week#jcite [https://perma.cc/V3W9-A8V5] (emphasis added).

97. 812 F. App'x 935, 936 (11th Cir. 2020) (per curiam).

98. *Id.* at 937.

99. *Id.*

100. *Id.*

101. *Id.* Orquidia did however refuse to launder the full $10,000 the gang requested—the legal transaction limit was "$3,000 per day"—and she cited her religion as the reason. *Id.*

102. *Id.*

103. *Id.*

The IJ and BIA refused Kenneth's petition on grounds that they were not convinced that Kenneth and his mother's religion "was a 'central reason' for the alleged harm."[104] Kenneth alleged he was persecuted for membership in two PSGs: the immediate family of his mother, and Evangelical Christians.[105] In assessing his claims, the BIA did not analyze the claim that his religion was a central reason for his persecution.[106]

On appeal, the Eleventh Circuit ultimately remanded the case on grounds that the BIA and IJ each "failed to give reasoned consideration to all the evidence and claims presented by Petitioner."[107] While they did not directly rule on whether Kenneth offered a viable claim that his religion was a central reason for his persecution, the Eleventh Circuit seemed willing to indicate how they might rule on the issue in the future.[108] The court stated that "an asylum applicant might demonstrate religion-based persecution based on evidence that he was targeted for forced labor or some other oppressive treatment because the persecutor perceived some positive attribute ... associated with the persecuted person's religion that would serve the persecutor's goals."[109]

This hypothetical does not map on perfectly to the Tenth Circuit's ruling in *Orellana-Recinos*, so it is hard to say whether the Eleventh Circuit would agree with the Tenth Circuit or not. Based on the strict line the Tenth Circuit seemed to draw in deciding what constitutes a central reason, it seems the Eleventh Circuit is willing to view things a bit more broadly.[110] However, the Eleventh Circuit merely stated that it could not rule out such a finding; it did not rule

104. *Id.* at 937, 939.
105. *Id.* at 936.
106. *Id.* at 939.
107. *Id.* at 940.
108. *See id.* at 939.
109. *Id.*
110. *See* Orellana-Recinos v. Garland, 993 F.3d 851, 858-59 (10th Cir. 2021) (disagreeing with the Fourth Circuit's analysis in *Hernandez Avalos v. Lynch* as being too permissive). The Eleventh Circuit, too, in its assessment of PSG cases has expressly rejected the lenient approach set in *Hernandez-Avalos v. Lynch* by the Fourth Circuit. Sanchez-Castro v. U.S. Att'y Gen., 998 F.3d 1281, 1287 (11th Cir. 2021). However, its acknowledgement in *Azurdia-Hernandez* that religious persecution *could* take the form of targeting a person for forced labor due to perceived positive attributes of their faith indicates that the Eleventh Circuit is open to a more lenient approach in certain circumstances, at least outside the context of PSG claims. *See Azurdia-Hernandez*, 812 F. App'x at 939.

on it as a matter of law.[111] Consequently, the Eleventh Circuit's approach to the one central reason standard appears to be more lenient than that offered in the Tenth, but it is difficult to determine based only on the guidance provided in an unpublished opinion.

C. Fourth Circuit: Chicas-Machado v. Garland

The Fourth Circuit, in *Chicas-Machado v. Garland*, has offered the least restrictive interpretation of the "one central reason" standard as compared to the other circuits that have considered the issue.[112] Odalis Mireida Chicas-Machado fled El Salvador after being threatened by members of the MS-13 gang.[113] In 2015, Ms. Chicas-Machado was "harass[ed] and insult[ed]" by gang members "several times a week when she left her home to walk to and from church."[114] A year later, the gang "threatened [her] with death" and demanded she report to them every time a police car went past her neighbor's store.[115] The gang chose her "because [she] was Christian" and "no one [would] suspect ... [her]."[116] Ms. Chicas-Machado refused to comply and instead reported the gang to the police, which prompted gang members to visit her house and "threaten[ ] to rape and kill her."[117]

The IJ and BIA agreed that Ms. Chicas-Machado failed to prove that her persecution was sufficiently caused by her religion.[118] The Fourth Circuit, on appeal, recognized that Ms. Chicas-Machado had clearly suffered persecution, and found that her persecution *was* sufficiently connected to her religion to grant review of her request for asylum.[119] In its assessment, the majority explicated the standard for assessing asylum cases: "an asylum applicant need not demonstrate that a protected ground, like religion, is the sole reason for persecution but only that it is 'at least one central reason'

111. *See Azurdia-Hernandez*, 812 F. App'x at 939.
112. *See* Ilgar, *supra* note 7.
113. Chicas-Machado v. Garland, 73 F.4th 261, 263 (4th Cir. 2023).
114. *Id.*
115. *Id.* at 264.
116. *Id.* (first and third alterations in original).
117. *Id.*
118. *Id.*
119. *Id.* at 265, 267, 269.

for the persecution.'"[120] The majority believed that the gang's "motive" for persecuting Ms. Chicas-Machado "was inextricably intertwined with her religion," and explained that the Fourth Circuit is strongly opposed to "'excessively narrow reading[s]'" of the nexus requirement.[121]

A very different interpretation of the "one central reason" standard was offered by the dissent, which agreed with the BIA that Ms. Chicas-Machado had failed to prove her persecution was sufficiently connected to her religion.[122] For one, the dissent believed that religious persecution must involve the persecutor intending to "*stop or hinder* [the applicant's] religious practice."[123] Further, the dissent argued Ms. Chicas-Machado's persecution was caused by her "refus[al] to serve as a police spotter" and for "report[ing] the gang's recruitment effort to the police," not her faith.[124] However, the majority dismissed each of these concerns as misinterpretations of past precedent and a mischaracterization of the facts of the case.[125] The majority emphasized that Ms. Chicas-Machado was targeted by the gang because they believed she could work for them unsuspected due to her reputation and association with the church.[126] Although Ms. Chicas-Machado's faith may not have been "'the immediate trigger for the gang's ... assault,' an asylum applicant has established nexus where, as here, a protected ground is the *reason* the gang issued its demand in the first place."[127]

---

120. *Id.* at 265.

121. *Id.* at 266 (alteration in original) (quoting Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015)).

122. *See id.* at 273 (Agee, J., concurring in part and dissenting in part). Judge Agee falls more in line with the opinion of the Tenth Circuit as expressed in *Orellana-Recinos*, believing a stricter interpretation of "one central reason" is needed. *See id.* at 289-90 (describing his disagreement with the Fourth Circuit's ruling in *Hernandez-Avalos*). Judge Agee expressly stated that the Fourth Circuit majority was wrong, and that it has made "an aberrant construction of immigration law as historically understood, untethered to the statutory text as written by Congress, and rejected by several of our sister circuits." *Id.* at 273.

123. *Id.* at 269 (majority opinion); *see id.* at 274 (Agee, J., concurring in part and dissenting in part) (explaining that the BIA was correct in finding that Ms. Chicas-Machado's religion was not the direct motivation for her persecution, and that her persecutors did not intend to stop her from practicing her faith).

124. *Id.* at 276 (Agee, J., concurring in part and dissenting in part).

125. *Id.* at 268-71 (majority opinion) (discussing the flaws in the reasoning of the BIA and the dissent).

126. *Id.* at 266.

127. *Id.* at 268 (quoting Olivia v. Lynch, 807 F.3d 53, 60 (4th Cir. 2015)).

This ruling indicates that the Fourth Circuit understands the "one central reason" analysis to require a lower threshold than that imposed by the Tenth Circuit. It is unclear how closely aligned the Eleventh and Fourth Circuits are in their interpretations given that the Eleventh Circuit has not conclusively ruled on the issue. However, considering that the Eleventh Circuit was not opposed to finding that a persecutor selecting someone for forced labor based on positive attributes associated with that person's religion could satisfy the nexus requirement, it seems that the Eleventh Circuit may have been willing to rule similarly to the Fourth Circuit, had Ms. Chicas-Machado's case been before it.[128]

IV. NEXT STEPS

This Part considers how to resolve the circuit split by looking at arguments on both sides as to whether the "one central reason" standard should be interpreted in a restrictive manner, almost forcing applicants to show that their persecution was caused solely by their membership in a protected status, or in a lenient manner that more generously assesses the degree of connectivity. Ultimately, this Note concludes that the Fourth Circuit provides the most accurate interpretation of the nexus requirement in choosing to assess that element more leniently.

A. How to Interpret "One Central Reason"

As noted in the previous section, there is a wide spectrum within which the nexus requirement can be understood for asylum cases. Certainly, a hard and fast rule cannot be established given the

128. Whether the Eleventh Circuit would agree with the ruling in *Chicas-Machado* is unclear given past disagreement with the Fourth Circuit's leniency. However, if the Eleventh Circuit was willing to interpret the gang's requests for Ms. Chicas-Machado to serve as a lookout as forced labor, there is a chance that the Eleventh Circuit would agree with the Fourth Circuit and be willing to find a sufficient connection in this case. *See* Sanchez-Castro v. U.S. Att'y Gen., 998 F.3d 1281, 1287 (11th Cir. 2021) (rejecting the Fourth Circuit's analysis in *Hernandez-Avalos*); *see also* Azurdia-Hernandez v. U.S. Att'y Gen., 812 F. App'x 935, 939 (11th Cir. 2020) (per curiam) (stating that the court "c[ould] not rule out—as a matter of law—that an asylum applicant might demonstrate religion-based persecution based on evidence that he was targeted for forced labor ... because the persecutor perceived some positive attribute ... associated with the persecuted person's religion that would serve the persecutor's goals").

unique complexities of each case; however, better guidance is essential to ensure that applicants are treated equally and offered the same protections across the nation. The question remains whether the standard should be interpreted more leniently, in line with the Fourth Circuit, or more restrictively, as understood by the Tenth Circuit.

1. Arguments for a More Lenient Interpretation

It is clear from the Congressional Record that in passing the REAL ID Act Congress wanted to impose a heightened standard in assessing applications for asylum, but it is not clear that Congress wanted that test to be as strictly applied as it was by the Tenth Circuit. In contrast to the Tenth Circuit, the Fourth Circuit consistently offers a lenient approach to interpreting the standard and does so with well-reasoned logic despite not having much support from other circuits.[129] However, the Fourth Circuit may not be as isolated as Judge Agee seems to imply; while courts like the Eleventh Circuit have expressly rejected some Fourth Circuit precedent,[130] that should not be understood as complete disagreement.[131] For example, even the Eleventh Circuit seems to be willing to stretch its analysis under certain circumstances.[132]

Further, the Congressional Record surrounding the REAL ID Act provides strong evidence that a strict interpretation of the nexus requirement is not consistent with the intent of Congress. The legislation that created the new standard went through several iterations.[133] Most significant for this analysis were the changes made between October 2004 and May 2005.[134] In October 2004, the initial phrasing would have required that an asylum applicant

129. *See Chicas-Machado*, 73 F.4th at 266-69; *Hernandez-Avalos*, 784 F.3d at 949-50. In each of these cases, the Fourth Circuit was able to rely only on its own precedent to support its rulings.

130. *Sanchez-Castro*, 998 F.3d at 1287.

131. *See Azurdia-Hernandez*, 812 F. App'x at 938-39 (leaving unsettled the possibility of a more lenient approach to the "one central reason" standard in cases dealing with religious persecution).

132. *Id.* at 939.

133. *See, e.g.*, H.R. REP. NO. 108-724, pt. 5, at 66 (2004); H.R. REP. NO. 109-4, at 4 (2005); H.R. REP. NO. 109-72, at 73 (2005).

134. *See supra* note 133.

prove "that race, religion, nationality, membership in a particular social group, or political opinion was or will be *the* central motive for persecuting the applicant."[135] That wording was softened in February 2005 to requiring the protected status "be *a* central reason for persecuting the applicant."[136] This was further revised to its final iteration requiring the protected status be "*at least one* central reason for persecuting the applicant."[137] These revisions, each increasingly softening the burden, suggest that Congress was hesitant to pass an act that would make asylum applications overly restrictive.

Further, there were several members of Congress who advocated strongly against the bill. Representative Nadler argued that "the asylum provisions in this bill completely gut the possibility of many legitimate victims of persecution to be granted asylum."[138] He further rebutted the presumption that the bill would help keep terrorists out of the country by asserting that the asylum system does not pose a terrorist threat.[139] A particularly strong critique came from Representative Berman, who stated: "The additional burden on asylum applicants created by this provision is impermissible under the international law, including the U.N. Convention on Refugees to which the United States is a signatory."[140] In all, those opposed to the bill felt that despite its promise to strengthen protections against terrorism, it would actually have no impact on terrorism and would instead serve to make asylum almost impossible for immigrants with legitimate cases.

The courts that have interpreted congressional intent in passing the new standard as calling for a stricter understanding of the nexus requirement do have some basis for this belief. However, the Congressional Record still raises several questions as to how strict that approach was truly meant to be. Revisions to the bill indicate that Congress did not want to enact a standard that would have required the protected status to be the sole cause of an applicant's

135. H.R. REP. NO. 108-724, pt. 5, at 66 (2004) (emphasis added).
136. H.R. REP. NO. 109-4, at 4 (2005) (emphasis added).
137. H.R. REP. NO. 109-72, at 73 (2005) (emphasis added).
138. 151 CONG. REC. 1911 (2005) (statement of Mr. Nadler).
139. *Id.*
140. 151 CONG. REC. 2009 (2005) (statement of Mr. Berman).

persecution.[141] Repeatedly loosening the proposed requirement, paired with statements about wanting to prevent terrorism, makes clear that while Congress wanted to keep terrorists out with this new bill, it did not want to make asylum unattainable for those seeking protection. Therefore, a lenient interpretation is more in line with Congressional intent.

2. Counterarguments for a Stricter Interpretation

To understand the intent behind the new standard, it is helpful to look to the Congressional Record generated during its passage. The REAL ID Act was passed in response to the events of 9/11 and was influenced by fears of terrorism that permeated throughout the country.[142] These fears were a primary consideration in raising the burden of proof beyond that required by the "at least in part" standard.[143] Authors of the change claimed it was necessary "in order to prevent terrorists from gaining asylum."[144] Other proponents of the bill similarly claimed "[i]rresponsible judges have made asylum laws vulnerable to fraud and abuse" and this legislation would "end judge-imposed presumptions that benefit suspected terrorists in order to stop providing a safe haven to some of the worst people on Earth."[145]

Following the passage of the REAL ID Act, courts quickly responded to the raised standard by reinterpreting their past precedent.[146] Despite an understanding that the bar was raised under the new standard, courts have varied in how they apply the new test.[147] Judge Agee of the Fourth Circuit noted in his dissent to the

141. *Compare* H.R. REP. NO. 108-724, pt. 5, at 66 (2004), *with* H.R. REP. NO. 109-72, at 73 (2005) (revising the nexus standard from requiring the protected status be *the* central reason to requiring that protected status be *at least one* central reason).

142. *See About Real ID*, DEP'T HOMELAND SEC. (May 7, 2024), https://www.dhs.gov/real-id/about-real-id [https://perma.cc/B9UH-J6BF]; 151 CONG. REC. 2009 (2005) (statement of Mr. Berman).

143. *See* H.R. REP. NO. 109-72, at 160 (2005).

144. 151 CONG. REC. 2009 (2005) (statement of Mr. Berman).

145. 151 CONG. REC. 1908 (2005) (statement of Mr. Sensenbrenner).

146. *See* Chicas-Machado v. Garland, 73 F.4th 261, 288-89 (4th Cir. 2023) (Agee, J., concurring in part and dissenting in part) (listing cases from other circuits that applied a heightened standard in asylum cases following the passage of the REAL ID Act).

147. The variance is primarily displayed by the circuit split that is the focus of this Note. However, as previously described, there continue to be questions as to how harsh the standard

court's ruling in *Chicas-Machado* that the Fourth Circuit "acknowledged" the new congressional standard but "paid it only lip service."[148] Judge Agee felt strongly that this new standard was a meaningful change as opposed to a simple rewording, pointing to the House Reports which explicitly state "that the 'at least in part' standard had 'undermined a proper analysis of mixed motive cases.'"[149]

Several courts have voiced similar opinions to Judge Agee, believing the Fourth Circuit is over broadening the "one central reason" standard.[150] The main case that has drawn the ire of other circuits is *Hernandez-Avalos v. Lynch*, a Fourth Circuit opinion that considered a mother's claim of persecution based on her familial relationship to her son.[151] In that case, Ms. Hernandez-Avalos was approached by members of the Mara 18 gang and was told that it was time for her son to join—she refused, and gang members subsequently threatened her with death on three occasions.[152] The Fourth Circuit found that the BIA was wrong to conclude that Ms. Hernandez-Avalos' relationship to her son was not a central reason for her persecution.[153] Judge Agee dissented and voiced his disagreement with the majority's holding.[154] Similarly, the Tenth, Eleventh, and Fifth Circuits have directly rejected the reasoning applied in *Hernandez-Avalos* in cases bearing similar facts.[155]

Courts that are proponents of a stricter interpretation of the "one central reason standard" base that opinion on the fact that Congress

---

should be applied in various circumstances in the Eleventh Circuit. *See* Azurdia-Hernandez v. U.S. Att'y Gen., 812 F. App'x 935, 939 (11th Cir. 2020) (per curiam); Sanchez-Castro v. U.S. Att'y Gen., 998 F.3d 1281, 1287 (11th Cir. 2021).

148. 73 F.4th at 287 (Agee, J., concurring in part and dissenting in part).

149. *Id.*

150. *See* Orellana-Recinos v. Garland, 993 F.3d 851, 858 (10th Cir. 2021) ("To the extent that the Fourth Circuit's opinion holds that a gang's threats to persuade a mother to encourage ... a son to join the gang is necessarily persecution on account of the mother's membership in the son's nuclear family, we are unpersuaded."); *Sanchez-Castro*, 998 F.3d at 1287 ("[W]e reject Sanchez-Castro's invitation to follow the approach of the Fourth Circuit. The Fourth Circuit takes a more lenient approach to the nexus requirement than we do.").

151. 784 F.3d 944, 946-48 (4th Cir. 2015).

152. *Id.* at 947.

153. *Id.* at 949-50.

154. *See* Chicas-Machado v. Garland, 73 F.4th 261, 286 (Agee, J., concurring in part and dissenting in part).

155. *See id.* at 290-91.

explicitly raised the burden of proof in asylum cases.[156] Further, the act was passed by Congress after it was made clear the authors of the legislation intended to make it harder for terrorists to enter and remain in the country.[157] Proponents of both the strict and lenient approaches can point to the Congressional Record for support. Those arguing for a stricter standard would likely point out that in floor debates it was emphasized that a heightened standard was necessary, and following those debates, a heightened approach was adopted. However, proponents of the more lenient standard would rightly emphasize that although a heightened standard was ultimately implemented, it was not as strict as originally proposed.

B. The Fourth Circuit's Interpretation Should Rule

There is admittedly support for both perspectives on how the nexus requirement should be interpreted. However, this Note argues that a more lenient interpretation of the "one central reason" standard should control. To resolve the confusion between circuits, either the Supreme Court should ratify the Fourth Circuit's approach to analyzing asylum applications, or Congress should revise the bill to explicitly clarify the standard to be in line with the Fourth Circuit's approach.

As a simple matter of policy, the Fourth Circuit offers the best approach to interpreting the "one central reason standard." As Mr. Nadler argued to the House of Representatives in opposition to the changing standard, "[a]sylum law is supposed to be about protecting individuals ... from serious human rights abuses; it is not supposed to be about seizing on any possible basis to deny a claim or return people to persecution."[158] A desire to combat terrorist threats was a reasonable goal in passing the REAL ID Act, but that goal should not be accomplished through making a system so inaccessible that people in need are sent away.

Despite Judge Agee's emphasis on the circuits that have directly opposed the Fourth Circuit's more lenient approach to the nexus

156. *See* 151 CONG. REC. 1908 (2005) (statement of Mr. Sensenbrenner).
157. *See id.*; 151 CONG. REC. 2009 (2005) (statement of Mr. Berman).
158. 151 CONG. REC. 1911 (2005) (statement of Mr. Nadler).

requirement,[159] disagreement with one holding cannot be understood as an across-the-board acceptance that Congress wanted a strict interpretation. The Eleventh Circuit offers the clearest example of why Judge Agee appears to have placed excessive emphasis on one case. In *Azurdia-Hernandez*, the Eleventh Circuit would not deny the possibility that a person's religion could be a central reason for their persecution in cases where that person is targeted for forced labor because the persecutor believes they will benefit from some positive trait associated with the victim's religion.[160] This notion seems to lend itself nicely to the facts of *Chicas-Machado* in which members of MS-13 attempted to coerce Ms. Chicas-Machado to serve as their lookout because they believed her status as a Christian would make her unsuspecting.[161] Given the similarities, it cannot be ruled out that the Eleventh Circuit might have ruled similarly to the Fourth Circuit had it been tasked with considering *Chicas-Machado*.

Hernandez-Avalos dealt with a request for asylum grounded in a close family connection to a person who was targeted by a gang.[162] It is understandable there would be disagreement on how to handle cases like these given how unique the facts and circumstances of each case are. However, with five distinct protected statuses and room for variance within each one, pointing to cases that concern a particularly unique (yet accepted) social group as the foundation for why a strict approach is preferable oversimplifies the issue.

With more than 600 IJs presiding throughout seventy-two immigration courts, a BIA, and twelve federal circuits, there is a lot of room for variance in decision making.[163] Further, with hundreds of thousands of cases coming before IJs each year, these courts lack the adequate resources to give a full and fair analysis to each

159. *See Chicas-Machado*, 73 F.4th at 290-91 (Agee, J., concurring in part and dissenting in part).

160. 812 F. App'x 935, 939 (8th Cir. 2020).

161. *See Chicas-Machado*, 73 F.4th at 264.

162. *See* Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015).

163. *See Office of the Chief Immigration Judge*, U.S. DEPT. JUST., https://www.justice.gov/eoir/office-of-the-chief-immigration-judge [https://perma.cc/EAN3-5JKV]; *Board of Immigration Appeals*, EXECUTIVE OFFICE OF IMMIGRATION REVIEW, https://www.justice.gov/ eoir/board-of-immigration-appeals [https://perma.cc/GJ99-VCP5]; *Introduction to the Federal Court System*, U.S. DEPT. JUST., https://www.justice.gov/usao/justice-101/federal-courts [https://perma.cc/LKA4-4JUL].

case.[164] IJs specifically have been critiqued in the past for "widely disparate results in the[ir] asylum decisions."[165] Given these concerns, a clear analytical framework for how to handle the nexus requirement in asylum cases could potentially reduce disparities in how asylum applicants are treated by different courts.

The broader approach offered by the Fourth Circuit would be an easier standard to apply. The Tenth Circuit in *Orellana-Recinos* tried to draw a hard line regarding how "one central reason" should be interpreted.[166] However, the Fourth Circuit pushed back against that line by explaining that the immediate triggering event for the persecution need not be related to the protected status the applicant belongs to, so long as the protected status was one central reason for the applicant's persecution.[167] The Fourth Circuit believes this goes so far as to include when the protected status was a central reason for the persecutor *selecting* their target.[168] A broad standard allows more applicants to establish grounds for asylum while a narrow interpretation risks denying protection to individuals facing persecution, and even death, if they were forced to return home.

Given that the bill was designed to combat potential abuses of the asylum system by terrorists hoping to gain access to the United States, it is important to recall that several members of Congress directly challenged the assumption that terrorists were even capable of abusing the asylum system. Representative Nadler pointed out that "most asylum-seekers are in jail while resolution of their cases are pending so they cannot pose a threat."[169] Representative Berman added that "while several persons with terrorist connections have applied for asylum over the years, the Department of Homeland Security has not found a single terrorist has ever been granted asylum in the United States."[170]

Finally, focusing strictly on the fact that the standard was heightened with the most recent bill ignores the full picture. It is imperative that courts recognize the various iterations of the bill

164. *See* AM. IMMIGR. COUNCIL, *supra* note 10, at 1.
165. JOHNSON ET AL., *supra* note 9, at 250.
166. Orellana-Recinos v. Garland, 993 F.3d 851, 858-59 (10th Cir. 2021).
167. *See* Chicas-Machado v. Garland, 73 F.4th 261, 267-68 (4th Cir. 2023).
168. *Id.* at 269-70.
169. 151 CONG. REC. H457 (2005) (statement of Mr. Nadler).
170. 151 CONG. REC. H534 (2005) (statement of Mr. Berman).

when considering how strictly Congress wanted the nexus requirement to be interpreted. If Congress wanted to establish a particularly restrictive system, it would have maintained the wording that required an applicant's protected status to be *the* central reason for their persecution as opposed to whittling that standard down to one that required the applicant's protected status to be only *one* central reason.[171] Congress was responding to fears of terrorist action in the wake of 9/11, and part of that response involved heightening the restrictions for people trying to enter the United States.[172] However, with the passage of time, the recognition that the asylum system does not pose a concerning avenue for terrorists, and the understanding that the United States' asylum system was designed to help rather than hinder, it is clear the Fourth Circuit offers the most defensible understanding of the "one central reason" standard.

CONCLUSION

Providing assistance and protection to individuals fleeing threats of death in their home countries is of critical importance. Having clear guidance for the courts deciding these cases is therefore a top priority. Given immigration courts' excessive caseloads, the small amount of support these courts have, and the lack of representation most applicants are able to acquire, clear and unifying guidance should be provided whenever the opportunity presents itself.

As it pertains to the nexus requirement's "one central reason" standard, the Supreme Court or Congress should formally establish that the Fourth Circuit thus far has offered the best interpretation of how that standard should be applied. The Congressional Record indicates that several members of Congress were concerned that raising the standard would have an adverse effect on applicants with legitimate claims. It further reflects that the bill was deliberately watered down from the strictest proposal to a more flexible and lenient standard. With these concerns in mind, it is wrong for circuits to use the simple fact that Congress elevated the

171. *Compare* H.R. REP. NO. 108-724, pt. 1, at 58 (2004), *with* H.R. REP. NO. 109-72, at 73 (2005) (revising the nexus standard from requiring the protected status be *the* central reason to requiring that protected status be *at least one* central reason).

172. H.R. REP. NO. 109-72, at 160-63 (2005).

burden of proof beyond the "at least in part" standard as convincing evidence that the "one clear reason" standard should be applied narrowly.

The application of this new standard has gone beyond strictly trying to protect the country against terrorist threats. It has directly impacted many individuals who were recognized to have suffered persecution but could not prove that their protected status was a sufficiently connected cause of their persecution. As a result, individuals who faced persecution and were forced to flee their home countries are sent away, finding no protection in the United States. Clarity is pivotal to ensuring that individuals with similar claims will not be treated differently based merely on which IJ they are before, or which circuit their case is in.

Christopher R. Porter[*]

* J.D. Candidate 2026, William & Mary Law School. I thank my wife, Bonnie DeWorken, my parents, John and Jill Porter, my brother, Andrew Porter, and my friends for their support and guidance. Thanks also to the editors of the *William & Mary Law Review* for their excellent work on this Note.