No. 24-1223

In the Supreme Court of the United States

JUAN CARLOS URIOSTEGUI HERNANDEZ, ET AL.,
PETITIONERS

v.

PAMELA BONDI, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the motive standard that governs applications for asylum, under which an applicant must show that a protected trait is "at least one central reason" for claimed persecution, also governs applications for statutory withholding of removal.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-4a) and the decisions and orders of the Board of Immigration Appeals (Pet. App. 5a-7a) and immigration judge (Pet. App. 8a-16a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 31, 2025. The petition for a writ of certiorari was filed on April 29, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, aliens facing removal from the United States may seek asylum or withholding of removal. Asylum is a form of discretionary relief, which the government may grant only if it determines, among

other things, that the alien is unable or unwilling to return to his country of nationality or last habitual residence "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." 8 U.S.C. 1101(a)(42)(A); see 8 U.S.C. 1158(b)(1)(A). Under amendments to the INA made by the REAL ID Act of 2005 (REAL ID Act), Pub. L. No. 109-13, Div. B, 119 Stat. 302, the applicant must establish that a protected ground is "at least one central reason" for the claimed persecution. 8 U.S.C. 1158(b)(1)(B)(i). The Board of Immigration Appeals (Board) has ruled that a protected trait does not amount to a "central reason" for persecution if the trait plays only "a minor role" or is "incidental, tangential, superficial, or subordinate to another reason for harm." *In re J-B-N- & S-M-*, 24 I. & N. Dec. 208, 214 (2007).

Withholding of removal, by contrast, is a form of nondiscretionary protection. The government must not remove an applicant to a particular country if "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," 8 U.S.C. 1231(b)(3)(A), and the applicant is not statutorily barred from receiving that protection, see 8 U.S.C. 1231(b)(3)(B). The "would be threatened" standard, which requires the applicant to show a "clear probability of persecution," is more "stringent" than the standard for eligibility for asylum, which requires only a "'well-founded fear of persecution.'" *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 443-444 (1987). Unlike the provisions on asylum, the provisions on withholding of removal do not expressly address the standard to be applied in cases involving mixed motives (beyond requir-

ing the applicant to show that his life or freedom would be threatened "because of" a protected trait). But the Board has ruled that the same "one central reason" standard that governs asylum claims also governs withholding claims. See *In re C-T-L-*, 25 I. & N. Dec. 341, 346 (2010). An applicant seeking withholding of removal, just like an applicant seeking asylum, must therefore establish that a protected ground is "at least one central reason" for the claimed persecution. *Id.* at 348.

2. The lead petitioner is a citizen of Mexico who arrived in the United States without valid travel documents and was placed in removal proceedings. See Pet. App. 9a. As relevant here, he applied for asylum and statutory withholding of removal, claiming that he feared gang retaliation after he rejected attempts to recruit him. See *id.* at 9a-11a. He argued that such retaliation would constitute persecution because of his membership in two "particular social groups," 8 U.S.C. 1101(a)(42)(A): "Mexican men who refuse to support gangs" and "Mexican men perceived to encourage public opposition to criminal gangs by refusing to submit to the gang's authority." Pet. App. 12a. The remaining petitioners (the lead petitioner's wife and child) filed derivative claims. See *id.* at 10a.

The immigration judge denied the lead petitioner's applications and ordered his removal. Pet. App. 8a-16a. The immigration judge rejected the asylum application because the lead petitioner had failed to show that the harm he faced was sufficiently severe to constitute past persecution, see *id.* at 12a; because the groups that the lead petitioner had formulated are not cognizable "particular social groups," see *id.* at 12a-13a; and because the lead petitioner had failed to establish that he had been targeted because of his membership in those

groups, see *id.* at 13a. The immigration judge then denied the withholding application "[b]ecause the burden of proof for [statutory] withholding of removal * * * is more onerous than that for asylum." *Id.* at 14a.

The Board affirmed the immigration judge's decision without issuing an opinion. Pet. App. 5a-7a.

3. The court of appeals denied a petition for review. Pet. App. 1a-4a. The court sustained the agency's determination that the groups formulated by the lead petitioner do not constitute cognizable particular social groups, see *id.* at 3a, and it explained that the "failure to establish a cognizable [particular social group] is dispositive of [the] claims for asylum and withholding of removal," *ibid.* The court then stated that the lead petitioner's "contention that withholding of removal has a less demanding standard than asylum with respect to establishing nexus is foreclosed" under circuit precedent. *Id.* at 3a-4a (citing *Vazquez-Guerra* v. *Garland*, 7 F.4th 265, 271 (5th Cir. 2021), cert. denied, 142 S. Ct. 1228 (2022)).

ARGUMENT

Petitioners contend (Pet. 11-27) that an applicant for withholding of removal need show that a protected trait was only "a reason," rather than "at least one central reason," for claimed persecution. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court. Although the question presented is the subject of a circuit conflict, that conflict is poorly developed, and this case would be an unsuitable vehicle for resolving it.

This Court has recently and repeatedly denied petitions for writs of certiorari presenting the same question. See *Diaz-Hernandez* v. *Garland*, 145 S. Ct. 1067 (2025) (No. 24-5462); *Lopez-Aguilar* v. *Garland*, 144

S. Ct. 2690 (2024) (No. 23-6801); *Vasquez-Guerra* v. *Garland*, 142 S. Ct. 1228 (2022) (No. 21-632); *Cortez-Ramirez* v. *Garland*, 142 S. Ct. 756 (2022) (No. 21-433); *Cerritos-Quintanilla* v. *Garland*, 142 S. Ct. 80 (2021) (No. 20-1529); *Fawzer* v. *Barr*, 587 U.S. 1051 (2019) (No. 18-953). The same course is warranted here.

1. The INA expressly adopts a motive standard for asylum cases: An applicant must show that a protected trait was "at least one central reason" for the claimed persecution. 8 U.S.C. 1158(b)(1)(B)(i). The INA does not, however, expressly set forth a motive standard for withholding-of-removal determinations, beyond requiring the applicant to show that his life or freedom would be threatened "because of" a protected trait. 8 U.S.C. 1231(b)(3)(A). Yet the best reading of the statute is that the same "at least one central reason" standard that governs asylum cases also governs withholding cases.

a. Under the INA, an applicant for withholding of removal must show that his life or freedom would be threatened "because of" a protected trait. 8 U.S.C. 1231(b)(3)(A). This Court has explained that, as a matter of "ordinary meaning," a person acts "'because of'" a protected trait only if that trait "'actually played a role'" in his decision and "'had a determinative influence on the outcome.'" *Gross* v. *FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009) (citation and emphasis omitted). The "at least one central reason" standard captures that ordinary meaning. A trait that played only an incidental, tangential, or superficial role in the alleged mistreatment would not have "had a determinative influence on the outcome." *Ibid.* (citation and emphasis omitted).

The textual parallels between the statutory provisions governing asylum and withholding of removal also support the use of the same standard in both classes of

cases. An applicant for asylum must show that he faces persecution "on account of" a protected trait, 8 U.S.C. 1101(a)(42)(A), while an applicant for withholding of removal must show that he faces persecution "because of" a protected trait, 8 U.S.C. 1231(b)(3)(A). As this Court has observed, "because of" and "on account of" are synonymous. *Gross*, 557 U.S. at 176 (citation omitted).

The Board has explained that using different motive standards for asylum and withholding cases would create severe practical difficulties. See *In re C-T-L-*, 25 I. & N. Dec. 341, 346 (2010). Every application for asylum "necessarily includes" an application for withholding of removal. *Id.* at 347. The rules governing those two forms of protection differ in some respects, but "[t]he existing distinctions are generally straightforward to apply because they involve either basic eligibility criteria or the overarching burden of proof." *Id.* at 346. In contrast, using different motive standards for asylum and withholding would "require a bifurcated analysis on a single subissue in the overall case," "mak[ing] these adjudications more complex, unclear, and uncertain." *Id.* at 347. "On the other hand, applying the same standard promotes consistency and predictability, which are important principles in immigration law." *Ibid.*

b. Invoking the Ninth Circuit's decision in *Barajas-Romero* v. *Lynch*, 846 F.3d 351 (2017), and the Sixth Circuit's decision in *Guzman-Vazquez* v. *Barr*, 959 F.3d 253 (2020), petitioners contend (Pet. 13-14) that an applicant for withholding of removal need show that a protected trait was only "a reason" for the claimed persecution. The Ninth Circuit's reading (which the Sixth Circuit followed) rests on an amendment made in the REAL ID Act, which provides: "In determining whether

an alien has demonstrated that the alien's life or freedom would be threatened *for a reason described in subparagraph (A)* [*i.e.*, the provision of the withholding statute setting out the protected traits], 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 [the asylum statute]." 8 U.S.C. 1231(b)(3)(C) (emphasis added). The Ninth Circuit interpreted the phrase "for a reason described in subparagraph (A)," *ibid.*, to mean that Congress required applicants for withholding to show that a protected trait is only "'a' reason, not 'at least one central reason,'" for the persecution. *Barajas-Romero*, 846 F.3d at 358 (citation omitted).

Naturally read, however, the phrase "for a reason described in subparagraph (A)," 8 U.S.C. 1231(b)(3)(C), is just a shorthand reference to the list of protected traits in subparagraph (A): "race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. 1231(b)(3)(A). Nothing in the phrase suggests that it prescribes new substantive standards for assessing motive.

History confirms that interpretation. Before Congress adopted the REAL ID Act, courts and the Board had "consistently" used the same motive standard in withholding and asylum cases. *C-T-L-*, 25 I. & N. Dec. at 346; see, *e.g.*, *Gafoor* v. *INS*, 231 F.3d 645, 653 n.5 (9th Cir. 2000); *In re A-M-*, 23 I. & N. Dec. 737, 739 (B.I.A. 2005); *In re V-T-S-*, 21 I. & N. Dec. 792, 796 (B.I.A. 1997) (en banc). If Congress wanted to "overturn" that "settled body of law," it would have done so directly, not in an "oblique way." *Helsinn Healthcare S.A.* v. *Teva Pharm. USA, Inc.*, 586 U.S. 123, 131 (2019) (citation omitted).

The adoption of Section 1231(b)(3)(C) would have been an oblique way to require the Board to use a different motive standard for asylum than for withholding cases. The phrase "for a reason described in subparagraph (A)" reads as a straightforward cross-reference to the withholding statute's list of protected traits. Such a statutory cross-reference would have been an unusual place to bury an implied instruction to use a distinct substantive standard. Further, the function of the provision as a whole is to promote uniformity between asylum and withholding cases, by requiring the agency to "make credibility determinations" in withholding cases "in the manner described in [the asylum statute]." 8 U.S.C. 1231(b)(3)(C). It would be unnatural to read a provision designed to promote consistency between the two contexts as actually requiring the application of inconsistent standards for evaluating motive.

2. The question presented does not warrant this Court's review at this time.

a. Petitioners correctly observe (Pet. 11-15) that the courts of appeals disagree about the appropriate motive standard for withholding-of-removal cases, but they overstate the extent of the conflict. On the one hand, the Sixth and Ninth Circuits have issued published opinions adopting the "a reason" standard for withholding cases. See *Guzman-Vazquez*, 959 F.3d at 273-274 (6th Cir.); *Barajas-Romero*, 846 F.3d at 358-360 (9th Cir). On the other hand, while it is not cited by petitioners, a published opinion issued by the Fourth Circuit adopts the "one central reason" standard. See *Diaz-Hernandez* v. *Garland*, 104 F.4th 465, 477 (2024), cert. denied, 145 S. Ct. 1067 (2025).

In the decision below, the Fifth Circuit stated that its previous decision in *Vazquez-Guerra* v. *Garland*, 7 F.4th

265 (5th Cir. 2021), cert. denied, 142 S. Ct. 1228 (2022), foreclosed petitioners' "contention that withholding of removal has a less demanding standard than asylum with respect to establishing nexus." Pet. App. 3a-4a. *Vazquez-Guerra*, however, did not analyze the statutory text or discuss the alternative "a reason" standard. See 7 F.4th at 269, 271.

The cases from the First, Eighth, and Eleventh Circuits that petitioners cite (Pet. 12) do not squarely address the question presented. In those cases, the alien does not appear to have disputed the applicability of the "one central reason" standard. See *Sanchez-Vasquez* v. *Garland*, 994 F.3d 40, 47 (1st Cir. 2021); *Lucas* v. *Lynch*, 654 Fed. Appx. 256, 259 (8th Cir. 2016) (per curiam); *Sanchez-Castro* v. *United States Attorney General*, 998 F.3d 1281, 1286 (11th Cir. 2021). The courts in those cases therefore took it for granted that the "at least one central reason" standard applied. They did not mention the alternative "a reason" standard, let alone analyze the question of statutory interpretation discussed above. "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster* v. *Fall*, 266 U.S. 507, 511 (1925).

In any event, the Eighth Circuit's decision in *Lucas* is unpublished and so does not bind future panels. And the First and Eighth Circuits have recently suggested that they have not taken sides in the circuit conflict. See *Pazine* v. *Garland*, 115 F.4th 53, 69 n.11 (1st Cir. 2024) ("[N]either party asks us to resolve the issue, [so] we apply the 'one central reason' standard here and leave the issue for another day."); *Durakovic* v. *Garland*, 101 F.4th 989, 996 (8th Cir. 2024) ("Petitioners did not raise

this argument," so "we apply the 'one central reason' nexus standard.").

Petitioners also cite (Pet. 12) the Third Circuit's decision in *Gonzalez-Posadas* v. *Attorney General*, 781 F.3d 677 (2015). In that case, the Third Circuit stated that "the Board's decision * * * to extend the 'one central reason' test to withholding of removal was sound" and noted that "the parties appear[ed] to agree on this point." *Id.* at 685 n.6. The Third Circuit did not analyze the statutory text or discuss the alternative "a reason" standard.

Finally, petitioners argue (Pet. 12) that the Second Circuit has applied the "one central reason" standard in withholding-of-removal cases. But the Second Circuit did so because it deferred to the Board under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (2022). See *Quituizaca* v. *Garland*, 52 F.4th 103, 108-115 (2022). Petitioners do not cite any published opinion in which the Second Circuit has revisited the issue since this Court overruled *Chevron* in *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024).

b. Certiorari is particularly unwarranted given this Court's recent decision in *Loper Bright*. There, the Court recognized that, "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." 603 U.S. at 413. The INA expressly empowers the Attorney General to issue "controlling" "determination[s] and ruling[s]" on "questions of law." 8 U.S.C. 1103(a)(1). The Court should give the courts of appeals the opportunity to consider the issue in light of *Loper Bright*. Granting review in this case could force this Court to confront the issue

prematurely, before it has percolated in the courts of appeals.

Deferring review of the question presented also would give other courts of appeals the opportunity to consider the alternative approach set out in Judge Murphy's dissent from the Sixth Circuit's decision in *Guzman-Vazquez* and Judge Sullivan's concurrence in the Second Circuit's decision in *Quituizaca*. Eschewing both the "one central reason" standard and the "one reason" standard, Judges Murphy and Sullivan advocated a third standard, under which the applicant for withholding of removal would have to show that the protected trait satisfies an even more stringent test of but-for causation. See *Quituizaca*, 52 F.4th at 118-120 (Sullivan, J., concurring in part and concurring in the judgment); *Guzman-Vazquez*, 959 F.3d at 276 (Murphy, J., dissenting). The Second Circuit applied *Chevron* in rejecting that approach. See *Quituizaca*, 52 F.4th at 112-113. Meanwhile, a panel of the Sixth Circuit has suggested that the "en banc Court" should consider the question presented, adding that, "[a]s more jurists consider the question, Judge Murphy's and Judge Sullivan's shared textual analysis may well carry the day." *Vasquez-Rivera* v. *Garland*, 96 F.4th 903, 910 (2024).

In short, the circuit conflict on the question presented is poorly developed and may well evolve in the near future. It does not warrant this Court's review at this time.

3. In all events, this case is an unsuitable vehicle for resolving the question presented because the decisions of the agency and the court of appeals rest on independently sufficient alternative grounds. The agency rejected the lead petitioner's asylum and withholding claims on three distinct grounds: (1) the harms faced by

the lead petitioner did not amount to past persecution, (2) the groups identified by the lead petitioner do not constitute cognizable particular social groups, and (3) the lead petitioner failed to show that he had been targeted because of his membership in those groups. See Pet. App. 12a-14a. The court of appeals, in turn, relied on the second of those grounds, explaining that the lead petitioner's "failure to establish a cognizable [particular social group] is dispositive of his claims for asylum and withholding of removal." *Id.* at 3a.

Petitioners do not ask (see Pet. i) this Court to review the court of appeals' "dispositive" alternative holding that they had failed to identify a cognizable particular social group. Pet. App. 3a. Petitioners therefore would not be entitled to reversal even if they were to prevail on the question presented. This case is accordingly a poor vehicle for resolving that question. See *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1881) (explaining that this Court does not sit to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties); Stephen M. Shapiro et al., *Supreme Court Practice* § 4.4(f), at 4-18 (11th ed. 2019) ("If the resolution of a clear conflict is irrelevant to the ultimate outcome of the case before the Court, certiorari may be denied.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 2025