Spreading Deference Too Thin: Why *Urias-Orellana* Should Not Broadly Insulate Immigration Questions from Searching Federal Appellate Review

by Leo Sainati[*]

The Supreme Court in Urias-Orellana v. Bondi *strengthened executive branch control over the asylum system. Writing for a unanimous Court, Justice Jackson directed federal appeals courts to use the deferential substantial-evidence standard when reviewing an immigration judge's decision that an asylum applicant has or has not met the legal definition of "persecution." That persecution determination, the Court explained, is an "administrative finding of fact" under 8 U.S.C. § 1252(b)(4)(B), for which Congress explicitly ordered deference to the executive branch unless "any reasonable adjudicator would be compelled to conclude to the contrary." The Court's holding—that Congress has directly spoken on the standard of review—is a narrow one, implicating only the persecution determination. Yet circuit courts across the country have read the opinion more broadly, as a blessing for deference to the executive branch outside of the asylum context. The best reading of* Urias-Orellana*, however, is a limited one. Congress spoke directly on the standard of review provision by codifying the Court's prior decision in* Elias-Zacarias*, a case about persecution, and the Court rejected arguments from the parties to treat persecution like other mixed questions in the immigration context. Styling the opinion as a broad mandate for executive deference ignores the Court's careful work to draw the decision's radius at the persecution determination and threatens to insulate many immigration questions from meaningful appellate review.*

In the midst of numerous consequential decisions on immigration law during the Supreme Court's October 2025 term, one case evaded the national spotlight. It was not released among the flurry of substantial cases at the end of the term in June, nor did it directly implicate the President of the United States or his

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policies. But it will enable them. In a unanimous decision, the Court strengthened the executive branch's control over the asylum system. Almost immediately, circuit courts began to use the opinion as a foothold for deference to the executive branch outside the asylum context. But a careful reading of the opinion reveals the Court walked a fine line to side with the government on narrow grounds and limit the decision's radius to the specific issue of the persecution determination.

The case was *Urias-Orellana v. Bondi*, in which Douglas Humberto Urias-Orellana, his wife Sayra Iliana Gamez-Mejia, and their child, natives of El Salvador, sought asylum in the United States after fleeing a sicario (a hitman) who shot two of Urias-Orellana's half-brothers and vowed to kill every member of his family.[1] Urias-Orellana raised asylum eligibility as a defense to removal, arguing that he qualified as a refugee under the Immigration and Nationality Act ("INA"),[2] that is, as someone who "is unable or unwilling to return" to his 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."[3] The Immigration Judge ("IJ") in Urias-Orellana's removal proceedings credited his account but concluded that the facts he presented did not amount to past persecution or a well-founded fear of persecution under the INA.[4] Put differently, the IJ applied "[t]he INA's legal standard for 'persecution' . . . to the IJ's findings of fact."[5]

The Supreme Court directed federal appeals courts to use the deferential substantial-evidence standard when reviewing this persecution determination.[6] Congress had specifically ordered this deference, the Court explained, by codifying the standard of review from *INS v. Elias-Zacarias*[7] into the INA's standard-of-review provision, 8 U.S.C. § 1252(b)(4)(B).[8]

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[1] Urias-Orellana v. Bondi, 607 U.S. 537, 540 (2026).
[2] *See* 8 U.S.C. § 1158(b)(1)(A).
[3] 8 U.S.C. § 1101(a)(42)(A).
[4] *Urias-Orellana*, 607 U.S. at 541.
[5] *Id.* at 549.
[6] *Id.* at 545.
[7] INS v. Elias-Zacarias, 502 U.S. 478 (1992).
[8] *Urias-Orellana*, 607 U.S. at 545.

Circuit courts almost immediately began to read *Urias-Orellana* to apply more broadly outside of the asylum context.[9] In *Baltazar Us*, the Sixth Circuit reasoned that *Urias-Orellana* "contemplate[d] the same standard of review for *any kind of mixed determination* involving the application of the INA to a given set of established facts reviewed under" the statutory definition of a "refugee."[10] The Fifth Circuit took an even more expansive approach in *Okene*, characterizing the opinion as mandating deference to the "application of the statute to the IJ's factual findings *generally*."[11] The Seventh Circuit agreed, explaining that *Urias-Orellana* mandated that *all* "[m]ixed questions of law and fact . . . are reviewed for substantial evidence."[12]

But these broader applications of *Urias-Orellana* do not follow from the clear lines deliberately drawn in the opinion. Two salient points in the opinion and the implications of a broader interpretation illustrate why lower courts should resist reading *Urias-Orellana* outside of the persecution context. First, the Court decided the case on narrow textual grounds, reasoning that Congress spoke on the standard of review for persecution determinations specifically by using language in the INA's standard of review provision from *Elias-Zacarias*, a case addressing persecution. Second, the Court explicitly declined to treat the persecution determination like other mixed questions under the INA, leaving the general law-fact framework unchanged outside of cases where Congress has directly spoken on the standard of review, as it did for persecution determinations. Finally, reading a substantial-evidence standard into all mixed questions under the INA would stifle development of immigration law, insulating most questions from federal

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[9] *See, e.g.*, Okene v. Blanche, 190 F.4th 445, 450 (5th Cir. 2026) (cancellation of removal and special cancellation of removal); Baltazar Us v. Blanche, 174 F.4th 509, 512 (6th Cir. 2026) (cancellation of removal hardship determination); Lin v. Blanche, No. 24-881, 2026 WL 2754285, at *1 (2d Cir. 2026) (same); Perez-Castillo v. Blanche, 177 F.4th 837, 842 (7th Cir. 2026) (all final orders of removal reviewable under § 1252(a)).

[10] *Baltazar Us,* 174 F.4th at 512 (emphasis added).

[11] 190 F.4th at 450 (citation omitted) (emphasis added).

[12] *Perez-Castillo*, 177 F.4th at 842.

appellate review and creating a one-way ratchet effect that would continually raise legal standards under the INA writ large.

First, Congress spoke specifically to the proper standard of review for persecution determinations by codifying the Court's decision in *Elias-Zacarias* into the INA's standard of review provision. *Elias-Zacarias* was a 1992 decision in which the Court considered "whether a guerilla organization's attempt to coerce a person into performing military service *necessarily* constitutes 'persecution on account of . . . political opinion'" under a previous version of the INA.[13] The Board of Immigration Appeals' ("BIA") determination "that Elias-Zacarias was not eligible for asylum," the Court held, "can be reversed only if the evidence presented . . . was such that a reasonable factfinder would have to conclude" to the contrary.[14] The evidence must not only "*support*[] that conclusion, but *compel*[] it."[15] After Congress amended the INA in 1996, it closely tailored the language for standards of review to the Court's decision.[16] Administrative findings of fact, the amended statute reads, "are conclusive unless any reasonable adjudicator would be *compelled to conclude to the contrary*."[17] The INA thus "codified the *Elias-Zacarias* standard" such that it "requires substantial-evidence review for the entirety of the persecution determination."[18] Outside of the persecution context, then, *Urias-Orellana* has little force.

The Court's codification argument in *Urias-Orellana* stretches *Elias-Zacarias* further than the language of the *Elias-Zacarias* opinion might suggest. That opinion vacillates between describing the determination under review as the asylum-eligibility decision in its entirety, the specific persecution finding, and in a footnote, simply "the BIA finding."[19] And *Elias-Zacarias* concerned the nexus element of the persecution determination:

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[13] *Elias-Zacarias*, 502 U.S. at 479.
[14] *Id.* at 481.
[15] *Id.* at 481 n.1.
[16] *See* 8 U.S.C. § 1252(b)(4)(B) (providing that "administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary").
[17] *Id.* (emphasis added).
[18] *Urias-Orellana*, 607 U.S. at 545.
[19] *Elias-Zacarias*, 502 U.S. at 481 & n.1.

the alleged persecution was "on account of . . . political opinion."[20] As the petitioners argued in *Urias-Orellana*, "the [*Elias-Zacaris*] Court applied substantial-evidence review to a finding of fact about the alleged persecutors' motives. It did not adopt an atextual rule that every aspect of the asylum-eligibility determination must be reviewed deferentially."[21] Although the *Urias-Orellana* Court ultimately ordered substantial-evidence review for the entirety of the persecution determination,[22] it did not extend the standard any further.

Despite the clear textual boundaries delineated in *Urias-Orellana*, lower courts have read the opinion to apply outside of persecution cases. The Seventh Circuit in *Perez-Castillo* applied *Urias-Orellana* to cancellation of removal determinations because "[t]he only provision speaking to standard of review is § 1252(b)(4), so we follow *Urias-Orellana*'s interpretation of that provision."[23] The Fifth Circuit in *Okene* justified a similar extension of *Urias-Orellana* on the ground that the provision of the INA the Supreme Court interpreted, 8 U.S.C. § 1252(b)(4), "does not specify any category of relief."[24] "Accordingly," the panel wrote, "the Supreme Court contemplated the substantial-evidence standard for application of the statute to the IJ's factual findings generally."[25] But the Supreme Court did no such thing. After acknowledging that "[w]hether a given agency determination fits within the purview of subparagraph (B)—and is thus reviewed for substantial evidence—is not always clear," the Court "resolve[d] the proper-standard question *as it relates to the courts of appeals' review of the agency's persecution determination*."[26] The Court thus did not explain what precisely qualifies as an "administrative finding[] of fact," instead holding that the persecution determination *was* such a finding because of clear language from Congress.[27] Properly understood, this

[20] *Id.* at 479 (quoting 8 U.S.C. § 1101(a)(42)(A)).
[21] Reply Br. for Pet., 2025 WL 3191847 at *11.
[22] *Urias-Orellana*, 607 U.S. at 545.
[23] *Perez-Castillo*, 177 F.4th at 842 n.1.
[24] 190 F.4th at 450.
[25] *Id.* (citation omitted).
[26] *Urias-Orellana*, 607 U.S. at 544–45 (emphasis added).
[27] *Id.* at 545.

reasoning should constrain lower court interpretations of the opinion outside of the persecution context.

Second, although the Court in *Urias-Orellana* eschewed its general framework for mixed questions under the INA for the persecution determination, it did not change that framework for other mixed questions. Generally, for mixed questions like the persecution determination, the proper standard of review depends on the test articulated in *U.S. Bank National Ass'n v. Village at Lakeridge, LLC*, which asks whether answering the question requires "primarily legal or factual work."[28] And although the Court had taken up mixed questions in the immigration context before, it had not expressly answered what standard should apply to persecution determinations in *U.S. Bank* terms.[29]

In *Guerrero-Lasprilla v. Barr*, for example, the Court held that the application of a due-diligence standard to the undisputed facts surrounding the reopening of removal proceedings was reviewable as a question of law under the INA's jurisdictional provision, 8 U.S.C. § 1252(a)(2)(D).[30] The application of law to settled facts, the Court said, was a "mixed question" for which *U.S. Bank* spelled out the appropriate review standard.[31] So too in *Wilkinson v. Garland*, where the Court held that application of the "exceptional and extremely unusual hardship" standard for cancellation of removal to undisputed facts is a reviewable question of law.[32] This application of a "statutory legal standard . . . to an established set of facts is a quintessential mixed question of law and fact."[33] And the proper standard of review, the Court explained, depends on the *U.S. Bank* criteria,

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[28] U.S. Bank Nat'l Ass'n v. Village at Lakeridge, LLC, 583 U.S. 387, 395–96 (2018).

[29] *See Urias-Orellana*, 607 U.S. at 544–45 "[T]he courts of appeals have split over the standard of review that should apply to the agency's determination that an asylum applicant has not established past "persecution" or a "well-founded fear of [future] persecution." . . . Today we resolve the proper-standard question . . . .").

[30] Guerrero-Lasprilla v. Barr, 589 U.S. 221, 227 (2020).

[31] *Id.* at 228.

[32] Wilkinson v. Garland, 601 U.S. 209, 212 (2024).

[33] *Id.*

that is, whether the judicial task requires "primarily legal or factual work."[34]

Thus, when the Court granted certiorari in *Urias-Orellana*, it already had a framework in place for mixed questions in immigration cases. Accordingly, the parties sparred over which side of the *U.S. Bank* ledger the persecution determination should fall on.[35] But the Court distinguished these prior decisions, separating out the question of whether an issue is reviewable under the INA from the standard of review that applies once the court has jurisdiction.[36] *Guerrero-Lasprilla* and *Wilkinson*, the Court explained, concerned whether courts had jurisdiction to review a given agency determination under the INA, which "tells us nothing about the type of review the court must afford to that issue" under the standard of review provision.[37] Indeed, the Court specifically rejected arguments that an analysis of the mixed question should apply at all, writing that "the force of *Elias-Zacarias* and [the INA's] enactment history" counseled otherwise.[38] The persecution determination was in fact distinct from other mixed questions, because "*Elias-Zacarias* and the subsequent statutory history suggest that Congress meant for the entirety" of the determination "to receive deference . . . ."[39] In other words, *Urias-Orellana* is a poor comparator for other mixed questions under the INA because Congress had directly spoken on the proper standard for persecution, displacing any judge-made framework.

Urias-Orellana did not apply or replace the *U.S. Bank* framework for other mixed questions, yet circuit courts have erroneously extended the substantial-evidence standard to such questions under the INA. At least three circuits have interpreted *Urias-*

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[34] *Id.* at 221–22 (citing *U.S. Bank*, 583 U.S. at 395–96).

[35] *See* Br. for Pets., 2025 WL 2532581, at *34 ("Judging whether a given set of undisputed facts qualifies as 'persecution' . . . primarily involves legal work that is best suited for appellate courts. De novo judicial review is therefore appropriate."); Br. for Resp., 2025 WL 2916069, at *28 ("A finding that an asylum applicant has not shown persecution is about as factual sounding as any mixed question gets." (citation omitted)).

[36] *Urias-Orellana*, 607 U.S. at 550.

[37] *Id.*

[38] *Id.* at 549.

[39] *Id.*

Orellana to govern hardship determinations under 8 U.S.C. § 1229b,[40] a provision governing cancellation of removal, even though the Supreme Court has suggested that is the wrong approach. In *Wilkinson*, the Court noted that the hardship determination "in § 1229b(b)(1)(D) is a legal standard that an IJ applies to facts" and, citing its framework in *U.S. Bank*, explained that the standard of review turns on whether that application "may require 'primarily legal or factual work.'"[41] In contrast to the persecution determination, Congress has not mandated the standard of review for statutory hardship determinations under the INA, and therefore *U.S. Bank*, not *Urias-Orellana*, governs the standard.

True, many immigration questions can require fact intensive work that may warrant deference to the initial trier of fact. But even a standard that "may require an IJ to closely examine and weigh a set of established facts . . . is not a factual inquiry. It is, inescapably, a mixed question of law and fact."[42] Calibrating the standard of review for such questions should turn on a searching inquiry into the factual or legal nature of the standard under *U.S. Bank*, an approach that best ensures the decisionmaker answering the mixed question is "better suited to resolve it[.]"[43] That distinction is important because it supplies the limiting principle to *Urias-Orellana* and illustrates how lower courts have overextended the opinion. Statutory hardship determinations under 8 U.S.C. § 1229b and other INA legal standards may ultimately be primarily factual ones, best left to the IJ rather than a reviewing court. But that institutional allocation should be made because *that specific determination*—rather than the mere fact it is a mixed question—is "better suited" for factfinders than for appellate panels.[44] Ultimately, these two doctrinal moves in *Urias-Orellana*—a narrow, codification-driven textual analysis of the statute and a rejection of the general mixed question framework solely for persecution questions—evince a firm commitment by the Court to limit the scope of the opinion.

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[40] *Okene*, 190 F.4th at 450; *Baltazar Us*, 174 F.4th at 512; *Lin*, 2026 WL 2754285, at *1.
[41] *Wilkinson*, 601 U.S. at 221–222 (citing *U.S. Bank*, 583 U.S. at 396).
[42] *Id.* at 221.
[43] *U.S. Bank*, 583 U.S. at 395.
[44] *Id.*

Finally, more expansive applications of *Urias-Orellana* threaten to recast it as a broad mandate to defer to the executive branch throughout the INA, insulating from meaningful judicial review legal questions that often determine whether a person is removed from the country. Indeed, the Seventh Circuit unmistakably extends the standard from *Urias-Orellana* to, in its own terms, "most questions in the immigration context . . . ."[45] The Seventh Circuit in *Perez-Castillo* sees *Urias-Orellana* as setting the standard for all "[m]ixed questions of law and fact" reviewable under the INA, and since "most questions in the immigration context are mixed questions of law and fact, . . . the immigration judge's overall conclusions merit significant deference."[46] This expansive reading would stunt the development of immigration law and create a one-way ratchet effect, continually raising legal standards under the INA at large.

Significant deference to the executive branch across the INA will insulate immigration questions from federal court review, forestalling development of immigration law. Immigration courts are facing an increasing backlog of cases, with the number of pending claims before IJs exceeding the number of new cases by over 600% in 2026.[47] The BIA also faces its own backlog, which more than tripled from 92,255 cases in 2019 to 325,774 cases in 2026.[48] These docket pressures have led the BIA to spend a "mere one hour adjudicating each appeal."[49] Further, the BIA often issues summary affirmances—brief unpublished decisions without reasoning or analysis.[50] These decisions make up the vast majority of BIA opinions: between 2012 and 2016, the BIA decided

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[45] *Perez-Castillo*, 177 F.4th at 842.

[46] *Id.*

[47] Executive Office for Immigration Review (EOIR) Adjudication Statistics: Pending Cases, New Cases, and Total Completion (2025), https://justice.gov/eoir/workload-and-adjudication-statistics (under "Caseload"; click "1. Pending Cases, New Cases, and Total Completions (PDF)") (generated Oct. 22, 2026).

[48] *Id.* (under "Board of Immigration Appeals"; click "19. All Appeals Filed, Completed, and Pending (PDF)") (generated Oct. 22, 2026).

[49] Faiza W. Sayed, *The Immigration Shadow Docket*, 117 NW. U. L. REV. 893, 945 (2023).

[50] Jaya Ramji-Nogales et. al., *Refugee Roulette*, 60 STAN L. REV. 295, 351–52 (2007).

roughly 30,000 cases each year, but only "about 30 decisions" per year were published as binding precedent.[51] With a promise in hand that most judgments will be reviewed deferentially, immigration judges will have even fewer incentives to supply reasoning for their decisions. After all, why provide a thorough analysis applying the legal standard and potentially risk reversal under even highly deferential review when a simple recitation of the standard ensures essentially rubber-stamp approval?

The dangers of insulating review of immigration questions are not merely conjecture. The Trump administration has culled BIA membership from twenty-eight to just fifteen judges because, according to the administration's interim rule, more members resulted in less doctrinal cohesion.[52] The restructured Board has narrowed eligibility for asylum and withholding of removal, and it has tightened the hardship standard governing cancellation of removal for non-lawful permanent residents, "engineer[ing] a body of precedents that reliably produces one result: removal."[53] Under a broad reading of *Urias-Orellana*, that engineered precedent is largely safe from searching appellate eyes.

Doctrinally, substantial-evidence review of all mixed questions will continually exert upward pressure on legal standards. Federal appeals courts will be confined to asking whether, on a particular set of facts, "any reasonable adjudicator would be compelled to conclude" that a standard is met.[54] Whether any reasonable adjudicator could conclude a standard is met, however, sets an unbounded ceiling on that standard—not the ground-floor baseline rules that appellate courts are apt to provide. The BIA, deferring to prior circuit precedent on legal standards,[55] takes a circuit court finding that a reasonable

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[51] New York Legal Assistance Grp. v. BIA, 987 F.3d 207, 210 (2d Cir. 2021).

[52] Jason A. Cade, *Welcome to the Trump Administration's Board of Immigration Appeals. The Immigrant Always Loses.*, 136 YALE L. J. 24, 26–27 (Sept. 25, 2026), https://yalelawjournal.org/essay/welcome-to-the-trump-administrations-board-of-immigration-appeals-the-immigrant-always-loses-forum.

[53] *Id.* at 24.

[54] 8 U.S.C. § 1252(b)(4)(B).

[55] *See* Abdulai v. Ashcroft, 239 F.3d 542, 553 (3d Cir. 2001) ("The BIA is required to follow court of appeals precedent within the geographical confines of the relevant circuit.").

adjudicator would not be compelled to conclude a standard has been met as the basis for that standard, a tautological exercise that works "as a one-way upward ratchet . . . ."[56] Deference layered on deference is poor foundation for a legal standard, especially one that governs an asylum-seeker's potential removal from the country.

The Supreme Court has recognized that the Executive Branch is due special deference in the immigration context.[57] One basis for this deference, the Court has explained, is that immigration decisions often implicate foreign relations concerns.[58] The Court has also "made conflicting and ambiguous pronouncements" about the fount of federal immigration power, which sometimes stems "from principles of international law, or from the foundational attributes of sovereignty . . . [or] by the combination of a number of enumerated powers."[59] But that deference, whatever its source, cannot displace the judiciary's duty to "say what the law is."[60] Where legal standards enacted by Congress are being engineered or ratcheted up to ensure removal, judicial review is "essential so that courts can ensure uniform precedent that will provide . . . a defined set of rules which, in most instances, makes it possible to reach a correct determination" on a noncitizen's claim.[61]

The case law interpreting *Urias-Orellana* is still unsettled, but early circuit court opinions seem to be tearing down the fine line the Court has drawn. The Court's textual analysis grounded in congressional codification of a persecution case illustrates a deliberately narrow framing of the opinion, as does the Court's

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[56] Plaza-Ramirez v. Sessions, 908 F.3d 282, 285 n.1 (7th Cir. 2018).
[57] *See* INS v. Aguirre-Aguirre, 526 U.S. 415, 425 (1999) ("[J]udicial deference to the Executive Branch is especially appropriate in the immigration context . . . ."); The Chinese Exclusion Case, 130 U.S. 581, 606 (1889) (explaining that certain executive branch immigration decisions are "conclusive upon the judiciary.").
[58] *See* I.N.S. v. Abudu, 485 U.S. 94, 110 (1988) ("INS officials must exercise especially sensitive political functions that implicate questions of foreign relations . . . .").
[59] Adam B. Cox, *Deference, Delegation, and Immigration Law*, 74 U. CHI. L. REV. 1671, 1673 (2007).
[60] Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).
[61] Bufkin v. Collins, 604 U.S. 369, 385 (2025) (citation omitted).

refusal to treat the persecution determination like other mixed questions under the INA. Future courts that engage with such mixed questions must do so with these doctrinal moves in mind, or risk recasting *Urias-Orellana* as a broad mandate to defer to the executive across the INA—a result that will insulate immigration cases from appellate review and restrict opportunities for relief from impending removal.