Immigration Court: BIA

Case: ***Matter of D-G-B-L-*, 29 I&N Dec. 392 (BIA 2026)** **Date:** January 15, 2026

Adjudicated by: Mullane, Hunsucker, Gemoets **Opinion:** Gemoets

Tags: Asylum, withholding of removal, serious nonpolitical crime bar (SNPCB), duress exception

Question Presented: Does the serious nonpolitical crime bar to asylum and withholding of removal include a duress exception?

Holdings: No: there is no duress exception to the serious nonpolitical crime bar to asylum & withholding of removal. 392

Rationale:

- **"INA § 208(b)(2)(A)(iii) / 8 U.S.C. § 1158(b)(2)(A)(iii)** does not include an express duress exception." 394
- U.S. criminal law contains a duress exception to the commission of crimes, but that's not relevant because removal proceedings are civil matters, not criminal. 396
- International refugee law emphasizes a duress exception to the SNPCB, but that's not relevant because the musings of UNHCR are not binding on the A.G., DHS, or the US government. 397

Facts: 392-94. Mexican. Between 2009 and 2023, physically and electronically transferred millions of dollars in drug trafficking proceeds for the Sinaloa drug cartel.

Procedural History:

- **October 17, 2024** – First appeal
- Remanded to EOIR
- **March 12, 2025** – IJ granted asylum, finding that the serious nonpolitical crime bar did not apply because the R was under duress based on abuse inflicted on her by her ex-pareja. 394
- **2025** – DHS appealed

Appeals to Statute & Precedent:

- **INA § 208(b)(2)(A)(iii) / 8 U.S.C. § 1158(b)(2)(A)(iii):** an alien is ineligible for asylum if there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the US prior to the arrival of the alien in the US.

- **8 C.F.R. § 1240.8(d)(2025):** If DHS submits sufficient evidence to establish probable cause, then R has burden to show by a preponderance of the evidence that the disqualifying bar does not apply.
- ***Gonzalez-Castillo v. Garland*, 47 F.4th 971, 974 (9th Cir. 2022):** The term "serious reason to believe" is equivalent to probable cause.
- ***Matter of E-A-*, 26 I&N Dec. 1, 3 (BIA 2012):** Same ^^
- ***District of Colombia v. Wesby*, 583 U.S. 48, 57 (2018):** "Probable cause is not a high bar [and] requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." (citations omitted)
- ***Villalobos Sura v. Garland*, 8 F.4th 1161, 1167 (9th Cir. 2021):** "Probable cause exists when there is a 'fair probability' that the defendant committed the alleged crime." (citations omitted)
- ***Dixon v. U.S.*, 548 U.S. 1, 6 (2006):** duress as an affirmative defense in criminal law (coercive conditions, necessity)
- ***Matter of Devison*, 22 I&N Dec. 1362, 1366 n.8 (BIA 2001):** removal proceedings are CIVIL, removal is NOT PUNISHMENT.
- ***Matter of Negusie*, 28 I&N Dec. 120, 146 (A.G. 2020):** no protections from the criminal law in removal proceedings.
- **UNHCR Guidance:** says that duress is a factor that should be considered—but it's not binding on the U.S. immigration gurus. 397

Relevant U.S. History:

- Statutory history: SNPCB was first added to the INA through section 203 of the Refugee Act of 1980, Pub. L. 96-212, 94 Stat. 102, 107 as a bar to withholding of deportation.
    - Other sections of the INA had language requiring voluntary conduct.
    - So if such language was omitted here, it must not have been Congress's intent to include a duress exception to the SNPCB.

- A.G.'s *Matter of Negusie* (2020, affirmed 2025) plays a weighty role here in dismissing the mitigation envisioned by U.S. criminal law and the UNHCR when it comes to serious crimes committed under duress.
    - "We are ultimately unpersuaded by the UNCHR guidance relied on by the R because it conflicts with the plain statutory language enacted by Congress." 397

Discussion:

- Based on the standard of probable cause (or "serious reason to believe"), DHS submitted sufficient evidence of R's nonpolitical crime, and R could not by a preponderance of the evidence refute it. 393

- R's admission to the money transfers for the Sinaloa cartel were enough for probable cause and were "serious crimes." 394

- "The absence of language regarding a voluntariness requirement [in the serious nonpolitical crime bar statute] provides strong evidence that the serious nonpolitical crime bar should be applied to any alien who has committed a qualifying crime, regardless of duress." 395

- The IJ argued from US criminal case law (e.g. *Dixon v. U.S.*) to show that duress (coercive conditions or necessity) can negate a person's guilt. But the BIA points out that removal proceedings are CIVIL, and the consequence (removal) is not PUNISHMENT. 396

- "The serious nonpolitical crime bar does not require that we decide whether a respondent is criminally liable for past conduct. Rather, we are tasked only with assessing whether the record evidence establishes serious reasons for believing that she committed a crime rendering her ineligible for asylum and withholding of removal." 396

- Buried in the CAT section:
  - "Absent evidence that the respondent made the police aware of specific extreme conduct amounting to torture, the record is insufficient to show that they acquiesced to activity constituting torture." 400

Commentary:

- Note the affirmation of the IJ's credibility finding, based on reasonable explanations for inconsistencies and omissions in the record. BIA will only overturn a credibility finding on the basis of "clear error," because it's a deferential standard of review (so BIA affords it deference unless it's way off-base). 393
  - 8 C.F.R. § 1003.1(d)(3)(i) (2025): BIA reviews IJ's credibility finding for clear error.

- The conclusion here seems a convenient argument from both silence & legal posture: because there's no explicit mention of a duress exception in the SNPC bar statute, and because removal proceedings are civil, not criminal, matters, we are under no obligation to apply the national (criminal law) and international (UNHCR) parameters exonerating victims of duress who commit criminal acts.

- I would think there would need to be a sea change in the entire US government system before what seems obvious in criminal law and international refugee law is applied with equal force to noncitizen people who have acted under duress in dangerous contexts.

- For a respondent, the legal goal in a case like this one would be to show, by a preponderance of the evidence, that they DID NOT commit the crime they are supposed by DHS to have committed.
    - I don't think it helps at the IJ level to keep emphasizing the "duress" argument (except to preserve it for appeal), because once the IJ agrees there's probable cause for **commission** of the serious nonpolitical crime, the R is barred from asylum, regardless of duress.

- Why is **withholding of removal** also obviated by the serious nonpolitical crime bar? I thought that was just for asylum. (See 397-98; cf. 393, which discusses the statute in terms of a bar to **asylum**.)