

Exam for JUR1530 and JUR5530 - Refugee and Asylum Law

Spring 2010

Please read the facts and answer the questions. Good Luck!

Juan is 21 year old man from Ciudad Juarez, Mexico. The city was at the center of battles between two drug cartels- the Juarez cartel and the Sinaloa cartel. The bloodshed totaled over 4,600 people killed in two years. Five years ago, Juan's younger sister, Violeta, was kidnapped, raped, and killed. Although Juan's parents went to the police, the killers were never apprehended. Juan was furious and decided to establish his own security company to service middle class families in Ciudad Juarez. One night, Juan was contracted to escort Esmeralda Gimenez to a social event at the town hall. As Esmeralda stepped out of the bullet proof vehicle, three hooded men grabbed her and threw her into another car. Juan fired his weapon at the assailants but they escaped. The Gimenez family was furious; the patriarch Luis Antonio Gimenez warned: "If my beautiful daughter does not reappear, Juan, you better get out of Ciudad Juarez! I trusted you with her security!" Juan was mortified, and he went to the police to seek their assistance. The police laughed at him, "You tried to do our job and look how you failed! You get what you deserve when you try and take over. We warn you to leave the Esmeralda case alone. This involves powerful actors beyond your control!" Juan received a tip that Esmeralda had been kidnapped by Los Zetas, a narco-mercenary paramilitary gang, with links to the police.

Luis Antonio Gimenez received a phone call instructing him to deliver 100,000 U.S. dollars to a taco restaurant in El Paso, Texas in the United States. Gimenez called Juan and ordered him to deliver the money. Juan agreed. Juan paid a smuggler to help him cross the border and he turned over the money. Esmeralda was released to her family, although the paramilitaries had chopped off three of her fingers. Juan received a message that Luis Antonio Gimenez thought that Juan was secretly working for Los Zetas. Hence, he was warned not to come back to Ciudad Juarez, or risk losing his life. At present the Juarez and Sinaloa cartels have united with a third cartel, La Familia to attack Los Zetas. According to a report in Time Magazine:

La Familia claims to employ thousands of people — all from the state of Michoacan — and pay them wages of at least \$2,000 per month, more than 10 times the minimum wage. The capos say they do not tolerate robbery, kidnapping or drug-dealing in their communities. But they reserve the right to use righteous violence against anyone who betrays or crosses them. "Those who commit mistakes are tied up for a long time. If the mistake is grave, they are tortured. If there is loss of trust and treachery, they must die," a cartel spokesman called El Tio (the Uncle) said in an interview printed in the newsmagazine Proceso.

Luis Antonio Gimenez contacted La Familia, and received an assurance that Juan would be punished for his alleged involvement in the abduction and disfigurement of Esmeralda. Juan was terrified and decided that he needed to seek sanctuary in the United States. On his way to a church, Juan was stopped by a police officer who suspected that he was an illegal migrant. Juan was taken to jail and informed that he would be deported within 48 hours. Juan asked if he could have access to a lawyer. The police gave him the phone number of a legal aid office.

You are the attorney who answered Juan's call. Please discuss whether or not Juan may be eligible for asylum or other form of international protection in order to stop the deportation.

Please refer to the US Country Report on Human Rights in Mexico, the US Immigration and Nationality Act selection provided below, as well as the 1951 Convention on the Status of Refugees and the Convention Against Torture (CAT). The United States has ratified the 1967 Protocol to the 1951 Convention, as well as the CAT. Make sure refer to cases and readings in your discussion.

The US Immigration and Nationality Act defines refugee as such:

"Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country 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."

(A) In general. - Paragraph (1) shall not apply to an alien if:

- (i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
- (ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;
- (iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;
- (iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

Attachments!