

Guide for Graders Refugee Law Exam Spring 2021

Due to the pandemic, all teaching at the Faculty of Law has been carried out online in the Spring semester 2021. Moreover, access to student reading rooms has been subject to significant restrictions. As the pandemic has made the study situation extremely demanding, grading must take this into account.

The exam is designed to test students on their ability to apply facts to the criteria of the definition of a refugee, critically analyze objective sources (such as the report on pre-trial detention in the US, the news report on the Proud Boys), refer to academic literature and case law, and form a well-organized, cogent, clear analysis. There is no right answer, rather there are well-written answers demonstrating a high level of competence and analytical thinking.

Graders should consider the quality of the student's discussion of:

- 1) **Well-founded fear**- identification of subjective statements in the fact pattern (such as statement made indicating fear, and record of death threats), compared with objective material confirming that persons linked to Proud Boys and Proud Boys Girls would or would not be targeted by state or social actors.
- 2) **Persecution**: definition of persecution may be offered by reference to academic literature, it is not in the 1951 Convention. Students should identify relevant human rights, such as alleged threat to right to life, risk of prolonged pretrial detention, violation of freedom of expression (possible discussion of hate speech as unprotected), right to work, etc.
- 3) **Nexus to protection category**- students should discuss relevance of political opinion and/or social group, as well as imputed political opinion for Sean.
- 4) **Ability or willingness of state of origin to protect**- students should discuss whether Sean may be protected from Antifa by US police, whether the pre-trial detention would amount to persecution
- 5) **Exclusion**: Students should analyze whether or not there are "serious reasons" for believing that Sean and Stacey have committed a serious non-political crime. It is possible to argue that sedition is a political crime, hence there should be a discussion referring to the nature of their actions and statements, their consequences, the context, any possible defences or excuses (such as whether technical assistance is sufficient for accountability, or whether engagement in conservative gender messaging is political), whether they may be considered material collaborators or conspirators, the fact that there is not yet a warrant for extradition, etc. Further, if the Proud Boys may be considered a terrorist group, students may discuss whether Sean and Stacey may or may not be considered members, and whether membership alone is enough to exclude, or whether their actions or statements taken together with their alleged membership is enough. Since the Proud Boys' Girls is an auxilliary group, it may or may not be considered to pursue the same aim.
- 6) **Non-refoulement**- there should be discussion as to whether return to the US would amount to threat to life or freedom on account of political opinion (art. 33 in the

1951 Convention) or risk of torture or cruel, inhuman or degrading treatment (art. 3 ECHR) Discussion of the death threats and impact of pre-trial detention. There should be analysis as to whether Sean or Stacey constitute a danger to Denmark due to their actions there. They have not been convicted in Denmark. If they are considered a threat then they are not covered by the 1951 Convention art.33 due to the exception in para. 2, but they can be protected by Art. 3 of ECHR if they are considered to risk torture, etc

- 7) For the second question for Masters students, they are expected to discuss whether detention is necessary, reasonable, proportional, whether it is discriminatory against Stacey for her political beliefs, whether there are alternatives, is there a risk of absconding. Students should refer to the UNHCR guidelines on detention and the report on detention in Denmark,