

# Forced Migration

## Class 14: adjudication

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## Practice Exam

### Adjudication System

Proposals for Reform

Silva

# Practice Exam

Essay analyzing the following two claims:

- (1) Assange is a refugee within the meaning of the 1951 Refugee Convention and its 1967 Protocol, and
- (2) Ecuador has an obligation under international law not to expel Assange from its embassy.

# Practice Exam

For each of the following scenarios, what is the biggest obstacle to obtaining asylum in the United States and how (if at all) could that obstacle be overcome?

# Practice Exam

1. Shao Zheng, a Chinese citizen, entered the United States without inspection in August 2010 and began working at a restaurant in New York. In January 2012 she was placed in removal proceedings and, in response, she filed Form I-589 seeking asylum based on having been forcibly sterilized in 2007 due to her violation of Chinas one-child policy.

## Practice Exam

2. Aida Dabul, a Syrian citizen, fled from Aleppo when her house was hit by artillery fire and she was blinded in one eye by shrapnel. She crossed the border into Turkey by foot, and then flew to the U.S., using false documents to board the plane. She claimed asylum when she reached the United States based on the harm she suffered in the artillery attack.

# Practice Exam

3. Michael Braun, a German citizen, is the lead singer in a neo-Nazi rock band who has been sentenced by a German court to 3 years in prison for singing songs that spread racial hatred. After escaping from prison, he flees to the U.S. and seeks asylum.

## Practice Exam

4. Musa Begovic, a Bosnian citizen, entered the U.S. two months ago on a tourist visa and now files Form I-589 seeking asylum based on having been detained and tortured for six months in 1992 by Bosnian Serb paramilitary forces who told him he was being held because, as a Bosnian Muslim, he was no longer welcome in "Greater Serbia."

# Practice Exam

5. Nuria Puig, a Spanish citizen, recently marched in a large demonstration in Barcelona advocating independence for Catalonia. During the demonstration, she was struck by a police car and sustained permanent damage to her leg. She now enters the United States and seeks asylum based on her injuries.

## Practice Exam

6. Abu Ahmed is an elderly Syrian citizen who has fled to the U.S. and sought asylum. He opposes the regime of Bashar al-Assad and contributed money to the Free Syrian Army, an armed rebel group that has been engaged in heavy fighting against government forces. He fears that if he returns to Syria the government will execute him as a traitor.

## Practice Exam

7. Maria Pena is a 15-year-old Salvadoran citizen who fled her home in San Salvador after a local gang leader asked her to go on a date. She is now seeking asylum based on her fear that the gang leader will harm her if she says no.

## Practice Exam

Abimael Flores is a Peruvian citizen and a member of the Shining Path, a rebel group in Peru. After entering the United States without inspection, Flores is placed in removal proceedings and he claims asylum, withholding of removal under INA 241(b)(3), and withholding and deferral of removal under the Convention Against Torture, all based on evidence that the Peruvian government aggressively targets Shining Path members, and detains and tortures them when they are found. The IJ denies asylum and withholding under 241(b)(3), but grants CAT relief. The BIA affirms, except with respect to the CAT decision, which it overturns because it concludes Flores is not more likely than not to be tortured.

# Practice Exam

8. Why is Flores ineligible for asylum and withholding of removal under INA 241(b)(3)?

# Practice Exam

9. How can Flores challenge the BIAs decision in federal court and which parts of the decision will the court review?

## Practice Exam

10. If the federal court overturns the CAT denial and the agency subsequently grants deferral of removal under CAT, can Flores be deported to Ecuador?

# Adjudication System

## Proposals for Reform

- ▶ more resources
- ▶ better access to counsel
- ▶ send defensive asylum applications to asylum officers
- ▶ greater independence for IJs and BIA
- ▶ consolidate judicial review

# Adjudication System

Silva: IJ decision

The only incident that respondent referred to which could qualify as past persecution would be the shooting of October 9th of 1999 and the respondent indicates that she does not know who shot her nor has in any other way identified who or why she was shot except for explaining that she had received anonymous calls and a condolence note. The respondent, although she may have been active in support of political candidacy of the actual mayor of Bogota, was in fact not in any leadership role in politics nor has she explained any other reason why she will be singled out other than saying that her whole family was a member of the conservative party and that she was being made an example. She speculates that nobody else has been harmed in her family because everybody has bodyguards. However, she indicates that her four brothers live in Bogota and they have had no problems.

# Adjudication System

Silva: IJ decision

Although the Court recognizes that conditions in Colombia are in fact violent, everybody in Colombia suffers under these general conditions of violence and criminal activity. The respondent has not supplied any evidence to show that she was either persecuted in the past nor that she has a well-founded fear of being persecuted in the future for any of the five previously enumerated grounds. Additionally, she always lived in Bogota has not explained why she could not have lived in another part of Colombia if she in fact felt threatened in the city of Bogota. In addition, she never, if she felt that she was in danger in Colombia, gave the authorities the opportunity to help or protect her. The Court finds that the respondent therefore failed to show that she qualifies for the relief that she seeks.