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LEX COMPETITION SECOND PLACE WINNER¹

Daju Helaire

Maria López, a journalist from Venezuela, fled her home country after receiving death threats for exposing government corruption. She arrived in the United States seeking asylum. Upon arrival, she was detained at the border for lacking proper documentation. She filed for asylum under the grounds of credible fear, but her case was complicated by missing paperwork and contradictory witness statements.

Does Maria meet the legal definition of a refugee under U.S. immigration law?

Was due process violated when she was detained for an extended period without legal representation?

Should political conditions in Venezuela be considered sufficient grounds for asylum?

Daju Helaire is an undergraduate student pursuing the study of Law and History at San Jacinto College. In addition to being a full-time student, she serves as President of the Student Government Association and the San Jacinto Phi Theta Kappa Chapter. she will be graduating this May and will transfer to four-year institution in the fall to complete a bachelor's degree.

According to the Immigration and Nationality Act of 1952, a “refugee” is “any person who is outside their country of nationality and unable or unwilling to return 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.” 8 U.S.C. § 1101(a)(42)(A) (1993). Maria’s alleged threats because of her journalism exposing government corruption clearly implicate political opinion. In *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), the Supreme Court held that “well-founded fear” is a reasonable possibility of persecution, not certainty. Therefore, in Maria Lopez’s case, she does not need evidence that persecution is a guarantee, only that there is a substantial chance. Therefore Ms. Lopez can demonstrate the received threats are from state actors or that the government has aided in or condoned them, it will strengthen the argument of causality between her political opinion and persecution.

Under U.S. immigration law, removal and asylum proceedings are treated as civil regulatory action rather than criminal punishment, therefore, noncitizens are not entitled to the constitutional protections under the Sixth Amendment, such as the right to government-appointed counsel. See *Gideon v. Wainwright*, 372 U.S. 335 (1963). However, noncitizens are protected by the Fifth Amendment’s guarantee of due process. According to *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), due process applies to all persons within U.S. jurisdiction, regardless of legal status. In addition, the Immigration and Nationality Act explicitly guarantees the right to retain counsel “at no expense to the government” in immigration proceedings (8 U.S.C. § 1362 (1952)). In *Landon v. Plasencia*, 459 U.S. 21 (1982), the Supreme Court recognized that due process requires that noncitizens be given a meaningful opportunity to be heard.

However, prolonged detention without access to counsel alone does not sufficiently implicate a violation of her right to due process. In *Reno v. Flores*, 507 U.S. 292 (1993), the Supreme Court held that due process violations must be evaluated considering whether the procedural deprivation adversely affected the outcome. Therefore, Ms. Lopez was denied counsel for weeks and it directly hindered her ability to present her evidence for her asylum claim, which may prove to be a violation of due process.

In *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993), the court held that evidence of a country’s political conditions, though necessary, must be tied to the applicant’s own experience, stressing that political conditions alone are insufficient unless they manifest in personal threats or harm. Evidence of Venezuela’s documented government targeting of journalists, arbitrary arrests, or persecution of political dissidents could be “judicially noticed as background evidence.” 8 C.F.R. § 208.12(a), if Ms. Lopez can show that her exposing government corruption made her a specific target, then Venezuela’s political conditions would strengthen her asylum claim.

Based on the foregoing, it is likely that Maria can claim refugee status, especially considering the ongoing political conditions in Venezuela, however, she is not entitled to legal representation under the Sixth Amendment.

¹ Lambda Epsilon Chi (LEX), the national paralegal honor society, sponsors an annual essay competition. The Journal of Paralegal Education and Practice highlights student excellence by publishing the first and second place winners.