

WITH RULING, FEAR OVER GANG MELTS AWAY

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Highlight: A Honduran man is granted asylum in U.S.

Body

The tattoo on Kenny Rivera's arm that once meant almost certain death is now just a fading reminder of a life that he has put safely behind him.

Rivera, a 21-year-old illegal immigrant from Honduras, fled his native country and the vicious **gang** that he said forced him to join. Threatened with deportation, he asked for asylum, vowing that if he were sent home he would be killed - either by the **gang** or by police.

Last month a Miami immigration judge granted that asylum request, ending a five-year legal odyssey and opening the door for Rivera to apply for permanent residency.

Cases like Rivera's are becoming increasingly common as powerful Central American street **gangs** extend their sway in Latin America and the United States, where an estimated 25,000 so-called maras are scattered across 33 states.

But the cases pose a tricky problem for U.S. immigration judges who are reluctant to open the door to a potential flood of **gang** members seeking similar legal protection.

"The judges are very skeptical about what's going on," said Matt Muller, a fellow at Harvard Law School's Immigration and Refugee Clinic Program. "They are particularly worried there are **gang** members who are getting through and aren't being straightforward about their history."

Rivera was only 14 when he was assaulted while playing soccer in August 2000 with three friends by the 18th Street **gang** in Honduras' capital, Tegucigalpa. All four were branded with the **gang**'s tattoo, XV3.

When they refused to take part in the **gang**'s criminal activities, they were hunted down and murdered, one-by-one.

Escape to Miami

Rivera hid at his grandmother's house for two years. After the second of his friends was murdered, he set out alone for Miami where his mother was working.

He crossed the Mexican border illegally in October 2002. Only 16, he was briefly detained by immigration authorities, before he was released to his mother's care.

In Miami he found work laying marble floors. But immigration authorities began deportation proceedings in September 2003. His only hope to avoid being sent home was to seek asylum.

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His attorney, Julie Ferguson, argued that Rivera had a right to protection under U.S. immigration law, as well as the United Nations Convention Against Torture. She explained that even if he managed to escape the **gang** members, his tattoo made him a target for torture by Honduran police.

Despite his tattoo, "Kenny was never a **gang** member," she said.

In April 2006, a St. Petersburg Times reporter visited Rivera's barrio in Tegucigalpa to check out his story. "He told you the truth," said Rivera's former soccer coach, Juan Carlos Godoy.

Residents also confirmed the risks Rivera faced if he returned home. Friends of one of the murdered boys, Carlos Chevez, described how he was gunned down by men in a taxi 50 yards from Rivera's door.

Despite documentation of the kind of risks Rivera faced, convincing immigration judges is not easy. Lawyers have won only a handful of cases on the so-called "**gangs** docket."

In the last six years a total of 360 Hondurans have been granted asylum in the United States, including 92 last year. Statistics do not show how many of those cases were **gang**-related.

But, as Rivera's case indicates, the opinion of judges may be changing.

"These are increasingly being perceived as genuine cases and that these are a real social phenomena with political, social and even religious connotations," Muller said.

Even so, it took Ferguson five years to battle through the court bureaucracy, including five hearings, before three separate immigration judges and three different U.S. government attorneys. One of the judges died of a heart attack before **ruling**. It took months for a new judge to be assigned.

It wasn't until March that the case came before Judge David Crosland. After several more delays, Crosland scheduled a hearing for July 17.

No opposition

With a extra time to prepare her case, Ferguson felt confident. The only other surviving member of the group of boys branded with Rivera in 2000, Humberto Godoy, had since been killed by the 18th Street **gang**. Ferguson had newspaper articles detailing the slaying.

Ferguson began the proceedings by giving a brief statement of the case. The judge then asked the government attorney, Atara Eig, what was the position the Department of Justice.

It was a surprise when Eig told the judge that the government did not oppose granting asylum in Rivera's case.

"We were only in the court for 10 minutes," said Rivera. "We weren't expecting that. Thank God the judge granted the case."

The government declined to comment.

"We don't discuss asylum matters so as not to jeopardize other cases," said Ana Santiago, a Department of Homeland Security spokeswoman.

"I think our case was unusually well documented," said Ferguson, noting that Eig had heard her present it to another judge a year ago. "For that reason the government was comfortable not opposing the grant of asylum."

Rivera says he can now breathe a bit easier. Next July he will be able to apply for permanent residency.

His wife is expecting their first child this weekend, a baby girl to be named Britney Andrea. He's taking English classes in the evening and hopes to get a better job, driving a forklift truck at Miami International Airport.

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He's uncertain about ever visiting Honduras again. "Maybe, down the road."

One day, he may get rid of the tattoo as well.

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41,150 Refugee arrivals in fiscal year 2006

26,113 Individuals granted asylum in fiscal year 2006

Graphic

PHOTO: Kenny Rivera will be able to apply for permanent residency starting in July.

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