

2005

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### Recommended Citation

Shauna Coleman, *While Victims Wait, DOJ, DHS Wrestle With Asylum Rules for Abused Women*, 10 Pub. Interest L. Rptr. 7 (2005).  
Available at: <http://lawcommons.luc.edu/pilr/vol10/iss1/6>

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## While Victims Wait, DOJ, DHS Wrestle With Asylum Rules for Abused Women

By Shauna Coleman

Former Attorney General John Ashcroft left office in February without deciding the asylum case of Rodi Alvarado, a severely battered Guatemalan woman living in San Francisco who suffered 10 years of severe physical abuse by her husband. Instead, Ashcroft sent the case back to the Board of Immigration Appeals, where it was pending when Ashcroft first intervened in 2003. He indicated that the BIA should further stay Alvarado's deportation until rules proposed by the Department of Homeland Security concerning asylum claims for domestic abuse are finalized.

In 1996, a U.S. immigration judge granted Alvarado asylum upon a determination that the abuse she suffered, combined with the Guatemalan government's unwillingness or inability to protect her, constituted "persecution" under U.S. refugee law. The Immigration and Naturalization Service appealed that decision to the BIA, and in 1999, the BIA overturned Alvarado's asylum claim and mandated that she be deported back to Guatemala based on a determination that the

abuse was not perpetrated by a government and that she was not a member of a protected "social group." *In Re R.A.*, 22 I & N Dec. 906 (BIA 1999).

Former Attorney General



Rodi Alvarado

Janet Reno vacated the BIA's decision and remanded it for further consideration. Reno also ordered the BIA to stay its reconsideration until proposed rules indi-

cating that spousal abuse could form the basis of an asylum claim took effect. Reno's successor, Ashcroft, did the same. However, those proposed regulations were never finalized.

In March 2004, DHS, which had taken over the functions of the INS, began drafting new proposed rules that would allow women fleeing from countries that condone severe domestic abuse, genital mutilation, and other forms of violence against women to obtain asylum. The Department of Justice must agree on the regulations and issue them jointly with the DHS because both departments have jurisdiction over asylum claims, but so far they have been unable to do so

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### *Who is Rodi Alvarado?*

Rodi Alvarado was born and raised in Guatemala. In 1984, at the age of 16, she married Francisco Osorio. Soon after they married, Osorio began threatening Alvarado with violent assaults and carrying out his threats. Over ten years, Osorio raped and sodomized Alvarado, broke windows and mirrors with her head, dislocated her jaw, and tried to abort her child by kicking her violently in the spine. Osorio also used weapons to physically abuse Alvarado. He was known to "pistol-whip" her, even attempted to chop off her hands with a machete. Brief for Amicus at 7-10, *In Re R.A.*, 22 I & N Dec. 906 (BIA 1999).

On five separate occasions, Alvarado attempted to prosecute Osorio in Guatemala. However, the police and the courts would not intervene because it was a domestic matter "and should be settled at home." *Id.* On several occasions, Alvarado tried to escape by running away to her brother's and parents' homes. However, Osorio, a former soldier, always found her. On one occasion, after Alvarado had run away, Osorio found her, beat her unconscious, and threatened to "break her legs ...and cripple

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despite having bipartisan support. The DOJ believes that such claims can be recognized under existing jurisprudence, while the DHS believes the law could be better developed by establishing a clear and generally applicable guideline.

In order to meet the current statutory eligibility standard for asylum under 8 C.F.R. § 208.13(b)(1)(i), an alien must have a fear of persecution that is well-founded on account of race, religion, nationality, membership in a particular social group, or political opinion. In addition, the person must be unable or unwilling to return to the country in which he or she last habitually resided because of persecution or a well-founded fear of persecution.

The difficulty for an applicant making a claim based on membership in a particular social group is

*Alvarado, continued from page 7*

[Alvarado]." Brief for Amicus at 7-10. Alvarado concluded that the only way to save her life was to flee Guatemala. In 1995, she fled to the United States in search of safety.

Alvarado is currently a housekeeper at a convent in San Francisco, while awaiting a final decision in her case. Since she fled 10 years ago, she has been separated from her two children, whom she was forced to leave in Guatemala.

- *Shauna Coleman*

*Read more about cases like Alvarado's at [sierra.uchastings.edu/cgrs](http://sierra.uchastings.edu/cgrs).*

***"The law has long accepted that a social group can be defined by gender, and that a refugee applicant can qualify whether persecuted by the government directly or by a private party which the government cannot or will not control."***

Karen Musalo,  
Center for Gender and Refugee Studies

that he or she must make a reasonable showing that the persecutor was motivated to cause harm based on the asserted group membership, an almost impossible standard for a victim of domestic violence to meet.

If approved, the new rules would recognize severe cases of domestic violence as equivalent to more familiar asylum cases involving political and religious persecution. This shift would bring the United States' immigration law in step with international human rights developments and the guiding principal of the Charter of United Nations, the Universal Declaration of Human Rights, and the 1951 Convention Relating to the Status of Refugees.

Alvarado's attorney, Karen Musalo, director of the Center for Gender and Refugee Studies at the

University of California Hastings College of Law, said that current jurisprudence is such that there is no need to change traditional asylum rules. Instead, she contended, the courts should apply the rules in a non-discriminatory way.

"The law has long accepted that a social group can be defined by gender, and that a refugee applicant can qualify whether persecuted by the government directly or by a private party which the government cannot or will not control," Musalo said.

Proponents of stricter immigration control, such as the Federation for American Immigration Reform, argue that restructuring political asylum rules to include victims of domestic violence would invite anyone seeking to escape difficult marriages to flee to the United States

On the other hand, groups such as Human Rights First believe that inclusion of new rules would indicate that the United States is committed to protecting women and girls fleeing persecution. However, other activist groups are concerned that the DOJ and the DHS will narrowly tailor the new regulations to the facts of Alvarado's case, thereby precluding most gender-based claims.

Musalo believes that it would be impossible to predict what the final rules will look like because both agencies involved in the development of the rules are in transition, with DHS Chief Tom Ridge and Ashcroft recently replaced by former Third Circuit Court of Appeals Judge Michael Chertoff and Former White House Counsel Alberto Gonzalez, respectively.