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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 indicating 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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