

# Guatemalan Woman's Asylum Case a Major Test for Ashcroft's Position on Women's Rights

By Jim Lobe | February 20, 2004

Immigration and human rights groups are hoping that a legal brief they have submitted to Attorney General John Ashcroft will persuade him to uphold a proposed Clinton administration policy that women who have suffered severe domestic abuse in their homeland may be granted political asylum in the United States.

Briefs were due Feb. 18 in the asylum case of Rodi Alvarado, an immigrant from Guatemala, who suffered repeated and nearly fatal beatings by her husband, a soldier in the Guatemalan army, for more than ten years before fleeing in 1995 to San Francisco, where she currently resides. She contended that if she were returned to Guatemala, her husband would almost certainly track her down and that the Guatemalan authorities were unwilling to provide her with protection.

Rights groups are concerned that Ashcroft intends to limit asylum for women fleeing gender-based persecution, a concern that was furthered when the attorney general initially declined to accept briefs to help him decide the matter a year ago. He reversed that decision last fall after 62 members of Congress intervened. Ashcroft has not said when he intends to issue his opinion.

The Alvarado case, which has been pending since the late 1990s, is considered the key test of whether the Bush administration will offer asylum to women based on gender-related abuse, an increasingly important issue in international refugee law.

## A Test for Human Rights for Refugees

Among the almost 100 groups that have signed the brief are the Lawyers Committee for Human Rights (recently renamed Human Rights First), Amnesty International, Human Rights Watch, the International Rescue Committee, as well as a number of faith-based groups representing the Catholic Bishops, Jewish congregations, the Presbyterian Church, and the National Association of Evangelicals. In addition, almost 100 law professors

have signed the brief that was drafted by the Harvard Law School Immigration and Refugee Clinic.

The case is the latest in an almost 20-year evolution that began with a 1985 opinion by the UN High Commission for Refugees that women who face abuse arising from certain customs in their society, such as female genital mutilation, honor killings, or beatings by their mates—should constitute a special group for asylum purposes. The opinion, however, was largely ignored until the UN's 1993 World Conference on Human Rights in Vienna, which paid particular attention to violence committed against women, including mass rape in Bosnia.

Despite these innovations on the international level, U.S. immigration judges continued to view claims of gender-based persecution, particularly those of battered wives, skeptically, seeing their plight largely as resulting from personal or family problems, rather than as stemming from social and legal systems that protected their abusers.

In 1995, the Immigration and Naturalization Service (INS) issued new guidelines, which called for immigration officers to give more attention to the social context in which the alleged persecution took place. But judges continued to make inconsistent and contradictory rulings, as demonstrated by the history of the Alvarado case.

The initial immigration judge in that case granted her asylum on the grounds that she belonged to a persecuted social group defined as "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination."

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But that finding was reversed by a majority in a sharply divided, 15-member Board of Immigration Appeals (BIA) that decided in 1999 that she could not win asylum because she had presented no evidence that her husband threatened any other members of that social group besides herself. As such a group did not exist, the majority found, she could not claim membership in it.

Under U.S. law, a person can be granted asylum only if he or she establishes a well-founded fear of persecution if returned home on account of five protected areas: race, religion, nationality, political opinion, or membership in a particular social group. Thus, the essential difference between the immigration judge and the appeals court majority was over the question of whether battered women could qualify as members of the last category.

#### Clinton Administration's Unfinished Business

As the Clinton administration prepared to leave office, Attorney General Janet Reno overruled the BIA's decision and drafted new rules for immigration judges to apply. In particular, it found that "certain forms of domestic violence may constitute persecution, despite the fact that they occur within familial or intimate relationships. Moreover, such patterns of violence are not private matters, but rather should be addressed when they are supported by a legal system or social norms that condone or perpetuate domestic violence." Under this test, the key issue was to be

whether the victims of domestic violence could obtain protection from their own government. If not, the case for asylum as a member of a persecuted social group must be taken more seriously.

Reno's draft regulations, however, never became final, and last March the BIA informed Alvarado's attorneys at the Center for Gender and Refugee Studies at the University of California's Hastings School of Law in San Francisco, that Ashcroft had decided to formally review the case.

In addition to the rights and immigration groups, the Department of Homeland Security is expected to file a brief. The National Organization for Women has already submitted a brief, while the conservative Concerned Women for America sent a letter in support of the grant of asylum on the grounds that turning Alvarado away "would be an act of pointless cruelty."

Human Rights First says that a denial of asylum could have a major impact not only on women immigrants fleeing domestic abuse, but also on other gender-related asylum policy covering sexual trafficking and honor killing. It said proposals for new regulations that have been circulating within the Justice Department promote a more restrictive approach.

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