

Domestic Violence News

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Gender Becomes Asylum Issue for Battered Immigrant Women

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According to her bid for asylum, Rodi Alvarado's husband made a sport out of raping and abusing her for more than 10 years in their native Guatemala. In between hand-and-fist beatings, she said, he pistol-whipped her, broke windows and mirrors with her head and dragged her down the street by her hair. Alvarado fled to the United States nearly 10 years ago, and none of the immigration courts that have considered her asylum bid since has questioned her story.

The issue is whether Alvarado's status as a woman, unable to get protection from Guatemalan authorities, in itself qualifies her for asylum. Now a housekeeper at a convent near San Francisco, Alvarado is at the heart of a national debate over whether people seeking asylum can claim they were persecuted because of their gender.

In her bid, Alvarado argues the abuse she endured stemmed from her status as a married woman living in a country unwilling to protect her from her husband. If her argument is ultimately accepted, it would establish a precedent for women who feel they can't get relief from gender-based abuses in their own countries.

Her case alternately has been accepted and overturned as it has bounced through the courts. Now, Attorney General John Ashcroft has indicated he will rule on the matter himself. All sides agree that fallout from his decision and related regulations under discussion will reverberate around the world. Many argue that accepting Alvarado's claim would open the door for women looking to flee violent practices - such as spousal beatings, female genital mutilation and honor killings - that might not be viewed as abuse in their native countries.

"This is tremendously important for the many other women who suffer harms equal to what Rodi Alvarado suffered and who left behind everything dear to them and put their lives at risk to seek protection," said Karen Musalo, Alvarado's attorney and director of the Center for Gender and Refugee Studies at University of California-Hastings College of the Law. "They ended up here on the hope that this country would provide them with a refuge."

Musalo has been involved in Alvarado's case through most of its long and complicated legal journey, which began in 1995 after Alvarado fled her husband, leaving her 2-year-old son and 7-year-old daughter behind.

Under current U.S. regulations, people can seek asylum by arguing they are being persecuted or have a well-founded fear of persecution based on five categories: race, religion, nationality, membership in a particular social group or political opinion. In the past, some victims of domestic violence have been granted asylum, usually after their attorneys found a way to argue the abuse was rooted in religion, politics or one of the other protected categories. But advocates have argued for years that this approach is hit or miss and that a protection based on gender is necessary to put such cases on solid legal footing.

In 1996, Alvarado's asylum claim was accepted by a U.S. immigration judge, who found that the domestic violence she had suffered constituted a form of persecution and that the Guatemalan police and courts had ignored her pleas for help. But the decision was overturned by the Board of Immigration Appeals in 1999, which said she had failed to prove the beatings resulted from membership in a social group or from political opinion.

Then-Attorney General Janet Reno took an interest in the case. She vacated the board's decision and put the case on hold while the Department of Justice drafted new asylum regulations that address how a social group is defined and whether it should include gender. Final release of those regulations, however, has been



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delayed, first by the change in administration and then the reorganization of immigration services under the Department of Homeland Security.

More recently, Ashcroft has taken the somewhat unusual step of assuming control of Alvarado's case. "His role is to interpret the refugee act's definition of a refugee and to determine whether Congress intended to include individuals such as (Alvarado)," said Jorge Martinez, a Justice Department spokesman. If Ashcroft rules against her, Alvarado, 36, would have to return to Guatemala. She declined to be interviewed for this report.

San Francisco immigration attorney Joye Wiley is among those who would like to see gender included under the umbrella of social group. Wiley recently won an asylum case for a woman who was beaten and terrorized for years by her politically connected husband in Brazil. Wiley successfully argued that Ana Maria Da Silva fit into the category of political persecution because she was abused by a dominating spouse and because Brazilian officials did nothing when she reported the abuse on five occasions.

Da Silva was granted asylum in late 2002, but Wiley said that under current regulations, such cases are frighteningly tenuous, subject to the whims of the individual asylum officer who reviews the case. "We're always a little nervous filing these gender-related cases," Wiley said. "We don't have solid, on-point case law to support the theories."

Da Silva, 47, fled to the United States in 1998 and has built a life for herself cleaning houses and studying English. She said she still carries the trauma of the beatings and sometimes is paralyzed by panic attacks. Still, she said, the fear now is nothing compared with living in a country where her husband refused to let her work and violently pummeled her - once breaking her eardrum - but where police refused to get involved. She believes the abuse she took stemmed from being a woman in a country where her husband felt he had the right to dominate her. "I lost my entire youth and all of my dreams," she said. "I lost everything. If I hadn't come here, I would be no one."

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