

The Huffington Post

October 13, 2008

This is the print preview: [Back to normal view »](#)



[William Fisher](#)

Posted October 11, 2008 | 01:30 PM (EST)

[BIO](#) [Become a Fan](#)

[Get Email Alerts](#) [Bloggers' Index](#)

Immigration: Have the Inmates Taken Over the Asylum?

Read More: [Asylum](#), [Civil Rights](#), [Immigration Reform](#), [Michael Mukasey](#), [Politics News](#)

 [stumble](#) [digg](#) [reddit](#) [del.icio.us](#) [news](#) [trust](#) [mixx.com](#)




Show your support.
Buzz this article up.



Get Breaking News Alerts

[SIGN UP](#)

never spam

-  [Share](#)
-  [Print](#)
-  [Comments](#)

No, this isn't about the economic meltdown - but it's almost as complicated. Try to follow it along.

In what some government critics are citing as an egregious example of public foot-dragging and bureaucratic inefficiency in immigration rule-making, the woman at the center of one of America's longest-running asylum disputes may now be in further jeopardy.

The case involves the asylum claim of Rodi Alvarado, who fled Guatemala in 1996 after suffering more than a decade of brutal domestic violence in a situation where neither the police nor the courts responded to her pleas for protection.

Professor Karen Musalo, Ms. Alvarado's long-time attorney and director of the Center for Gender and Refugee Studies at the University of California, Hastings, told us that a recent action by U.S. Attorney General Michael Mukasey could actually make Ms. Alvarado's plight even more tenuous. "It could change the course of protection of women asylum seekers across the country," she said.

The twists and turns in Ms. Alvarado's plea for American asylum since she fled to the U.S. place it in the pantheon of the more Byzantine and difficult-to-explain immigration cases.

Under U.S. law, asylum applicants have to show they can't go home because they face persecution because of religion, race, nationality, political opinion or membership in a particular social group. Neither gender nor domestic violence are currently considered grounds for asylum.

In 1996 Ms. Alvarado was granted asylum by an immigration judge in San Francisco. In 1999 the Board of Immigration Appeals (BIA), the highest immigration tribunal in the country, reversed her grant of asylum and ordered her back to Guatemala. This

decision mobilized thousands of women's rights advocates, who successfully persuaded then Attorney General Janet Reno to intervene. Reno proposed a regulation that would have allowed battered women to be considered members of a social group, and thus potentially eligible to be granted asylum.

Reno vacated the BIA's decision in January 2001, and ordered the BIA to reconsider the case once regulations the Justice Department (DOJ) had proposed in 2000 were finalized.

More than three years passed and no regulations were finalized. In 2004, then Attorney General John Ashcroft took jurisdiction over the case, and ordered lawyers for Ms. Alvarado and the Department of Homeland Security (DHS) to brief the case. Though the DHS itself recommended that Ms. Alvarado be granted asylum, Attorney General Ashcroft did not rule on the case but sent it back to the BIA with the same order that his predecessor Janet Reno had - that the BIA reconsider the case once the regulations proposed in 2000 were issued as final.

With the 2000 election of President George W. Bush, the Sept. 11, 2001 terrorist attacks, and the current and continuing anti-immigration sentiment in the U.S., drafting of new rules languished. Opponents said they would lead to a surge in claims, an assertion disputed by advocates.

Musalo told us: "Both the DHS and the DOJ have to reach consensus on the regulations and issue them jointly, since both agencies have jurisdiction over asylum. It is a little kept secret that the delay is due in no small part to the DOJ, which does not agree with the DHS. The DOJ has expressed the position that such claims cannot be recognized. The DHS expressed an opposing position in the brief it filed in February 2004" in the Alvarado case.

The proposed new regulations were generally seen as a positive legal development, which recognized claims such as Ms. Alvarado's," Musalo told IPS. But as of today, they have not been issued in final form. Spokespersons for both the DHS and the DOJ declined to comment on their apparent failure to reach consensus.

The case took yet another arguably more discouraging turn last month. In a surprise move on September 25, Attorney General Mukasey issued a decision ordering the BIA to reconsider the case. In so doing, he removed the requirement that the BIA await the issuance of proposed regulations.

This means that the BIA can immediately begin to consider the Alvarado decision -- as well as many others also on hold awaiting a BIA decision in the Alvarado case.

Musalo told us that Mukasey's removal of the requirement that Reno initially put in, and that Ashcroft also included in his order -- that the BIA should wait to decide the case until the new regulations were finalized - could have serious negative implications for Alvarado. She said that "without the requirement of those regulations, the BIA can just apply its own precedent -- which has been increasingly restrictive. Mukasey said the BIA doesn't have to wait for the new regulations to decide the case -- which is very troubling to us."

"Though we are glad to see some movement in the case, I am worried that that the current Attorney General is less sympathetic than his predecessors to the protection of women asylum seekers who flee brutal forms of persecution in countries where their governments will not protect them," she told us.

Domestic violence is recognized as a legitimate basis for refugee protection by the United Nations High Commissioner for Refugees, as well as by countries around the world - including Canada, the United Kingdom, Australia and New Zealand; however its acceptance in the U.S. has been controversial.

The DHS says it will not press for Ms. Alvarado's deportation regardless of how much longer it may take the agency to finalize the new regulations. Meanwhile, Ms. Alvarado remains in legal limbo. Though she can remain in the U.S. that is only a partial victory since she cannot be reunited with her children, who remain in Guatemala. For a number of years, she has been working as a housekeeper at a convent in San Francisco.

Mrs. Alvarado's case created a firestorm of bipartisan criticism of U.S. Government immigration policies. Advocates for women and immigration rights had hoped Alvarado's situation would already have led to a change in U.S. policy to recognize asylum cases filed by victims of domestic violence.

The issue of immigration judges has been further complicated by the recent revelations of partisan political influence in the DOJ during the tenure of former Attorney General Alberto Gonzales. One of Gonzales' key aides, Monica Goodling testified to Congress that she recommended the appointment of immigration judges based on their conservative political credentials.

Fairness and common sense ought to tell us that domestic violence is a hideous crime whether it happens in Guatemala or in America. In America, however, we pride ourselves on being a nation of compassion. Well, what happens to the compassion when government lawyers spend eight years trying to make what appears to be a simple rule-change - and then comes up with zilch?

What happens is that we lose our confidence in Government - which is a lot about what the current presidential election is about.

 [stumble](#) [digg](#) [reddit](#) [del.icio.us](#) [news](#) [trust](#) [mixx.com](#)

More in Politics...

- [John McCain: I am an Arab and...](#)
- [Obama Aides: Record Cash Raised In September....](#)
- [Are Democrats Throwing Gays Under the Bus?](#)
- [I Just Voted in the Most Important...](#)

Comments

0

Pending Comments

0

[FAQ: Comments and Moderation](#)[FAQ: HuffPost Accounts](#)
[Post Comment](#)

Want to reply to a comment? Hint: Click "Reply" at the bottom of the comment; after being approved your comment will appear directly underneath the comment you replied to

View Comments: [Newest First](#) [Expand All](#)

You must be [logged in](#) to reply to this comment. [Log in](#)

SEARCH

- [Copyright © 2008 HuffingtonPost.com, Inc.](#) |
- [Archive](#) |
- [User Agreement](#) |
- [Privacy](#) |
- [Comment Policy](#) |
- [About Us](#) |
- [Powered by Movable Type](#)

