

# Ashcroft Reconsiders Asylum Granted to Abused Guatemalan

## *New Regulations Could Affect Gender-Based Persecution*

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Attorney General John D. Ashcroft has decided to reconsider the granting of asylum to a battered Guatemalan woman whose husband has threatened to kill her if she returns to her homeland, a senior Justice Department official has confirmed.

Ashcroft is also considering new gender-persecution regulations for asylum-seekers instead of a proposed set that was left hanging in the final days of the Clinton administration.

The regulations, proposed by Attorney General Janet Reno in December 2000, grew out of the case of the Guatemalan woman, Rodi Alvarado, who said she fled to the United States in 1995 after her husband repeatedly raped her, whipped her with electrical cords, broke windows and mirrors with her head, and vowed to kill her if she tried to leave him.

An immigration judge granted her asylum in 1996, finding that the 10 years of abuse Alvarado suffered and the persistent failure of Guatemalan authorities to protect her entitled her to relief. The Immigration and Naturalization Service appealed and the Justice Department's Board of Immigration Appeals reversed that decision in

1999. The board did not question Alvarado's credibility, but said in a 10-to-5 ruling that neither the beatings nor her opinions about them qualified her for asylum.

The law allows asylum only for foreigners who can show they face persecution in their home countries because of race, religion, nationality, political opinion or membership in a particular social group. Before leaving office, Reno vacated the board's decision and proposed regulations that would allow battered women to be granted asylum as members of a social group if they can show government complicity in their suffering. President Bush suspended this and all other pending regulations upon taking office.

The Lawyers Committee for Human Rights and other immigrant and women's groups say they fear Ashcroft intends to issue new regulations that would severely restrict women fleeing gender-based persecution, such as honor killings and sexual slavery as well as domestic violence, from obtaining asylum. In a letter to Ashcroft on Thursday, 48 House Democrats and one independent urged him to abandon any such plans.

Ashcroft remains in charge of decisions about immigration law despite the transfer of the INS

from the Justice Department to the new Department of Homeland Security.

Advocates of more restrictive immigration rules, such as the Federation for American Immigration Reform (FAIR), warned that expanding the "social group" definition could become "a fast track for asylum abuse."

"You can't just say, 'I'm in a bad situation and therefore I'm a member of some new social group,'" FAIR spokesman David Ray said. "If the categories grow so large as to include millions of people, asylum policy is going to crumble."

Alvarado, now 35 and working as a housekeeper for nuns in the San Francisco area, could be forced to return to Guatemala. Her attorney, Karen Musalo, said Friday that three Justice Department sources have told her that Ashcroft intends to reinstate the immigration appeals board decision.

Justice Department officials declined to comment. A senior official said Ashcroft has taken the Alvarado case "out of limbo" by deciding to review it himself. Reno's decision had remanded the case to the Board of Immigration Appeals (BIA) but with instructions to wait until the rules she proposed had been acted upon.

As for the regulations, the offi-

cial said they would have to be approved by Ashcroft and Homeland Security Secretary Tom Ridge. "Both departments have equity in determining what 'asylum' means," the official said. "When it comes to rulemaking, it will be a shared authority. Neither department will promulgate a rule without the assent of the other."

Several sources reported that Ashcroft has also notified five BIA members that they are being

dropped from the board in line with a scheduled reduction from 23 to 11 members. The five are all Clinton administration appointees and three were dissenters in the Alvarado case. A Justice Department spokesman did not return calls seeking comment.

"This is the court of last resort for many immigrants," immigration law expert Stephen Yale-Loehr said of the BIA. At House hearings last year, he opposed the

proposed reduction, saying it raised "troubling concerns about how the attorney general will determine who will stay on the board and who would be dismissed."

The board, Yale-Loehr added, decides 30,000 to 40,000 cases a year and only a couple of thousand are appealed to the courts. "For the vast majority of immigrants seeking relief or asylum," he said, "this is their last chance."