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New Policy Permits Asylum for Battered Women

By [JULIA PRESTON](#)

The Obama administration has opened the way for foreign women who are victims of severe domestic beatings and sexual abuse to receive asylum in the United States. The action reverses a Bush administration stance in a protracted and passionate legal battle over the possibilities for battered women to become refugees.

In addition to meeting other strict conditions for asylum, abused women will need to show that they are treated by their abuser as subordinates and little better than property, according to an [immigration](#) court filing by the administration, and that domestic abuse is widely tolerated in their country. They must show that they could not find protection from institutions at home or by moving to another place within their own country.

The administration laid out its position in an [immigration appeals court filing](#) in the case of a woman from Mexico who requested asylum, saying she feared she would be murdered by her common-law husband there. According to court documents filed in San Francisco, the man repeatedly raped her at gunpoint, held her captive, stole from her and at one point tried to burn her alive when he learned she was pregnant.

The government submitted its legal brief in April, but the woman only recently gave her consent for the confidential case documents to be disclosed to The New York Times. The government has marked a clear, although narrow, pathway for battered women seeking asylum, lawyers said, after 13 years of tangled court arguments, including resistance from the Bush administration to recognize any of those claims.

Moving cautiously, the [Department of Homeland Security](#) did not immediately recommend asylum for the Mexican woman, who is identified in the court papers only by her initials as L.R. But the department, in the unusual submission written by senior government lawyers, concluded in plain terms that "it is possible" that the Mexican woman "and other applicants who have experienced domestic violence could qualify for asylum."

As recently as last year, Bush administration lawyers had argued in the same case that in spite of her husband's brutality, L.R. and other battered women could not meet the standards of American

asylum law.

“This really opens the door to the protection of women who have suffered these kinds of violations,” said Karen Musalo, a professor who is director of the [Center for Gender and Refugee Studies](#) at the [University of California](#) Hastings College of the Law in San Francisco. Professor Musalo has represented other abused women seeking asylum and recently took up the case of L.R.

The Obama administration’s position caps a legal odyssey for foreign women seeking protection in the United States from domestic abuse that began in 1996 when a Guatemalan woman named Rody Alvarado was granted asylum by an immigration court, based on her account of repeated beatings by her husband. Three years later, an immigration appeals court overturned Ms. Alvarado’s asylum, saying she was not part of any persecuted group under American law.

Since then Ms. Alvarado’s case has stalled as successive administrations debated the issue, with immigration officials reluctant to open a floodgate of asylum petitions from battered women across the globe. During the Clinton administration, Attorney General [Janet Reno](#) proposed regulations to clarify the matter, but they have never gone into effect. In a briefing paper in 2004, lawyers for the Department of Homeland Security raised the possibility of asylum for victims of domestic violence, but the Bush administration never put that into practice in immigration court, Professor Musalo said.

Now Homeland Security officials say they are returning to views the department put forward in 2004, refining them to draw conditions sufficiently narrow that battered women would prevail in only a limited number cases.

“Although each case is highly fact-dependent and requires scrutiny of the specific threat an applicant faces,” said Matt Chandler, a spokesman for the Department of Homeland Security, “the department continues to view domestic violence as a possible basis for asylum in the United States.” He said officials hoped to complete regulations governing the complex cases.

The new policy does not involve women fleeing genital mutilation.

Any applicant for [asylum or refugee status](#) in the United States must demonstrate a “well-founded fear of persecution” because of race, religion, nationality, political opinion or “membership in a particular social group.” The extended legal argument has been whether abused women could be part of any social group that would be eligible under those terms. Last year, 22,930 people won asylum in this country fleeing all types of persecution; the number has been decreasing in recent years.

Because asylum cases are confidential, there is no way of knowing how many applications by

battered women have been denied or held up over the last decade. The issue is further complicated by the peculiarities of the United States immigration system, in which asylum cases are heard in courts that are not part of the federal judiciary, but are run by an agency of the Justice Department, with Homeland Security officials representing the government.

The government has not disputed the painful history that L.R., now 42, recounts in a [court declaration](#). The man who became her tormentor first assaulted her when she was a teenager and he was a physical education coach, 14 years her senior, at a high school in the Mexican state of Guanajuato. He and his family were regarded as wealthy and influential because they owned a restaurant in town, L.R. said.

Over the years, he made her live with him, and forced her to have sex with him by putting a gun or a machete to her head, by breaking her nose and by threatening to kill the small children of her sister. Once when she became pregnant, she said, she barely escaped alive after he had poured kerosene on the bed where she was sleeping and ignited it. He stole the salary she earned as a teacher and later sold her teacher's license.

Local police dismissed her reports of violence as "a private matter," the court documents said, and a judge she turned to for help tried to seduce her.

"In Mexico, men believe they have a right to abuse their women because they are like a possession," she said. With three children born from her involuntary sex with the man, who never married her, she fled to California in 2004.

An immigration judge denied her asylum claim in 2006. In its new filing, the government urged that L.R.'s case be sent back to the immigration court for further review, suggesting she might still succeed. But the government also injected a caveat, insisting that "this does not mean that every victim of domestic violence would be eligible for asylum."

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