

# The Washington Post

## Time to End an Asylum Limbo for Abused Women

By Esta Soler and Karen Musalo  
Saturday, July 18, 2009

Rody Alvarado Peña, a victim of brutal domestic violence in her native Guatemala, sought refuge in the United States in 1995. An immigration court judge granted her asylum the next year, but almost 14 years later Rody remains in limbo. She is working in a convent in California and hoping that the Obama administration will finally resolve her case and take steps to protect women who flee their countries to escape certain death from gender-based violence.

The administration recently sent a positive signal about these types of cases, but it needs to do much more. The plight of Alvarado Peña -- an indisputably peaceful woman at risk for deportation -- underscores both the dysfunction in our immigration system and the fact that our nation's promise of mercy and refuge is still applied erratically, even capriciously.

Nobody disputes the facts of this case. At age 16, Alvarado Peña married a career soldier. He raped and beat her with abandon, breaking mirrors over her head, causing a miscarriage by kicking her until she hemorrhaged and viciously beating her until she lost consciousness. With divorce impossible without her husband's consent, and no shelters or supports available, Alvarado Peña fled to the United States.

Initially, she was granted asylum, but because a dispute continues over whether gender-based persecution is a basis for asylum, the Immigration and Naturalization Service appealed the case. A few years later, the Board of Immigration Appeals, the nation's highest immigration court, denied her asylum. The judges did not dispute what had happened to Alvarado Peña, and they recognized her husband's violence as "deplorable." Still, they found no basis in law to grant Alvarado Peña asylum.

During the Clinton administration, as one of her last acts in office, Attorney General Janet Reno vacated that ruling and issued regulations recognizing gender-based persecution as a possible basis for asylum. Reno ordered the court to reconsider Alvarado Peña's case when the regulations were finalized. That never happened, in part because responsibility for asylum law is now split between the Justice Department and the Department of Homeland Security -- a complication, no doubt, but one federal agencies surely could overcome.

In 2003, Attorney General John Ashcroft took the case with the intention of deciding it himself, but he dropped it when Secretary Tom Ridge's Department of Homeland Security filed a brief stating the obvious: Alvarado Peña is no threat and should be granted asylum.

Alvarado Peña remained in limbo for years, though, because the Bush administration failed to finalize the regulations that could shape the outcome of her case. Last year, Attorney General Michael Mukasey ordered the Board of Immigration Appeals to decide the case without waiting for the regulations to be finalized. (The board sent it back to an immigration judge in San Francisco, who will decide her fate.) Without those regulations, Alvarado Peña could be deported to Guatemala, where all semblance of law has collapsed and the danger has escalated dramatically.

To those of us who have been paying attention all these years, it's almost inconceivable that another administration left office with Rody's case unresolved. Ten years ago, on this page, one of us urged the Bush administration to finish what the Clinton administration started by finalizing the rules addressing gender-based violence ["Denying Asylum to a Battered Woman," Nov. 8, 1999]. The response to that opinion piece was enormous: Senators called us, constituents flooded congressional offices with calls, attorneys wrote more briefs and generous donors sought ways to help. But the system defied the pressure to act.

Sadly, cases like this aren't going away. Violence against women and girls is a global crisis. In the past year, rape has been used as a weapon of war in Zimbabwe, grandmothers have been hacked to pieces in the Democratic Republic of Congo, and a 13-year-old rape victim was stoned to death in Somalia. Every day, there are "honor" killings, acid attacks, bride burnings, and horrific domestic and sexual violence worldwide.

There is reason once again to be hopeful. The Department of Homeland Security filed a [brief](#) this spring -- which became public this week -- in the case of a severely battered woman from Mexico; the brief acknowledged that such claims could be accepted under law. But the filing of one brief is no substitute for clear national policy.

It's time we put our regulatory house in order and assured victims of gender-based violence that they can count on justice in the United States. As the Obama administration sets its priorities, this one should be easy. Diverse groups -- from conservative Christians to liberal feminists -- agree that Rody Alvarado Peña deserves asylum and that it's time to finalize the regulations affecting cases like hers. If federal agencies don't do it through regulation, it's time for Congress to do it through legislation.

We need Obama administration officials to do the job and do it right. Unless they do, Rody and others fleeing brutal gender-based violence will spend more years -- or even decades -- in limbo. We can do better.

*Esta Soler is president of the Family Violence Prevention Fund. Karen Musalo directs the Center for Gender and Refugee Studies.*