

Congress of the United States
Washington, DC 20515

July 22, 1999

The Honorable Janet Reno
United States Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Matter of R- A- Interim Decision 3403 (BIA 1999)

Dear Attorney General Reno:

We are writing to express our deep concern about the recent precedent-setting decision by the Board of Immigration Appeals reversing an immigration judge's grant of asylum. Rodi Alvarado Peña is a Guatemalan woman whose request for asylum is based on ten years of brutal domestic violence she suffered at the hands of her husband, a career soldier from whom she was unable to obtain protection in her own country. To survive, she was forced to flee her home and leave behind her family, including two small children.

Because we strongly disagree with the Board's interpretation of the refugee statute, and believe it to be inconsistent with United States case law and policy on the issue, we urge you to certify *Matter of R- A-* for your review, reverse the Board, and reinstate the grant of asylum. Although decided by a sharply divided 10-5 vote, the Board's published en banc opinion constitutes a binding landmark decision on the question of violence against and persecution of women as a basis for political asylum in the United States. We cannot overstate our very strong support for timely action on your part to reverse this extremely troubling decision.

The facts regarding Ms. Alvarado's case are very compelling and are not disputed by either the Board or the INS. At age sixteen, Ms. Alvarado married a Guatemalan army soldier. During the course of the next ten years, she was subjected to his unrelenting physical and psychological abuse. He beat and raped her repeatedly, forcing sex on her nearly daily, causing infection, severe abdominal injury and hemorrhaging. He used her body as a battering ram, breaking windows and mirrors with her head. Ms. Alvarado continues to suffer abdominal pain and headaches as a result of the traumas she endured. Her repeated attempts to gain protection from the state were unsuccessful, as the police

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and judicial system refused to intervene or protect her. Before making the painful decision to leave her homeland, Ms. Alvarado tried to escape her husband by relocating within Guatemala. Her husband tracked her down whenever she tried to flee. If Ms. Alvarado is sent back to Guatemala, as the Board acknowledged, her husband has threatened "to hunt her down and kill her."

The Board expressly sympathized with Ms. Alvarado's plight, deplored her husband's conduct and agreed that she had been persecuted. Nonetheless, the Board ruled that she did not qualify for protection under the United States Refugee Act.

Ms. Alvarado's case has garnered national and international interest and attention. Amnesty International criticized the INS for appealing Ms. Alvarado's grant of asylum, finding the appeal constituted a failure by the agency to abide by its own Gender Considerations. Since the Board issued its decision, numerous media, including the Washington Post and National Public Radio, have reported on the case due to its devastating impact on asylum law. A number of major refugee, domestic violence and human rights organizations, including the Women's Commission for Refugee Women and Children, Amnesty International, the Family Violence Prevention Fund and Human Rights Watch, have expressed concern about the Board's decision and have offered assistance in Ms. Alvarado's case.

We firmly believe U.S. law clearly supports this action on your part. As you know, a person seeking asylum in the United States must demonstrate that he or she has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.

On the question of persecution, it is generally recognized that where grave harm has been found, this requirement is met regardless of the private or public context. The international community has recognized that gender-based violence is not merely a random crime or a private matter. The Board readily concedes that what Ms. Alvarado suffered was persecution, that her own government failed to protect her and that her fear of future persecution by her husband is extremely well-founded.

It is the Board's analysis regarding the reason for her persecution that most concerns us, and that often proves problematic for women asylum-seekers. Experts and advocates on asylum and women's rights are alarmed by the Board's interpretation of United States immigration laws and its significance for how this country views gender-related abuse.

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Too often, women asylum-seekers have faced adjudicators who fail to understand the link between the undisputed harm they face and one of the five enumerated grounds. Partly to address this situation, your Department of Justice published the Considerations for Asylum Officers Adjudicating Asylum Claims from Women in 1995. These "Gender Considerations" recognize that a claim for asylum may be predicated on a well-founded fear of domestic violence, and state that an asylum applicant who can demonstrate a well-founded fear of persecution on account of her beliefs about the role and status of women in society may be eligible for refugee status on account of political opinion. The Gender Considerations also quote the declaration by the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) that "women asylum seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group'." Conclusions on International Protection of Refugees, No. 39 (1985).

Where persecution is inflicted at least in part due to a woman's gender, there is a growing consensus toward finding that the persecution is being inflicted on account of the woman's membership in a particular social group. This analysis is clear from the decisions of courts in Canada and the United Kingdom that have recognized that women who suffer violence or severe discrimination in violation of their rights under international law, and are unprotected in their own countries, should be granted asylum.

The Immigration Judge found that Ms. Alvarado faced persecution on account of her membership in the social group of Guatemalan women who are intimately involved with a male companion who believes that women are to live under male domination. Deciding that she also faced persecution due to her resistance to her husband's violence, the judge granted asylum on political opinion grounds as well.

As we noted, the Board does not contest that Ms. Alvarado was persecuted or faces future persecution. Instead, the majority of Board members rejected the immigration judge's ruling that she was targeted for abuse because of her membership in a social group. We are deeply troubled by this decision and find it to be inconsistent with a growing body of precedent in the U.S. It establishes a particularly troubling double-standard for women victims of persecution who seek the fair and uniform application of U.S. asylum law.

In fact, the decision in *Matter of R- A-* prompted a vigorous dissent, with five members of the Board pointing out that the majority's "differentiation between the supposedly more private forms of persecution, typically suffered by women, and the more public forms of persecution, typically suffered by men, is exactly the type of outdated and

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improper distinction that the [INS's Gender] Guidelines were intended to overcome." (Page 42.) The dissenters clearly articulated the view that Ms. Alvarado is eligible for asylum, and analogized her case to the Board's 1996 precedent decision in *Matter of Kasinga*, demonstrating how the two cases are legally, factually and analytically similar.

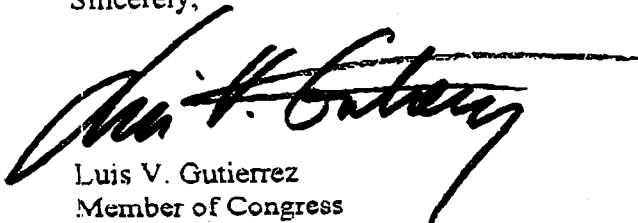
We are unwavering in our belief that Ms. Alvarado qualifies for asylum under the Refugee Act. The immigration judge's decision to grant her asylum is in conformity with current standards in both United States asylum law and policy and international human rights law, which recognize that women's persecution often takes gender-specific forms, including domestic violence and rape. Any doubt that might have existed on this question has been addressed by the considerable work during the past decade, both domestically and internationally, toward a greater understanding of women's human rights. *Matter of R- A-* represents a wrong and unacceptable step backwards.

In support of its denial of asylum, the Board points to protection for battered spouses elsewhere under the Immigration and Nationality Act, inviting Congress to take legislative action on this issue. However, Ms. Alvarado qualifies for protection under a fair and uniform application of the refugee statute, and Congress should not have to pass legislation to overturn this decision. We urge you to certify the decision to yourself for review under 8 C.F.R. § 3.1(h), reverse the Board, and reinstate the grant of asylum.

We also request a meeting with you as soon as possible regarding this urgent matter. We are eager to share more details and background with you on the critical importance to us of providing fairness to Ms. Alvarado and reversing this troubling precedent. We urge you to include Bonnie Campbell of the Department of Justice Violence Against Women Office in this meeting.

We consider this issue a vital priority and we look forward to hearing from you about your availability for a meeting to discuss this case and other issues related to the adjudication of gender-related asylum claims.

Sincerely,



Luis V. Gutierrez
Member of Congress

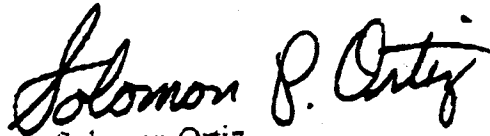


Robert Menendez
Member of Congress

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Xavier Becerra
Member of Congress



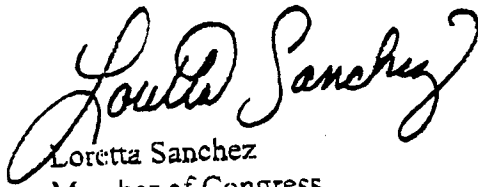
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Member of Congress



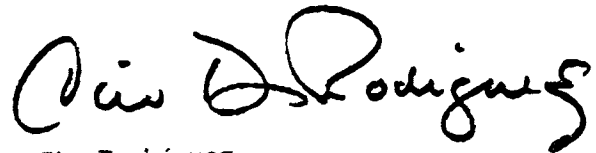
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Member of Congress



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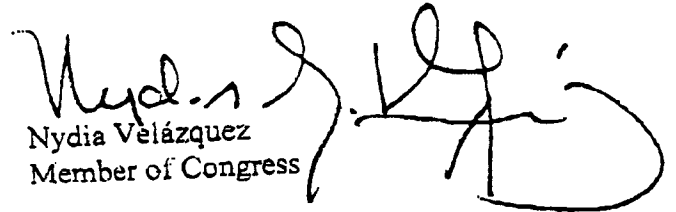
Loretta Sanchez
Member of Congress



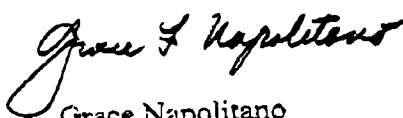
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Member of Congress



Silvestre Reyes
Member of Congress



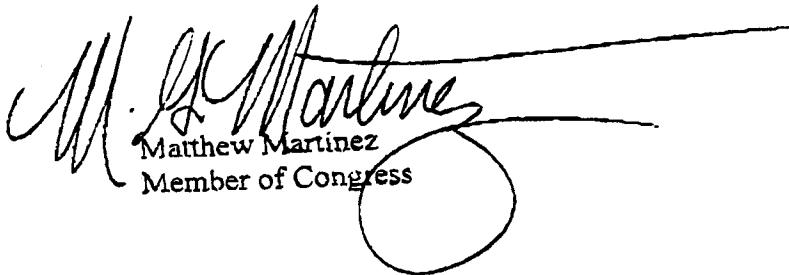
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