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Ninth leans to asylum for rape victim

*Woman raped by
Guatemalan soldiers
was denied haven*

By Jeff Chorney
RECORDER STAFF WRITER

The Ninth Circuit U.S. Court of Appeals on Wednesday appeared inclined to grant asylum to a Guatemalan woman who says she was gang-raped as a form of political oppression.



**Johnnie
Rawlinson**

The Ninth Circuit judge had tough questions for a lawyer from the Office of Immigration Litigation.

While giving a lawyer for Guatemalan immigrant Reina Izabel Garcia-Martinez free rein, the three-judge panel beat up a government lawyer for picking and choosing from Garcia-Martinez's immigration court testimony about why she was raped.

"Isn't her testimony credible?" Judge Johnnie Rawlinson asked.

"The fact that she believes it doesn't make it true," Office of Immigration litigation lawyer James Grimes replied.

Later, Judge A. Wallace Tashima asked whether Garcia-Martinez's beliefs are backed up by historical records that show mass rape was conducted by the Guatemalan army.

"That's not in this record," Grimes said. Rawlinson, incredulous, said: "So you're saying that an unlearned petitioner has an obligation to bring forth additional

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— KAREN MUSALO
Center for Gender and Refugee Studies

ASYLUM

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evidence?"

Jayne Fleming, a Reed Smith associate who is handling the appeal pro bono, had an easier time. Fleming was able to hit many of her points and spoke for several minutes uninterrupted before the judges — Rawlinson, Tashima and Senior Judge David Thompson — hit her with questions.

At issue in *Garcia-Martinez v. Ashcroft*, 02-74068, is whether women who have been raped for political reasons should be granted asylum in the United States.

If the court decides in favor of the appellant, it wouldn't be the first time the circuit has agreed rape can be a political weapon.

But, according to Karen Musalo of Hastings College of the Law's Center for Gender and Refugee Studies, which filed an *amicus curiae* brief in the matter, it would be an important victory in an asylum system that too often is still chauvinistic in its view of oppression.

"A man may be beaten — people won't hesitate to draw a political connection," Musalo said. "But when it's a rape, immediately you have people's conclusion that it's [just] a crime."

That distinction is important. Crime victims don't automatically get asylum in the United States. But if people can prove there was a political motive behind the abuse, they have a better chance of winning asylum.

Garcia-Martinez was raped in her home by three soldiers in 1993. The trio also beat her family members, tied up her father in the backyard, and forced her mother to cook the soldiers a meal while they assaulted the then 19-year-old Garcia-Martinez, Fleming said.

Garcia-Martinez eventually entered the United States illegally, settling in Richmond. She married and had two children.

The United States tried to have Garcia-Martinez deported, but she requested asylum. Immigration Judge Mimi Yam turned her down, and the Board of Immigration Appeals then affirmed in a one-sentence opinion.

The government argues that Garcia-Martinez doesn't deserve asylum because the rape was a simple crime and wasn't meant to accomplish any political goal. In briefs and arguments, the government said the rape was a "carnal de-



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GIMME SHELTER: Karen Musalo of the Center for Gender and Refugee Studies says courts need to start incorporating women's rights into immigration law.

sire." As evidence, it cited Garcia-Martinez's own testimony, in which she says the soldiers told her father they

wanted a woman.

But Garcia-Martinez also testified that the soldiers made a regular practice of raping women in the 200-person village because they believed the community was in cahoots with guerrillas at war with the government.

The guerrillas had forced men, including Garcia-Martinez's brother, into their ranks, and soldiers came through the village seeking revenge.

Fleming asked the court to grant asylum for humanitarian reasons. If her client's appeal is denied, Fleming said Garcia-Martinez will likely go back to immigration court to seek asylum based on hardship because of her family.

According to Musalo, courts should recognize sexual assault in the same way they do other physical harm because rape is commonly used by regimes as a political weapon. She cited wars in the former Yugoslavia, some African conflicts and South America.

"We're committed to seeing women's asylum claims being treated on parity with men's," Musalo said.

Reporter Jeff Chorney's e-mail address is jchorney@therecorder.com.