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Rights – US: Battered Women Seeking Asylum Face Legal Quagmire

By William Fisher

[New York] – Shortly before he left office, former Attorney-General John Ashcroft told employees at the Department of Justice that the United States is “a freer nation than before because our families can live peacefully in their communities, our wives, daughters and mothers can travel the streets safely, and our children are turning away from illegal drugs.”

But it would be difficult to convince Rodi Alvarado that she was either safe or free.

Alvarado is a Guatemalan refugee who is at the center of a 10-year debate over whether battered women can successfully gain asylum in the U.S. Her case had been in the hands of Ashcroft, who said two years ago that he would decide her fate.

But just before he stepped down, he passed the responsibility to his successor, Alberto Gonzales.

Ashcroft decided neither to grant nor deny asylum to Alvarado. He said a decision should await new regulations from the Department of Homeland Security (DHS), which supervises most immigration matters.

The DHS says its new regulations would make domestic abuse a valid legal basis for asylum-seekers. The government started working on such regulations many years ago, long before the DHS was created.

“The DHS has been very sympathetic to the plight of abused women and girls. It believes this very narrow category of asylum-seekers should be able to enter the U.S. to escape abuse,” said Cory Smith, a lawyer with Human Rights First, an advocacy group that has worked on the Alvarado case for several years.

“For reasons that are difficult to understand, the Justice Department has seemed to be dragging its feet on completing new regulations to make this possible, although they have received a lot of positive bipartisan support, including support from conservative advocacy and religious groups,” she told IPS.

The DHS says it will not press for Alvarado’s deportation regardless of how much longer it may take the agency to finalise the new regulations. Meanwhile, Alvarado remains in legal

limbo. Though she can remain in the U.S., it is only a partial victory since she cannot be reunited with her children, who are in Guatemala.

Alvarado's husband, a former soldier in the Guatemalan military, brutally beat her over a period of 10 years while the Guatemalan police and courts ignored her repeated attempts to get help. When she ran away, her husband found her and beat her unconscious.

Finally, in 1995, she fled to the U.S. in search of safety. She now works as a housekeeper at a convent in San Francisco.

Alvarado's case has created a firestorm of bipartisan criticism of U.S. immigration policies. Advocates for women and immigration rights had hoped that Alvarado's situation would already have led to a change in U.S. policy to recognise asylum cases filed by victims of domestic violence.

Janet Reno, the attorney-general during the Bill Clinton administration, proposed such a change in her final hours in office in 2001.

But with the change of administrations and the Sep. 11, 2001, attacks, the proposal languished. Opponents have said new asylum rules would lead to a surge in claims, an assertion disputed by advocates.

"Both the DHS and the DOJ (Justice Department) have to reach consensus on the regulations and issue them jointly, since both agencies have jurisdiction over asylum," said Karen Musalo, director of the Centre for Gender and Refugee Studies at the University of California's Hastings College of the Law.

"It is a little kept secret that the delay is due in no small part to the DOJ, which does not agree with the DHS. The DOJ has expressed the position that such claims cannot be recognised. The DHS expressed an opposing position in the brief it filed in February 2004" in the Alvarado case, she said in an interview.

Under U.S. law, asylum applicants have to show that they face persecution at home because of their religion, race, nationality, political opinion or membership in a particular social group. The regulation proposed by Reno would have allowed battered women to be considered members of a social group.

"While we are disappointed that Attorney General Ashcroft did not follow the full recommendation of the Department of Homeland Security, and grant Mrs. Alvarado permanent asylum as he absolutely should have, we are encouraged that a basic regulatory framework – at least in proposed form – has been established which may allow for a principled approach to this issue," said a statement by Nancy Kelly and Deborah Anker of Harvard Law School's Immigration and Refugee Clinic, which filed a friend of the court brief in the Alvarado case.

A coalition of groups signed the Women Refugees Project's amicus brief and have supported Alvarado's efforts to obtain asylum, including the Centre for Refugee Studies, Human Rights

First and the Family Violence Prevention Fund, as well as Amnesty International-USA, the National Immigration, the Project of the National Lawyers Guild, the Women's Commission for Refugee Women and Children, and Human Rights Watch.

The Refugee Project says there is broad, bipartisan support for granting asylum to Alvarado, including from many conservative organizations and Republican Senators like Sam Brownback of Kansas, Mike DeWine of Ohio, and Susan Collins and Olympia Snow of Maine.

However, Alvarado's case could be complicated by the political environment created by the ongoing congressional controversy over immigration and asylum.

Last week, the House of Representatives passed the so-called REAL I.D. act, which would block states from issuing driver's licenses to illegal immigrants, restrict asylum, and complete a controversial border fence between San Diego, California, and Tijuana, Mexico.

The White House said in a policy statement issued hours before debate began that the bill would "strengthen the ability of the United States to protect against terrorist entry into and activities within the United States."

But immigration advocates, groups supporting civil and privacy rights, and state government organizations opposed the bill. They said it would make it harder for those fleeing persecution to seek asylum in this country and would endanger public safety and national security by denying driver's licenses to millions of illegal immigrants.

The REAL-ID bill now goes to the U.S. Senate, where it is likely to be attached to a piece of "must pass" legislation, probably related to further support for U.S. troops in Iraq.

A similar bill was introduced in the last session of Congress as part of the intelligence reorganisation legislation designed to implement the recommendations of the 9/11 Commission, but immigration provisions were largely stripped from the final bill by the Senate as a compromise to assure passage of the broader legislation.

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