

Redefining Policy:
The Effect of External Organizations on the Approach to Gender-Motivated Crimes
within the Asylum System

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WGST-5001-001

Completed Fall 2007

General University Honors

In every Civics textbook in the United States, there exists a section entitled “How a bill becomes a law.” The assumption behind such a lesson is that all policy emerges from the legislature, a process framed and condoned by the Constitution. However, this is not always the case.

External influences can have significant effects upon the internal workings of the federal government. While it is simplest to be elected into power, others use their influence over the media and public opinion to push particular issues.

The policy change in the asylum system in reference to gender-motivated crimes in an interesting case study of this phenomenon of democratic participation. Crimes based on gender are less readily accepted than other types of crimes and gender as a basis for persecution has yet to be established by the courts. Unwilling and unable to create specific, static definitions of gender-motivated persecution, the government did not work to incorporate gender into the asylum application process until the end of the twentieth century. Faced with a well-publicized campaign backed by social organizations and congressmen, the government was forced to adapt to changing definitions of the refugee experience. It was through this external pressure that a policy change came about and brought gender into the asylum system as a significant contribution to the meaning of persecution.

History of the Asylum System

The United States asylum process and the definitions and procedures used therein were first developed after the Second World War. In 1951, the United Nations (UN) produced the United Nations Convention of Human Rights (UNCHR), a document that outlined the definition of a refugee and the ways in which receiving states would be required to treat this unique type of immigrant. A refugee was defined as a person with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.”¹ This document was almost universally

¹ The United Nations, *Convention Relating to the Status of Refugees* (Geneva, 1951), 1.

adopted and became the basis of the newly created refugee structure of the post-war period.² The United States, along with other nations, adopted this definition of a refugee, lending a type of uniformity and standardization to the system worldwide. In the past fifty years, the American asylum structure has not been altered, as the majority of asylum cases that are deemed legitimate fall within the realm of the above stated requirements.³ Universally recognized and considered largely uniform and just, UNCHR was the cornerstone of the new asylum regime and continues to be utilized by governments worldwide.

One of the most notable omissions in the litany of immutable characteristics that define a refugee is gender. While race, gender, and religion often go hand-in-hand as a basis for analysis, gender was omitted from the UNCHR. Several explanations have been offered in response to gendered critiques of the document, most of which recognize the responsiveness of the document to the problems of the era. The focus of the UN Convention on post-World War II refugees in Europe led to an emphasis on race and religion in light of the Holocaust.⁴ Women were not separated from their male counterparts in the understanding of the persecution and thus were not recognized as a separate targeted group. Others offer the suggestion that the simple lack of recognition of gendered crimes was responsible for the omission of gender as a category.⁵ At a time when mass rapes and other gender-related crimes were not as endemic (or at least not widely publicized), gender was not considered a principal motivation for violence. Gender was a glaring omission within the Convention and remains one of the most prominent focal points for

² Kristen Walker, "Defending the 1951 Convention Definition of Refugee," 17 *Georgetown Immigration Law Journal* (2002): 583.

³ Andrew Schoenholtz and Jonathan Jacobs, "The State of Asylum Representation: Ideas for Change," 16 *Georgetown Immigration Law Journal* (2002), 750. ; Summer 2002, Vol. 16 Issue 4, p739, 34p, 7 charts

⁴ Gerard Daniel Cohen, "The Politics of Recognition: Jewish Refugees in Relief Policies and Human Rights Debates, 1945–1950," *Immigrants & Minorities* 24 (2006): 127.

⁵ Nancy Kelly, "Gender-Related Persecution: Assessing the Asylum Claims of Women," 26 *Cornell International Law Journal* (1993): 626.

women's rights and immigration activists.⁶ In the past fifty years, it has presented one of the strongest challenges to the currently accepted system of asylum worldwide.⁷

The principal reason for this challenge is the increasing frequency and severity of newly publicized crimes in conjunction with the recognition of gender-based violence. Violence against women has occurred throughout history but certain types of violence are increasingly recognized in the public sphere as gender-motivated. While rape has been a fact of war since ancient times, systematic rapes in an effort to wipe out an entire population are a somewhat new phenomenon.⁸ Incidents of female genital mutilation (FGM), specifically on the African continent, are only now beginning to be publicized and stories of the plight of women who attempt to flee this cultural practice circulate through the immigration system.⁹ In other words, the world is just beginning to wake up to the reality of gendered crimes. With this new understanding comes a new desire to assure women and men protection if and when they are targeted explicitly or implicitly because of their gender. Gender has come to the forefront of the conversation on refugees and this can largely be attributed to the increasing recognition of gender-motivated crimes that occur throughout the world.

As intended by the UN Convention, groups have begun to use the "particular social group" category in an effort to expand the current understanding of refugees, most notably

⁶ Men are also disproportionality targeted for certain types of violence due to their status in society. For the purpose of this paper, all gender-motivated crimes will refer to those targeting women specifically rather than gendered violence directed at both sexes. Ibid. 628.

⁷ Deborah Anker, "Refugee Status and Violence Against Women In the 'Domestic' Sphere: the Non-state Actor Question," *Georgetown Immigration Law Journal* 15 (2001): 393.

⁸ The most notable example of this occurred in the conflict in the Balkans in the mid-1990s. By grouping the thousands of women that had been systematically raped into one cohesive group, observers highlighted the phenomenon of mass rape and the idea of rape as a tool of war. This was one of the most well-publicized incidents of mass rape and was helped no doubt by the focus the global media put on the situation. With a focus on this kind of crime, the idea of gender-based violence became an accepted reality within asylum law. Lene Hansen, "Gender, Nation, Rape: Bosnia and the Construction of Security," *International Feminist Journal of Politics* 3, no. 1 (April 2001): 62.

⁹ Arthur C. Helton and Alison Nicoll, "Female Genital Mutilation as Ground for Asylum in the United States: The Recent Case of *In re Fauziya Kasinga* and Prospects for More Gender Sensitive Approaches," 28 *Columbia Human Rights Law Review* (2001): 378.

through the discussion of gender-motivated crimes. Coupled with educational initiatives on gender-based violence, the push for the acceptance of more types of violence as persecution made significant strides in recent decades.¹⁰ While state governments became more reluctant to change refugee requirements through legislation, the new gender-sensitive court decisions and interview practices forced the informal recognition of gender-based violence. Guidelines issued in 1995 urged more gender sensitivity on the part of the INS caseworker and listed numerous gendered crimes, such as domestic violence, that could be considered when reviewing the application. One can see a change in the attitude of the INS towards gender-motivated crimes and its willingness to work for a more gender-sensitive approach to reviewing applications.

The Story of Rodi Alvarado

A specific example of this new attempt to address gender-motivated crimes is the case of R-A-, a Guatemalan woman who suffered severe domestic abuse that has been characterized as at the level of persecution. After her application for asylum was rejected in 1996, Rodi Alvarado was ordered to be deported by Immigration and Naturalization Services (INS).¹¹ More than ten years later she remains in the United States and is unlikely to ever be deported. She is in legal limbo, neither accepted as a refugee nor deported as ordered by the Board of Immigration Appeals (BIA). The intricate political maneuverings and popular manifestations that led to this situation are a prime example of how one can change a well-established asylum system through political pressure.

The life Alvarado led in Guatemala and her reasons for coming to the United States are

¹⁰ Irena Lieberman, "Women and Girls Facing Gender-Based Violence, and Asylum Jurisprudence" 29 *Human Rights* (2002): 10.

¹¹ Until the creation of the Department of Homeland Security (DHS), all immigration and refugee applications passed through the INS. In 2002, the INS formally became United States Citizenship and Immigration Services (USCIS) under the DHS and has remained so ever since. In this paper, INS and USCIS are interchangeable, the only difference being the chronological situation of each organization. Each will be used throughout the paper but no differentiation will be offered. Jeffrey Manns, "Reorganization as a Substitute for Reform," 112 *Yale Law Journal* (2002): 147. 145-153.

undisputed by INS. At sixteen, Rodi Alvarado married Francisco Oserio, a former officer in the Guatemalan military. Throughout their marriage, she suffered severe physical and sexual abuse that worsened as time went on. He forced her to miscarry when she refused to have an abortion and broke bones several times over the course of their marriage. She was pistol-whipped and abused in the streets of her town. Alvarado's repeated attempts to leave her husband and seek help from authorities were rebuffed as the police refused to intervene against her husband.¹² This was attributed in large part to the culture of abuse in Guatemala and the position her husband once held in the military.¹³ After ten years, Alvarado resolved to flee Guatemala as the only way to escape her husband.

In the end, the initial INS caseworker chose to deny Alvarado asylum based on the fact that she did not belong to a particular social group and was not the target of persecution due to her political opinion of objecting to the abuse. Alvarado appealed this decision and in 1996, an Immigration Judge (IJ) granted asylum based on the set of 1995 guidelines that recognize gender-based violence as a potential basis for asylum. The IJ noted that Alvarado has suffered persecution and said persecution was on account of her membership in a social group, namely women in Guatemala that suffered abuse. However, the INS chose to appeal that decision and in 1999 the Board of Immigration Appeals (BIA) reversed the previous judge's decision. The Board "found it questionable that the social group adopted by the Immigration Judge appears to have been defined principally, if not exclusively, for the purpose of this asylum case," and rejected Alvarado's claim based on membership in a particular social group.¹⁴ In a ten-to-five decision, the Board ruled that Alvarado did not qualify as a refugee under the current system and

¹² Matter of R- A-, Int. Dec. 3403 (BIA 1999): 7.

¹³ United Nations Commission on Human Rights, "Advisory Opinion on International Norms: Gender-Related Persecution and Relevance to "Membership of a Particular Social Group" and "Political Opinion." Washington, DC (2004): 3.

¹⁴ Matter of R- A-, Int. Dec. 3403 (BIA 1999): 8.

ordered her to be deported. Nearly a decade later, Alvarado is still a resident of the United States.

A Straightforward Decision

The rejection of Alvarado's application was well within INS guidelines and did not constitute a violation of asylum law. Though she was the victim of severe violence and had been unable to seek help from the authorities, Alvarado lacked membership in a recognized group targeted for persecution.¹⁵ Additionally, the fact that it was domestic violence rather than violence actively condoned by the government significantly weakened her application. There were no circumstances or obscure policy decisions that would or should have rescued her nor did the law change during the trial. Like thousands of applications, Alvarado's was denied by the INS based on legitimate legal grounds and her order of deportation should have gone through immediately.

The decision of deportation was essentially straightforward and did not violate the letter of the law. Of the five recognized groups, "a particular social group" is the most mutable and can continuously evolve.¹⁶ This was intentional as the UNHCR Convention of 1951 did not want to exclude future grounds of persecution that would no doubt arise.¹⁷ In the United States, however, it is entirely up to the discretion of the caseworker if the clause can be legitimately evoked by individual applicants. For Alvarado, her particular social group was defined as "Guatemalan women who have been involved intimately with Guatemalan male companions,

¹⁵ Ibid., pg 9

¹⁶ T. David Parish, "Membership in a Particular Social Group under the Refugee Act of 1980: Social Identity and the Legal Concept of the Refugee," *Columbia Law Review* (1992): 925. For example, some journalists hailing from countries that repress and abuse members of the press have argued for asylum based on the "particular social group" category, as original framers intended this category to be used. Edward L. Carter and Brad Clark, "Membership in a Particular Social Group': International Journalists and U. S. Asylum Law," 12 *Communication Law & Policy* (2007), 283.

¹⁷ This category is the most flexible but also proves to be the most problematic of the five. Because no guidance was given outside of the Convention, states are often at a loss as to how to uniformly implement the "social group" definition. Guy S. Goodwin-Gill, "The Refugee in International Law" 362-63, (2nd ed. 1996).

who believe that women are to live under male domination.”¹⁸ This could easily be considered too broad a generalization to create a cohesive group definition. While some groups are defined by race in a somewhat standardized fashion, defining women in Guatemala with abusive husbands must take into account levels of abuse, relationships with men, and the responsiveness of each regional government. The burden of proof is on the applicant and in this case a clearly defined “particular social group” was not found to be legitimate. The claim of Alvarado of membership in a particular social group did not have to be legitimated and the caseworker within INS was acting according to clear INS policy in rejecting her application.

Additionally, the BIA correctly found that, though Alvarado was the victim of continuous persecution, said persecution was not the result of an imputed political opinion.¹⁹ Alvarado’s objection to her husband’s abuse was presented as a political opinion for which she was persecuted. The courts did not agree. Political opinion only registers within the asylum application if that opinion is the basis for persecution. The Court noted that “nowhere in the record does the respondent recount her husband saying anything relating to what he thought her political views to be, or that the violence towards her was attributable to her actual or imputed beliefs.”²⁰ It was never proved that the abuse Alvarado suffered was the result of her political beliefs and the lack of evidentiary support weakened her application. Additionally, the Board noted “nor does it suggest that his abusive behavior was dependent in any way on the views held by the respondent.”²¹ The requirement is that persecution must be *based* on membership and Ms.

¹⁸ Matter of R- A-, Int. Dec. 3403 (BIA 1999): 2.

¹⁹ Integral to this particular case was the situation in Guatemala at the time and the cultural position of a woman within that society. The repeated refusal of the police to aid Alvarado as a victim of domestic abuse were largely attributed to the gender roles within Guatemala and the general acceptance of domestic violence as a personal matter outside the sphere of the legal system. The INS also noted that an applicant’s access to such protection offered by the state may be limited if the perpetrator is influential in the government or has some sort of special access to government officials. This refusal to assist Alvarado was framed as government-condoned and therefore structural persecution. Karen Musalo, “Amicus Brief,” (February 18, 2004), 12.

²⁰ Matter of R- A-, Int. Dec. 3403 (BIA 1999): 6.

²¹ Ibid., 6.

Alvarado was not able to prove that to the INS. Her husband did not attack other people who held similar political beliefs nor did he articulate a specific objection to Alvarado's political stance. Her opinion did not figure into the application and the BIA was well within its rights to overturn the grant of asylum.

In addition, the use of domestic violence as an example of persecution is a somewhat novel approach within asylum applications. It was only recently that female genital mutilation (FGM) was defined as persecution and even that maneuver was difficult as many consider FGM to be a culturally acceptable practice.²² For domestic violence, there is the additional complication that it is a private, domestic affair. Asylum regulations require persecution by the state or by a party which the state cannot or will not control.²³ This definition was intended to refer to paramilitary or rebel groups that terrorize civilians, not for individuals who perpetuate violence within their own homes.²⁴ For private complaints, the asylum system often turns applicants towards their domestic governments for relief and not the INS. There is a clear difference between the treatment of government-condoned violence and domestic violence within the definition of a refugee.²⁵ This dichotomy between public and private violence in determining persecution for asylum claims is one of the fundamental reasons that Alvarado was denied.²⁶ There was a lack of evidence of the public, government-condoned persecution of Alvarado this was necessary to move the application forward.

Legally speaking, the decision to order Alvarado's deportation was well within the

²² Arthur C. Helton and Alison Nicoll, 284.

²³ Matter of R- A-, Int. Dec. 3403 (BIA 1999), PAGE

²⁴ Concerns that the refugee definition would only be applied to violence by government forces were a concern at the original drafting committee. By including language about forces the government could not or would not control, drafters focused on removing another potential barrier to refugees seeking assistance. Catherine Phoung, "Persecution by Third Parties and European Harmonization of Asylum Policies," 16 *Georgetown Immigration Law Journal* (2001): 83.

²⁵ Mark R Von Sterberg, *The Grounds of Refugee Protection in the Context of International Human Rights and Humanitarian Law* (The Hague: M. Nijhoff Publishers, 2002).

²⁶ Carol Jane Hall, "The Link Between Public and Private Harm: Is There Hope for Gender-Based Violence as a Ground for Asylum in the United States," *Immigration and Nationality Law Review* (2002): 682.

boundaries of asylum law implemented in the United States. Alvarado's case served to highlight the difficulties inherent in having gendered crimes recognized. The fact that gender is not fully recognized as a basis for persecution hinders efforts to have gender-motivated crimes recognized within the asylum system.

The Build-Up of Political Pressure

The evolution of the case of Rodi Alvarado provides an interesting lens through which one can see the implications of public pressure on otherwise rigid and immutable guidelines. Alvarado is an exception to the rule and it is through the external campaign mounted around her case that real change was enacted within INS. As previously discussed, there was no legal reason to prevent the deportation of Alvarado after the BIA decision of 1999. She was in the country illegally and had been rejected by the INS. More than ten years later, she remains in the United States and her case is still pending. One must ask how such a thing is possible; that an illegal immigrant remains in the United States despite an order of deportation against her. It is a clear case of popular pressure on the federal government and the ways in which political pressure prevented the deportation of Alvarado. Buoyed by law schools, members of congress, and social organizations her case became a cause celebre and was the force that drove an internal reassessment by the INS.

Participation of Law Schools

One of the most important aspects of the campaign for staying the deportation of Alvarado began in legal organizations throughout the country and it was upon these associations that the greater campaign was built. Following the appeal of INS in 1996, numerous law schools began to participate in the case in an effort to assure that Alvarado would be granted asylum. Later, the focus shifted to stopping the order of deportation and keeping her in the United States.

Most notably, the Center for Gender and Refugee Studies at the University of California at Hastings devoted a significant amount of effort to the cause. The campaign was powered by Professor Karen Musalo, the director of the Center, and law professors from Harvard University Law School Refugee Clinic also provided support through briefs and legal advice. By assisting in the courts and raising the profile of Alvarado's application, these universities were able to focus the public spotlight on her case. They were also instrumental in building a case that could survive an appeal in immigration court and present a cohesive argument for the acceptance of Alvarado. It is through these organizations that the campaign to grant asylum for Alvarado first began to receive national attention and gain the kind of political capital necessary to effect change.

Karen Musalo, the director of the Center for Gender and Refugee Studies, filed the initial amicus brief on behalf of Alvarado in October 1997. After the INS had appealed the 1996 granting of asylum, Musalo became involved in the case in an effort to force a confirmation of the decision an establishment of legal precedent for gender-motivated crimes within the asylum system. In the brief she argued that the IJ had "evaluated each element necessary to establish eligibility for political asylum....and found that 'the harm Alvarado endured rises to the level of persecution.'"²⁷ Musalo tried to build up the idea of precedent, that the previous ruling established the grounds necessary to confirm the grant of asylum. Moreover, Musalo argues that the judge's decision "is completely consistent with long-standing principles of asylum law as well as recent developments in human rights standards and asylum law regarding gender-related claims."²⁸ Musalo expended extra effort to establish a broader and more sustainable definition of gender-related claims through the previous decision on the Alvarado case. The

²⁷ Karen Musalo, "Amicus Brief," (February 18, 2004), 3.

²⁸ Ibid, 4.

application itself is unique and Musalo steps in to create a cohesive argument for the inclusion of domestic abuse as an example of persecution. She also referenced the UNCHR and other international standards to further ground her argument. The expertise Musalo lent to the case proved to be essential to the longevity of the application and Alvarado's ability to fight the order of deportation. By stepping in to argue on behalf of Alvarado, Musalo brought a background in gender law and her status at the university to bear in arguing for the establishment of Alvarado's case as standard.

The Immigration and Refugee Clinic at the Harvard School of Law also submitted an amicus brief in 2004 to support Alvarado's application and establish her case as perceived to be legitimate. The brief was submitted "on behalf of a coalition of ninety-three organizations and ninety-four law faculty who have experience as legal advocates and scholars in the immigration, human rights and domestic violence fields."²⁹ There was an effort to establish the idea of a broad coalition of organizations coming together around Alvarado in a concerted effort. Such an alliance has significant weight in the political arena. The brief again included international precedent, stating that the entire "international community, including the United States, has taken substantial steps over more than a decade toward recognizing the gravity of gender-related persecution."³⁰ The brief continued to emphasize the universal nature of the support for Alvarado and the ways in which the decision to deport can be seen as an anomaly in the eyes of society. The reference to a previous set of gender guidelines are shown as evidence of the INS's own desire to address gender-related crimes, an approach that attempted to nullify any legal or political concerns surrounding the approval of Alvarado's application. Along with briefs from other law schools, the amicus brief from Harvard Law School sought to convince the INS of the

²⁹ Ibid, 3.

³⁰ Ibid, 11.

appropriateness of granting asylum and the legal precedent already in place to confirm such a decision.

One of the most important functions this participation from law schools served was to disrupt the standard procedures of INS. The case itself was sensational and the high level of abuse experienced by Alvarado rendered her the most sympathetic of victims. While the INS may have been able to quietly dismiss this and similar cases before, law schools that participated were able to prevent a deportation. The potential legal impact forced the courts to proceed carefully. They acted as surveillance, watching the actions of the INS and providing a boost to the Alvarado campaign after each significant decision. This kind of informal oversight forced the INS to treat the case more carefully because it was gradually becoming a political liability. The INS had to readjust its approach in deference to the demands of well-known institutions. By heightening the profile of the case, these actors were able to create political capital for Alvarado. She was no longer a no-name asylum applicant but a woman who was known and pitied for her plight.

The participation of these high profile individuals also provided the necessary exposure to teach people about Alvarado and make her case a national concern. With the addition of law schools that held press conferences, wrote articles, and maintained case updates on their official sites, the dissemination of information about the case greatly increased. The story itself was so tragic that the human interest angle could effectively capture the attention of the American public if only it was well-publicized. By lending their weight to the cause, these law schools gave the case the political capital it would need to become a force in asylum proceedings.

The decision of law schools and other legal bodies to become involved after the initial decision served to put political pressure on the INS to decide in Alvarado's favor. By creating a

higher profile for the case and amassing a coalition behind Alvarado, these actors managed to vocalize the plight of an otherwise powerless applicant. Their legal briefs lent weight to Alvarado's case and gave it greater significance within immigration courts. At the same time, the political capital amassed by these groups was spent to force a global acknowledgement of the case. The INS was unable to quietly dismiss the case and instead had to justify its decision once again. The participation of law schools was the first step in creating a high-profile, well-publicized campaign that prevented the United States from deporting a woman who quietly sought refugee status.

Social Organizations

This case also showed the growing strength of immigrant and human rights groups who became increasingly vocal in defense of Alvarado. Following the case's adoption by various law schools, it attracted a wide variety of non-governmental organizations who felt the need to advocate on Alvarado's behalf. Brought to their omen's groups, human rights groups, and immigrant groups all united behind Alvarado in defense of her status as a refugee. This broad coalition exerted its influence nationwide, encouraging letter-writing campaigns and increased publicity for the case. The next step in the defense of Alvarado, these activities elevated her profile even further and produced direct pressure on members of Congress and the Administration that could not be ignored.

Human Rights Organizations

Human rights organizations became actively involved in the case and lent their weight to the public aspect of Alvarado's application for asylum. Amnesty International, an international non-governmental organization dedicated to human rights, submitted an action report and accompanying remarks on behalf of Alvarado.³¹ The organization's position was abundantly

³¹ Amnesty International, "Refugee Action," Amnesty International (2003), 1.

clear and strongly favored Alvarado. The action report expressed concern about the “damaging precedent that denying her asylum would have on women fleeing not only domestic violence, but also a wide range of violations of their fundamental human rights.”³² Additionally, the report contained a call to action that implored its readers to write letters to the Attorney General, the President, and members of Congress on behalf of Alvarado.³³ The fact that Amnesty International, an organization with offices in fifty-two countries and over 2.2 million members, became involved points to the ways in which this case went from being an isolated incident into a matter of international concern.³⁴ The call for letters also helps translate public outrage into solid deliverables that could be shown to legislators and federal agents to prove the level of public interest.³⁵ The involvement of organizations such as Amnesty International built upon the work of the initial law schools and helped raise the profile of Alvarado’s application.

Aiding in this effort to promote the universality of support for Alvarado, some inter-governmental human rights organizations became active in the case. The United Nations Commission on Human Rights (UNCHR) submitted an analysis of the case to USCIS and confirmed its support of Alvarado’s application for asylum. Submitted in 2004, the brief maintains that domestic violence can be considered grounds for asylum and refers to international precedents regarding gender-related violence as a way to ground its argument. The brief argued that “the consequences for Ms. Alvarado, should she be forced to return to Guatemala, would be extremely serious...UNHCR is of the view that Ms. Alvarado should be recognized as a refugee.”³⁶ Importantly, the report incorporated the country data from Guatemala that served to highlight Alvarado’s plight, noting “in many cases the police do not

³² Ibid, 1.

³³ Ibid, 2.

³⁴ Amnesty International, “Amnesty International: Introduction,” Amnesty International, <http://www.amnesty.org>.

³⁵ Marwaan Maran-Markar, “Write vs Wrong,” *New Internationalist* 398 (2007), 21.

³⁶ United Nations Commission on Human Rights, “Advisory Opinion on International Norms.”

respond to calls for help....officers who do arrive often chastise female victims for behavior that provokes their husbands' ire."³⁷ This brief served to add pressure to the USCIS to take into account the new standards of gender-related crime. The addition of the UNCHR to the domestic institutions that were already involved provided an international declaration of the rights of Alvarado. The participation of the internationally recognized legal authority for refugee law added to the legitimacy and high profile of Alvarado's case and made it a force to be reckoned with.

Other human rights groups also applied pressure to Congress and the administration in an effort to secure refugee status for Alvarado. World Organization Against Torture (WOAT), National Coalition Against Domestic Violence, Human Rights First, and the National Organization for Women (NOW) Legal Defense Fund all participated in major letter-writing and publicity campaigns on behalf of Alvarado. Human Rights First released statements urging "that the regulations recognize that in appropriate circumstances, women like Rodi Alvarado who suffer from certain kinds of violence are eligible for asylum."³⁸ These campaigns were often coordinated around particular developments in the Alvarado case and this cohesiveness lent them the appearance of a massive, concerted effort. They willingly signed on to amicus briefs and official statements made against the order of deportation. Faced with a letter signed by dozens of human rights groups, a member of Congress or the administration would be hard-pressed to ignore the issue at hand. These organizations took up the political fight for Alvarado's future, translating national outrage into letters and protests aimed at convincing the federal government to reexamine its asylum system.

Immigrant Organizations

³⁷ Ibid., 4.

³⁸ "AG Ashcroft Issues Long-Awaited Asylum Decision Rodi Alvarado's Life Remains in Limbo," Human Rights First, http://www.humanrightsfirst.org/media/2005_alerts/asy_0121_rodi.htm.

At the same time, newly-empowered immigrant groups became increasingly vocal on behalf of Alvarado. Participating in similar letter-writing campaigns, these groups also sought to mobilize the immigrant community on behalf of one of its own. The order of deportation was often seen as setting a dangerous precedent that would threaten the security of those seeking asylum. The domestic abuse Alvarado suffered was readily recognized as persecution and yet she was denied a place in the United States. The fear that the rigid policy of the INS would one day threaten their status led many immigrants to become involved in the case. The US Committee for Refugees, the Political Asylum and Immigration Representation Project and the Northwest Immigrant Rights Project were just a few immigrant organizations that participated in the campaigns. The Refugee Law Project participated with others in the submission of an amicus brief on behalf of Alvarado.³⁹ While the brief itself was important to the case, equally important was the way in which it was publicized and disseminated by these organizations. The additional pressure brought to bear by these groups had a significant impact on the handling of the case by USCIS. The need to object to this inhumane policy drove many immigrants groups to participate in a way that gave Alvarado an even greater voice and an even higher profile in American society.

Immigrant organizations throughout the United States took an active interest in the outcome of the case and used their status to approach various members of the federal government. Among them, the Hebrew Immigrant Aid Society (HIAS) took part in the letter-writing campaign and lobbying efforts on behalf of Alvarado. In a letter to the Secretary of Homeland Security, Leonard Glickman, the President and CEO of HIAS, pleads for the adoption of regulations by the Department of Homeland security that would not restrict access to the asylum system for victims of gender violence. He writes

³⁹ “Amicus Brief on Behalf of Rodi Alvarado,” (January 21, 2000).

if the Department of Homeland Security...ultimately issues regulations that would prevent women fleeing from human rights violations, including domestic violence, trafficking, rape, sexual slavery, and honor killing, from seeking asylum in the United States, it would be a significant step backwards for U.S. asylum law.⁴⁰

He further states that “women and girls subjected to gender-related violence would have no means of escape, and would likely face death at the hands of their abusers.”⁴¹ In conjunction with a more compassionate approach, HIAS attempted to convince the Attorney General through straightforward debate that a decision against Alvarado would have significant negative ramifications for victims of gender violence worldwide. A vocal and well-funded organization, HIAS rose to support Alvarado and approached various members of the federal government in an effort to apply political pressure on the offending institutions.

In companion with HIAS, other religious immigrant groups came to the forefront to protest the treatment of Alvarado. The Lutheran Immigration and Refugee Service (LIRS) mounted a letter-writing campaign to members of Congress and released official statements to record their support for asylum for Alvarado. They advocated on behalf of Alvarado “and other vulnerable women and girls who flee from domestic violence...and who seek asylum in the United States.”⁴² The Service urged the Attorney General to grant asylum on the basis on human rights and common decency. It also referred back to the case of Canada, which had broadened its understanding of persecution due to gender and had not been subject to the predicted deluge of new applicants that many opponents to Alvarado feared.⁴³ LIRS advocated granting protection to those in need and this message of compassion was a common theme for immigrant groups, especially those supported by various religious organizations. In much the same way labor unions are effective political tools by presenting a united front, these organizations

⁴⁰ Leonard Glickman to Tom Ridge, letter (March 19, 2003).

⁴¹ Ibid, 1.

⁴² “News Release,” Lutheran Immigration and Refugee Service (August 18, 2004), <http://www.lirs.org/News/NewsReleases/20040818RodiAlvarado.htm>.

⁴³ Ibid, 1.

represented a significant portion of the American population that campaigned on behalf of Alvarado. Many organizations urged compassion in the most public way possible and sought to open American borders on the basis of protecting universal human rights.

In addition to the press releases and letter writing campaign encouraged by these organizations, there was an added benefit of constant vigilance. Most notably, Human Rights First was the primary contact for information and arguably the most cognizant of developments in the Alvarado case. Many of their internet sites had sections devoted to the Alvarado case and any developments that occurred. This meant the Administration was unable to act without a reaction from the groups surrounding Alvarado. By monitoring each other, neither side was caught unaware or completely disadvantaged in the negotiations over the case. The circulation of press releases was timed for after major announcements that negatively affected the Alvarado campaign. The fact that these organizations actively tracked the case allowed for Alvarado to have the kind of protection that many applicants do not receive. There was no chance for a quiet order of deportation to be ordered or for Alvarado to find herself en route to Guatemala with no legal recourse. The active vigilance by organizations that have resources to devote to the case was one of the greatest contributions.

The participation of these human rights and immigrant groups proved crucial to the stay of deportation for Alvarado. Paired with law schools, they submitted briefs on her behalf that overwhelmed the INS with the sheer number of signatures from organizations across the United States. At the same time, their efforts to create letter-writing and publicity campaigns began to build political capital for Alvarado's case. The public outcry on her behalf could not be ignored by the federal government and, out of deference to their constituents, members of Congress began to pay attention and participate in the debate over asylum. These groups were able to

devote significant resources to Alvarado's plight and create a campaign at the grass-roots level that was extremely effective.

Media Involvement

Building on the moment created by the law schools and non-governmental organizations, the campaign for staying Alvarado's deportation became a national concern. The activity surrounding her case extended beyond the immediate area of California in which it was being debated. These organizations called media outlets throughout the country to pitch Alvarado's story as a human interest piece. National publications soon began to run stories on the case and newscasters found themselves commenting on any developments. The power of the press was put to work to further educate interested parties on the campaign surrounding Alvarado.⁴⁴ Commentaries were recorded and disseminated nationwide, heaping criticism upon the federal government for its handling of the case.

Soon after the law schools and immigrant groups began to participate, national publications addressed Alvarado's application. A 1999 article in the *Washington Post* addressed the decisions faced by Attorney General Reno and was entitled "Denying Asylum to A Battered Woman." The article opens by stating that "Attorney General Janet Reno faces a decision whether to save the life of Rodi Alvarado Pena....If she is forced to return to her native Guatemala, she faces a husband who has made no secret of his intention to kill her."⁴⁵ The somewhat sensationalistic opening served to grab the attention of the reader and paint Alvarado as a victim that should be saved by the Attorney General. It refers to the courts as "wildly inconsistent in gender-based claims" and noted that the outcome of Alvarado's case contradicted

⁴⁴ Irene Weiser, "Time is running out for Rodi Alvarado Peña," *Immigration Daily* (January 11, 2001), <http://www.ilw.com/articles/2001,0111-Weiser.shtm>.

⁴⁵ Esta Soler, "Denying Asylum to a Battered Woman," *Washington Post*, November 8, 1999 (p. A21).

previous rulings.⁴⁶ The author lamented the fact that the ruling treats domestic violence as “a less-serious crime than other types of violence.”⁴⁷ The article served to educate the reader on the facts of the case while also taking into account the political and legal implications of the decision. Alvarado became a sympathetic figure whose only sin was marrying the wrong man in a country that didn’t protect women.⁴⁸ Like most articles, this one is overwhelmingly on the side of Alvarado and sought to provoke an outraged reaction on her behalf.⁴⁹

A 2004 editorial in the *New York Times* highlighted the concerns over Alvarado’s plight and urged the United States to act as her guardian angel. The article referred to the United States as “a haven for abused women.”⁵⁰ The editorial noted it was “welcome news that the Department of Homeland Security is drafting rules for allowing asylum for women who flee to this country after suffering from extreme abuse elsewhere.”⁵¹ The move was heralded as a response to the “poignant appeal for asylum by a woman from Guatemala.”⁵² The article also took a slightly political bent, stating “this is not about eroding well-established asylum policies, or creating some flimsy loophole that will open the floodgates to immigrants.”⁵³ The author addressed both sides of the debate in an effort to promote Alvarado’s application despite the logistical concerns surrounding her case. The fact that it references concerns about “the floodgates” that would be opened if the courts decided in Alvarado’s favor points to the development of a significant debate throughout the country on the merits of changing the law to

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Less frequently, publications approved of the deportation order and noted that expanding the guidelines would soon let everyone qualify to come live in the United States. Interestingly, articles such as one published in the *St. Petersburg Times* in 1999 advocated this view while also recognizing Ms. Alvarado as “a victim of torture” and in need of protection from her husband and the state’s indifference. “A harsh reality of immigration,” *St. Petersburg Times* (July 13, 1999), 10A.

⁵⁰ “A Haven for Abused Women,” *The New York Times* (April 29, 2004), 24.

⁵¹ Ibid.

⁵² This of course refers to Ms. Alvarado, as is latter explicitly stated in the article.

⁵³ “A Haven for Abused Women.”

be more gender-sensitive. This national publication pitched the political significance of the case and sought to rally the American public to support this woman despite immigration concerns voiced by commentators.

Many human rights organizations used their personal weight to have editorials published by major media outlets, highlighting their roll in pushing the issue forward into the public arena. Wendy Wright, the director of Human Rights First, co-authored an editorial published by the *Washington Post* in 2004 in response to efforts by the Attorney General to certify the decision of deportation. The article pleaded for girls who “flee here from other countries to escape domestic violence, human trafficking, sexual slavery, rape, honor killing and other abuses.”⁵⁴ It further addressed the more than one hundred churches, civil rights organizations, and immigrant organizations that banded together around the issue. The editorial was a pointed response to the Attorney General’s attempt to recertify the order of deportation. By constantly monitoring the situation and rising up when the government attempted to address the case, these groups continued to force a conversation over the issue. Through the media, they were able to remain powerful, pertinent actors within the drama of the Alvarado case. By publishing the article, they forced accountability in the government, bringing external pressure on the immigration courts. It was a prime example of the kind political maneuvering that eventually influences the formation of new policy. By publishing specific groups, the media strengthened their voices and the role of these human rights groups was amplified nationwide.

Perhaps one of the greatest efforts to publicize Alvarado’s story was a segment on the Public Broadcasting System (PBS) documentary “Destination America.” Broadcast in 2004, the series chronicled the journey to and lives of immigrants in the United States. In her interview, Alvarado recognized the role the public had in shaping policy and the legal decisions

⁵⁴ Wendy Wright and Cory Smith, “Grant This Woman Asylum,” *The Washington Post* (October 8, 2004), A35.

surrounding the case. She noted

Americans from all parts of the country have supported my plea for asylum, and have made phone calls, and sent letters and faxes to the U.S. attorney general, and to other government officials who have power over my case. I know that these efforts on my behalf have really helped.

By participating in the documentary, Alvarado was able to personalize her story beyond the capabilities of newspaper articles and wire stories. By expressing her appreciation of the public for their intervention, she both gained their sympathy and galvanized others to support her. The documentary educated people on her case and put a face to the name they had been reading in the newspaper. Supported by Human Rights First and the Hastings College of Law, Alvarado gained a high enough profile that she was adopted as a cause celebre and became a part of the nation's most recognizable media outlets. It was impossible for the administration to fight the kind of sympathy the public had for Alvarado. The media was dominated by sympathetic accounts of her story and the way she implored the public to act.

It is not possible to explain the kind of power significant media coverage can have for an issue.⁵⁵ By finding ways to be seen and heard at a national level, Alvarado became a figure outside of immigration court. Her case gained enough exposure that she couldn't simply be dismissed from USCIS's agenda. She became a person on whose behalf the average citizen was willing to campaign. Faced with this kind of popular support, the government was hard-pressed to force through the order of deportation. With the American people behind her, Alvarado was able to cling to her place in American society.

While the above articles and media productions are just a few of those published in the past decade, they represent the majority of articles that address the case. The extremity of the abuse Alvarado suffered at the hands of her husband had a profound influence on the ways in

⁵⁵ Adam F. Simon and Jennifer Jerit, "Toward a Theory Relating Political Discourse, Media, and Public Opinion," *Journal of Communication* 57, no. 2 (2007), 255.

which the story was reported. At the same time, each article served to lay out the facts of the case and appeal to the reader to care. This kind of appeal no doubt translated to letters to Congressman or, at the very least, a discussion at work or among friends. The dissemination of information by the media helped publicize the case and make Alvarado a figure of national importance, forcing the government to reassess its treatment of the situation.

Activity in Congress

Significant pressure was also brought to bear by members of Congress, many of whom participated in letter-writing campaigns and personally lobbied on behalf of Alvarado. With the mounting popular disgust of the Board's decision, representatives began to feel pressure to speak out on this particular issue. Specifically, those representatives of California, where the case was decided and Alvarado resided, received the brunt of the public reaction. In response, these representatives were some of the most vocal on Alvarado's behalf and were instrumental in advancing her agenda within USCIS and the administration.⁵⁶ Additionally, representatives who regarded themselves as second- and third-generation immigrants lobbied on behalf of Alvarado. The executive branch was faced with a ground swelling of support for Alvarado in Congress and the attempts by members to influence administration policy was just one manifestation of the political significance of the case.

Members of Congress first became involved when the case was still in the hands of Attorney General Reno and sought to plead Alvarado's case for her. A letter sent in 1999 detailed the members' disgust with the way in which Alvarado had been treated. The letter described Alvarado's situation in Guatemala as one of "unrelenting physical and psychological abuse," where her husband "used her body as a battering ram, breaking windows and mirrors

⁵⁶ Congressmen to Janet Reno, letter (July 22, 1999).

with her head.”⁵⁷ She suffered years of “horrific,” “chilling and well-documented abuse.”⁵⁸ The letter continued to detail in the most extreme terms the true situation in Guatemala. The goal was obviously to grab the attention of the Attorney General and force a re-examination of asylum regime that would let such a victim be returned to her tormenter. According to the members, “her repeated attempts to gain protection from the state were unsuccessful, the police and judicial system refused to intervene or protect her...If Ms. Alvarado is sent back to Guatemala, as the Board acknowledged, her husband has threatened to ‘hunt her down and kill her.’”⁵⁹ The authors and signees of the letter made a specific effort to describe the extreme violence Alvarado has been exposed to. They wanted to publicize this case to encourage public support and a change in INS policy. By using their position within the government, members were able to bring significant political pressure on the INS and force a response from an otherwise silent administration.

Letters from members of Congress also attempted to place the case within the universal context of protecting victims of violence. Alvarado was proposed as a rallying point around which gender guidelines would be formed. In a letter from the Senate, the signees wrote

as members of the Senate concerned with the protection of women and girls from abuse such as honor killings, domestic violence, trafficking, sexual slavery, and rape, we are writing to urge you to cooperate with the Department of Homeland Security (DHS) in the issuance of positive regulations to govern gender-based asylum claims.⁶⁰

The listing of violence that is perpetrated against women was significant and sought to put domestic violence in the same categories as honors killings and rape. It was an attempt to bring domestic violence into the light as a matter of concern for the government. The letter appealed to the fundamental obligation of the United States to protect universal human rights. Rather than

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

rallying around one specific topic, the members of Congress looked to use the standard strategy of evoking human rights to argue for the necessity of granting asylum to Alvarado.

Addressing concerns that an opening up of asylum regulations would lead to a flood of new refugees, Senators looked to international examples to shore up their claims. They maintained that there would be no flood of abused women looking for shelter on American soil. They referred to the “experience of other countries, such as Canada, which has recognized violence against women as a basis for granting asylum since 1993, demonstrates that such recognition does not lead to a proliferation of such claims.”⁶¹ Canada’s regulations for asylum were less strict than the United States and yet they did not suffer from an overabundance of applicants since the implementation of new guidelines. The fact that Canada is a wealthy, North American country like the United States was probably the reason for its use in this document. It is an equally attractive host nation and yet was able to implement these changes smoothly and with few complications. Members argue that there is a “lack of sufficient understanding of... international human rights law” within the INS.⁶² The INS was being reactionary rather than actually trying to learn from the examples of others. Any policy fears about new refugees were systematically debunked as these members of the Senate sought to influence policy in a non-threatening manner.

The activity of the members also extended to personally campaigning for Alvarado, as many sought to encourage other Congressmen and Congresswomen to join the fight for greater equality in the asylum code. In DATE, several members wrote that others should “join us in an urgent effort to reverse a troubling precedent regarding US refugee and asylum policy and to very possibly save the life of a Guatemalan woman seeking asylum in our nation.”⁶³ The call to

⁶¹ Ibid.

⁶² Senators to Janet Reno, (February 14, 2000).

⁶³ Ibid.

arms was an attempt to rouse more legislative support for those opposing Alvarado's deportation. In response to declarations that Congress should change the guidelines, members rebuke the INS in stating "Ms. Alvarado qualifies for protection under fair and uniform application of the refugee statute, and Congress should not have to pass legislation to overturn this decision."⁶⁴ This slap on the wrists both reasserted Congress's power over the Attorney General and the Department of Homeland Security while pushing the cause forward. They actively worked for a reexamination of the BIA's decision and an improved approach to the case by INS.

Additionally, members began to look at the larger implications of INS policy and became extremely vocal on potential regulations that did not specifically address Alvarado's case. No doubt aided by local groups who were actively tracking developments in the INS, members began to sit up and take notice when Attorney General Ashcroft looked to offer up a new set of asylum regulations in 2003.⁶⁵ The regulations, which had implications for the definition of persecution and "particular social group," were quickly noticed and commented on. In a letter to the Attorney General, dozens of members argued against the "possible issuance of new regulations that threaten women and girls seeking asylum in the United States." They expressed concern that "these new regulations could severely limit the ability of women fleeing trafficking, sexual slavery, honor killings, domestic violence, and other gender-related human rights abuses from seeking asylum."⁶⁶ Throughout the letter, they argued that the regulations were detrimental to women, ending the letter with "your new proposed regulations will condemn several women and girls to death."⁶⁷ The letter is written with hard language and no room to allow for any leeway in considering the new regulations. They were, in the minds of members, a death knell

⁶⁴ Ibid.

⁶⁵ Monica Rhor, "US Asylum Ruling Awaited for Woman who Alleges Abuse, Ashcroft to Decide Case that Could Add a Class of Victims," *The Boston Globe* (February 19, 2004) A24.

⁶⁶ Senators to John Ashcroft, (June 16, 2004).

⁶⁷ Ibid.

for many female asylum seekers and the kind of policy that would eventually lead to a completely rigid and unjust asylum system.

The presence of many members from California in these campaigns was telling to the kind of influence popular support can have on an issue. Between the various letters sent to the Attorney General and other members of Congress, both California Senators and several California Representatives joined the campaign for Alvarado.⁶⁸ Their participation in this effort was a manifestation of the concerns in their state and the influence of constituents who decided to lobby for Alvarado. As a local cause, the case was essential for legislators. The people's support convinced them that the wish of their constituents was to fight the order of deportation.

Additionally, the sheer number of participating Congressional members who were descendents of immigrants shows the growing influence of immigrant groups in the United States and the ways in which their concerns were reaching the highest levels of government. In the longest and most passionate letter addressed to the Attorney general, fourteen members of Congress who were second- or third-generation immigrants argued for the reversal of the deportation order.⁶⁹ This issue was not only personal; it also represented a very real fear expressed by their constituents. The voters did not want this to happen to them. Additionally, their participation illustrated the influence of immigrant groups who wrote to them as sympathetic members of Congress. Alvarado became the center of a truly controversial political issue and the need to address the treatment of immigrants rose to the forefront. The fact that these members of Congress also had a personal connection to the plight of immigrants no doubt helped the case. In turn, these members began to pressure others and strengthened the campaign to force the Attorney General to recognize a need to reexamine the case.

⁶⁸ Ibid.

⁶⁹ Ibid.

The political implications of this kind of legislative campaign were enormous. While many local groups were involved in California, the fact that dozens of members of Congress signed off on letters to the Attorney General signified the national recognition of Alvarado's situation. There was a real interest in Congress and various districts throughout the country to see that Alvarado received the protection of the United States. Additionally, the fact that members of Congress actively campaigned on her behalf had significant influence on the amount of pressure Congress was willing to exert. While members may listen to their constituents and their colleagues at different points, the overwhelming pressure brought when both parties simultaneously vocalize their opinion on an issue can be extremely convincing. The participation of members of Congress in debating the issue with the Attorney General lent the case additional political capital and forced the administration to address the issue within the highest levels of government.

The efforts of human rights organizations and law schools translated into significant political capital for Alvarado. By convincing voters to lend their voices to the cause, the campaign was able to capture the attention of members of Congress, many of whom campaigned for Alvarado themselves. In turn, the efforts of the legislative branch to negotiate with the executive branch showed the importance of having a powerful political ally. The external pressure on the administration was significant and could not be easily dismissed as if it were one or two associations that were participating. By becoming active in the campaign for Alvarado, members of Congress forced the government to examine itself and evaluate whether or not following the letter of the law was essential when faced with such vocal opposition.

Playing Politics

The campaign to stay the deportation of Rodi Alvarado was well-orchestrated, well-

publicized and captured the attention of the highest offices in the government.⁷⁰ The government in turn found itself becoming quite responsive to the requests of such a vocal campaign. The situation changed from one of total domination by the INS to a serious negotiation between two comparable parties. The conversation between the two sides could be seen in the timing and content of the documents each issued and the steps taken to affect a compromise for the Alvarado case. The effect of public pressure was keenly felt and the responsiveness of the government points to the influence popular opinion had on the formulation of objective policy. At the same time, each side was forced to take political considerations into account and temper their message in deference to the other side.

Influence of the Administration on the Alvarado Campaign

At the same time that the campaign put significant political pressure on the Clinton and Bush administrations, it also was forced to respond to government action in a defensive maneuver. The high activity points of the campaign were in direct response to movements by the government. The initial order of deportation was the most notable event but later pronouncements by the government also forced these organizations to react. It was this responsiveness of the campaign that managed to maintain Alvarado's place in legal limbo, denying the government the right to deport her while also unable to mount an independent offensive for asylum. The debate over the case was a give and take where each side responded to the other in turn and subtly tweaked the agreed upon approach to the situation.

One of the clearest examples of this kind of popular referendum was the actions of the government and the campaign in 2003, when Attorney General Ashcroft finally decided to rule on the case. In 2003, it was rumored that Attorney General Ashcroft was looking to reinstate the

⁷⁰ Monica Rhor.

original denial of asylum and deport Alvarado.⁷¹ Since the inauguration of 2001, the campaign had been largely quiet in regards to the Alvarado case, though the Center for Gender and Refugee Studies and others continued to campaign on her behalf. With the rumor of a new deportation order, the campaign was once again galvanized. A spike in newspaper articles in national publications showed the increased attention paid to Alvarado as well as the more frantic efforts of her supporters. Members of Congress that had been silent for four years restarted their letter-writing campaign, asking for meetings with the Attorney General and arguing against Alvarado's deportation.⁷² The give and take of the campaign reemerged, with the negotiation of Alvarado's status continuing as the organizations were forced to respond to actions by the government.

Another example of this responsiveness, albeit in a more positive manner, is the reaction to a brief submitted by the Department of Homeland Security (DHS) regarding the Alvarado case. Submitted in 2004, the brief stated "Alvarado has established statutory eligibility for asylum....DHS asks the Attorney General to remand this case to the Board with instructions to grant asylum without an opinion." This forceful order is more than a simple recommendation; it is nearly an order. The fact that USCIS had been absorbed by DHS made the brief seem like a memo from an executive to an underling. Through DHS cannot truly intervene in these cases, its blatant support of Alvarado could not be fought by the government. With the issuance of this brief, the Alvarado campaign renewed its efforts to force through effect gender policy for asylum-seekers. This responsiveness, accompanied by new articles and other media coverage, was typical and showed the conversation occurring between the two sides. The Alvarado campaign responded to movements by the government, both to cut off attempts to deport

⁷¹ Ibid.

⁷² Senators to John Ashcroft, letter (June 16, 2004).

Alvarado and to push their favor in the face of more sympathetic federal administrators.

Active Responses to Public Pressure

The timing of government action and the groundswell of public support were prime examples of the kind of conversation taking place over asylum law. The deportation order in 1999 was the starting point for one popular campaign on Alvarado's behalf. The campaign eventually provoked the government to act in a way that acknowledged the importance of the Alvarado case. There was a lack of governmental involvement in the case outside of the courts of INS before the 1999 ruling. However, one saw a response soon after from the administration in response to this popular uprising. It was after the reception of a string letters from Congress and articles in the *New York Times* that Janet Reno chose to stay the order of deportation.⁷³ Not only did a member of the administration intercede in response to public outcry but it was the Attorney General, a Cabinet-level office. The fact that the government felt the need for the highest officer in the Justice Department to intercede pointed to the influence of the campaign on the Clinton administration.

It was also in response to the activities in Congress and across the political landscape that Attorney General Reno introduced a set of gender guidelines to address concerns about the asylum system. This active step highlights the influence of the campaign on INS policy. Rather than a simple confirmation or statement of support for Alvarado, the Justice Department actively offered a change in department policy to help her.⁷⁴ In the Federal Register report of the submission of the guidelines, Alvarado was specifically mentioned as the catalyst for the changes and many of the clauses directly referenced her case. The Register noted that "this proposed rule removes certain barriers that the *In re R-A-* decision seems to pose to claims that domestic

⁷³ Janet Reno, "Remand," Office of the Attorney General (January 19, 2001).

⁷⁴ Robert Verkaik, "Women Asylum Seekers to Get Greater Consideration, *The Independent* (December 6, 2000). 8.

violence...rises to the level of persecution.”⁷⁵ Alvarado’s influence was clearly felt throughout the document and was explicitly referenced. The proposed guidelines

restate that gender can form the basis of a particular social group. It also establishes principles for interpretation and application of the various components of the statutory definition “refugee”...in the assessment of claims made by applicants who have suffered or fear domestic violence.⁷⁶

This was a blatant reference to Alvarado whose case was the highest-profile application centered on domestic violence in the United States. The reaction of the Justice Department to the Alvarado campaign was an offer to fundamentally change the application of asylum law in reference to domestic violence, a huge step for that case.

At the same time, the proposed guidelines showed an increased gender sensitivity that could be attributed to the Alvarado campaign. Different country situations and the treatment of gendered crimes abroad were included in the new regulations. They noted that “evidence about patterns of violence in the society against individuals similarly situated to the applicant may also be relevant to the “on account of” determination.”⁷⁷ By increasing the emphasis placed on country reports and “circumstantial evidence,” the courts allowed a gendered crime to be considered as persecution within a specific system or governmental structure. The law further evaluated this idea in the context of domestic violence, including a wide variety of evidence such as

any direct evidence about the abuser’s own actions, as well as any circumstantial evidence that such patterns of violence are (1) supported by the legal system or social norms in the country of question and (2) reflect a prevalent belief within a society, or within relevant segments of society.⁷⁸

This expansion of admissible evidence opened up the path for victims of culturally accepted violence to seek asylum. Victims of FGM, which was recognized as a cultural tradition, were

⁷⁵ “Asylum and Withholding Definitions,” Federal Register (December 7, 2000), 76590.

⁷⁶ Ibid, 76592.

⁷⁷ Ibid, 76591.

⁷⁸ Ibid, 76592.

able to reference the tacit approval of the tradition by local authorities as a reason to consider it persecution.⁷⁹ It was violence combined with government non-intervention that rendered it persecution. The unwillingness of authorities to address domestic violence became proof of persecution within specific societies because the government was unwilling to intervene.⁸⁰ This broadening of the definition and willingness to acknowledge gender inequalities in other nations was essential to the expansion of the recognition of gender-based violence within the asylum application process.

Tempering the Message

At the same as the responsiveness of the government can be recognized as evidence of democratic participation, the political maneuverings surrounding each action partially nullified the advances in the gender system. The choice to temper the message by passively approving changes or by allowing advancements to fade away was a theme throughout the case. The advances of the gender guidelines were tempered by the decision of Attorney General Reno to let them flounder through the administration. Active actions on behalf of Alvarado were only taken when it was politically safe. As political pressure can be used to enact positive change, it can also be felt in every attempt to compromise or nullify the arguments surrounding the issue.

The issuance of the gender guidelines by the Justice Department should have been a major step for the Alvarado campaign but in the end they were only symbolic. The guidelines were presented on December 7, 2000 as a reaction to the campaign to stay the order of deportation of Alvarado.⁸¹ This was roughly six weeks before the change of administrations and the inauguration of President Bush. All comments and suggestions were required to be submitted “on or before January 22, 2001.”⁸² The submission of the guidelines was carefully

⁷⁹ Arthur C. Helton and Alison Nicoll, 85.

⁸⁰ Robert Verkaik.

⁸¹ “Asylum and Withholding Definitions,” 76591.

⁸² Ibid, 76591.

timed to be a politically savvy decision on behalf of Attorney General Reno. The guidelines were open until the day after she left office, creating the impression of active lobbying on Alvarado's behalf while also removing the responsibility for implementation from her shoulders. As she first responded to the campaign by staying the order of deportation, so Reno also responded to the sustained campaign by producing these guidelines. The Justice Department never intended to implement the guidelines because they were too politically dangerous but the political pressure of the Alvarado campaign provoked a response. It was a classic example of playing politics: giving the cause the high-profile attention it demanded while not forcing through a fundamental change to the asylum system that was controversial.

One also sees this kind of political savvy and recognition of the high profile of the case in the order of remand issued by the Attorney General's office. Though she stayed the order of deportation in early 1999, Attorney General Reno allowed the Alvarado ruling to stand as was. Eventually, in part because of pressure placed on the Justice Department, she chose to remand the case back to the courts for review.⁸³ While this could be considered a huge victory for the Alvarado campaign, the timing and intent of that decision pointed to the political considerations of the case. The order for remand was signed January 20, 2001, the day before Attorney General Reno left office.⁸⁴ This could be the manifestation of several inclinations. Perhaps she wanted to remand the case but was unable to do so during her tenure because of its political implications. Perhaps she simply wanted to leave the next Attorney General with the mess that was the Alvarado case. In either situation, the decision to remand the case at the eleventh hour points to the less than wholesome intentions behind Attorney General Reno's actions. She may have wholeheartedly been on the side of the Alvarado campaign but political considerations and her

⁸³ "Remand."

⁸⁴ Ibid.

unwillingness to step on the toes of the INS eventually influenced her decision. This political peculiarity showed the negotiations that still must go on, even when popular referendum demands policy change, as in the case of Rodi Alvarado.

Almost as important as the actions taken by the Attorney General are those that were not taken. Upon entering office in 2001, Attorney General Ashcroft made no major attempt to resolve the issues surrounding Alvarado's case within his first two years. The lack of attention pointed both to distractions from other criminal aspects of the United States and the desire not to touch a livewire like the Alvarado case. The complete lack of activity until 2003 shows an understanding of the negative ramifications of enforcing the order of deportation. The government was extremely responsive to Alvarado's campaign but managed to resemble allies in the fight without actually giving anything to Alvarado.

Towards a Mutually Agreeable Solution

The end result of this give and take between the government and interested outside parties was a mutually agreeable solution that is not the decision prescribed by asylum law. The response of each side to the actions of the other points to a consistent and equal distribution of influence between the two parties. Popular participation, as well as legal arguments, proved to be effective for the Alvarado campaign. At the same time, the government relied on the substance of the law and its ability to make policy. The two were equally, though not perfectly, matched and it became apparent that it was necessary to find a solution that both sides could work with.

In the end, the mutually agreeable solution was one of inactivity on the Alvarado case. Her order of deportation had been stayed, so she was allowed to remain in the country, even if she was not formally recognized as a refugee. The uncertainty of legal limbo was certainly not

desirable but in this case the chance of deportation was slim to none. At the same time, the public relations nightmare that that would have resulted from a deportation order was deflated by the government's decision to allow Alvarado to remain. The political pressure was lifted to a certain extent and she was able to continue to live in California.

The two parties to this conversation thus found themselves in an eternal stalemate, with inactivity as the only acceptable solution. For either party to force an advance of their agenda would be disastrous. For Alvarado to go from deportation to a remand of her case and still demand more has the potential to backfire as a strategy. The government has every legal reason to deny her asylum and by pressing her case, she may force the government to rule, probably against her. At the same time the government is unable to follow the letter of the law and deport her. It would be disastrous for them and at that point allowing one woman to stay in California would be less of a burden than fighting her.

Unattainable Status of Refugee

Rodi Alvarado will never attain the status of refugee in the United States and will be ineligible for the benefits of United States citizenship. While some asylum applications that were granted have included aspects of domestic violence, Alvarado is unique in basing her entire application solely on the instances of domestic violence. As such, there is no legal precedent to follow in granting her asylum and no firm policy initiatives to ensure that her claims have enough weight to force the granting of residency. Members of USCIS and the administration are unwilling to fundamentally alter immigration policy to accommodate her case if it risks inviting a deluge of applications. Alvarado's application itself is not a clear-cut case for asylum and by changing policy to fit her situation, the USCIS risks exposing itself to unknown ramifications in regards to immigration.

While there are legal precedents for the acceptance of gender-based crimes as persecution, the decision in the case are left up to the discretion of the caseworker. There is no mandatory requirement that domestic violence at the level of persecution be considered appropriate grounds upon which to grant asylum.⁸⁵ The guidelines suggested by Attorney General Reno were never implemented and are not a legal basis for appeal. There are few legal precedents for the kind of recognition of gendered-violence that Alvarado needs.⁸⁶ The initial IJ that ruled in Alvarado's favor used her discretion to create an atmosphere for the approval of the application for asylum. However, her decision has been largely discredited and, for many, does not provide sufficient proof for the approval of the application.⁸⁷ The Alvarado case therefore has the chance to be decided in Alvarado's favor if she receives a sympathetic judge who is willing to allow a more liberal interpretation of the asylum requirements. The chance that a more conservative judge would hear her case is too much for the Alvarado campaign to risk. The lack of legal precedent and specific USCIS policies makes the decision to force a legal confrontation incredibly risky for a woman who is already hanging on the edge of deportation.

The government's unwillingness to fundamentally alter USCIS policies because of popular pressure is another warning point for the Alvarado campaign. For Alvarado to be declared a refugee under United States law, a change in policy and immigration law is necessary.

While judge's orders may have been adequate before, the high-profile involvement of the

⁸⁵ The Gender Guidelines issued by the INS in 1995 can be considered explicit instructions to the treatment of gender-based violence, as they address domestic violence, rape, and similar crimes. However, they are guidelines and not fully-implemented policy. The author recognizes that they can be influential in decisions pertaining to asylum but, as they can not be the sole grounds for acceptance of an asylum application, they are considered legally toothless for the purposes of this discussion. Robert Verkaik.

⁸⁶ The Kasangi case, in which a girl fleeing the cultural practice of FGM was granted asylum, has been referenced by scholars and advocates of Alvarado as a precedent that allows for the kind of leniency Alvarado needs. However, the decisions of the judges *In re R-A-* specifically mentioned the Kasangi case and then highlighted a series of differences between the two that preclude an appeal based on the Kasangi decision. Though they are similar, the two cases have been differentiated by the immigration courts. *Matter of R- A-*, Int. Dec. 3403 (BIA 1999), 11.

⁸⁷ *Ibid*, 8.

Attorney General necessitates an equally high-profile resolution.⁸⁸ It is therefore necessary for a declaration on the part of the Attorney General to grant refugee status, especially after Attorney General Ashcroft ordered the submission of briefs and personally turned his attention to the outcome of the case. By recognizing the legitimacy of Alvarado's claims, the USCIS would in fact be acknowledging domestic abuse and other less "public" crimes as grounds for asylum.⁸⁹ Currently, the Service is unwilling to shift America's approach to immigration in such a fundamental way. Alvarado will never be granted refugee status because of the policy implications that such a decision would have on immigration policy in general.

Sovereignty and the role of the state are also implicated in this discussion, again because of the high profile of the case. By accepting a woman who suffered from domestic violence in Guatemala, the United States would be declaring that the Guatemalan government was unable to recognize the importance of the issue and its own inability to protect its citizens. This is tantamount to telling another nation how to run itself. Fundamental to the nation-state is its sovereignty and a high-profile decision such as this would no doubt focus attention on Guatemala. The dichotomy between public and private jurisdiction still exists and the United States is only willing to recognize those public acts of violence perpetrated by the state against its people.⁹⁰ By choosing to address domestic violence, the United States would begin to regulate the private lives of non-citizens. It would begin to replace the function of the native government. Though this may not be a consideration of the Alvarado campaign, her case could have significant ramifications beyond the smaller world of asylum law. This refusal to impugn

⁸⁸ Susan Sachs, "The Nation: Fears of Rape and Violence; Women Newly Seeking Asylum," *The New York Times* (August 1, 1999), 4.

⁸⁹ Duncan Kennedy, "The Stages of the Decline of the Public/Private Distinction," 130 *University of Pennsylvania Law Review*, (1982), 1353.

⁹⁰ The INS is often reluctant to identify private acts as persecution even if the level of violence is extreme enough to qualify it as persecution. In the BIA's decision, it rejected "construing private acts of violence to be qualifying by virtue of inadequacy of protection" and rejected domestic violence as a type of persecution. *Matter of R- A-, Int.* Dec. 3403 (BIA 1999): 8.

another's sovereignty is another key reason that the government will never rule in favor of Alvarado, a fact that lends itself to the solution of inactivity.

In the end, it is not politically or legally feasible for USCIS to grant Alvarado the status of refugee. Such an act would usher in a new host of grounds for applying for asylum that USCIS is unwilling to consider at this time. Many in the administration and in the public fear the potential increase in applications that such a change would encourage. At the same time, fears about breaking the public/private divide in regards to the definition of persecution and impugning another's sovereignty have also been considered. While Alvarado may want American residency more than anything, USCIS and the Attorney General are unwilling to make an exception in the rules for her.

Stymieing the Order of Deportation

At the same time that Alvarado cannot fight for refugee status and expect to win, she can also expect that she will not be included in future orders of deportation. After Attorney General Reno stayed the initial order of deportation, the situation reached equilibrium. Any attempt by the government to reinstate that order will be seen as an active attempt to send Alvarado to her death. There would be a renewed public outcry following the established pattern and it would become a public relations nightmare. The increased strength of human rights and immigrant groups and their ability to utilize the mass media would also prove to be a deterrent for the government. By taking any action to legitimize the ruling against Alvarado, the government would be setting itself up as the villain in the eyes of the American public.

Any attempt to deport Alvarado would be a public relations nightmare for an administration that does not have a good record with immigration or human rights issues. Problems with abuses at Abu Gharib prison and the treatment of illegal immigrants has plagued

the Bush Administration for the past several years.⁹¹ The active attempt to deport Alvarado to a certain death in Guatemala at the hands of her violent ex-husband would destroy any goodwill the administration has built up in the eyes of the public. One can see in the rhythm of the letters and campaigns addressed to the Attorney General that the case is still monitored constantly. The last order of deportation prompted over a hundred members of Congress to voice their opposition. Another active denial and actual attempt to deport Alvarado would most likely result in a similar campaign, if not a stronger one. The fact is that in this case any attempt to enforce the law and deport Alvarado will make the federal government look like the worst kind of bully. The government is desperate to avoid any negative publicity in the case and will not press for deportation out of fear of igniting another round of protests and congressional scrutiny.

At the same time, the increased strength of immigrant and human rights organizations would prove an even greater political obstacle than the initial coalition of religious and social organizations of the late 1990s. The past decade has seen the rise of immigration as a central political topic. This has been accompanied by a rise and strengthening of immigration groups in defense of their rights on American soil. Combined with the human rights organizations and NGOs devoted to women's rights, immigrant groups could prove to be an insurmountable obstacle to the efforts to deport Alvarado. Politicians must answer to their constituents and any campaigns directed by the newer immigrant groups would no doubt bring pressure to bear in the face of ever-present elections. They have the resources and capabilities to make their voices heard on important issues. More importantly, newer immigrant groups are being run by immigrants rather than for them, giving new citizens the ability to voice their concern for pertinent issues.⁹² The deportation of a woman back to a life filled with violence in Guatemala is

⁹¹ "No American Gulag," *The Statesman* (February 19, 2006).

⁹² Chi-Kan Richard Hungl, "Immigrant Nonprofit Organizations in U.S. Metropolitan Areas," *Nonprofit & Voluntary Sector Quarterly* 36, no. 4 (2007), 709.

no doubt a central issue in immigrant life. Many immigrants have applications pending with USCIS and any rejection of Alvarado would send a chill through the community. Faced with opposition of increasingly vocal and powerful immigrant groups, the administration would be unable to force the deportation of Alvarado without sustaining significant and long-lasting political damage.

The Alvarado case thus rests in eternal stalemate as the best possible solution. Alvarado will be allowed to remain in the United States, protected from her abusive husband. At the same time, she will not be allowed to receive citizenship nor send for the children she left behind with her family in Guatemala. The government is unable to deport her and carry USCIS policies to their full extent but they are spared the public outcry that would result from an order of deportation. The legal limbo in which Alvarado finds herself is the only mutually agreeable solution to the problem and is the political bargain struck by the two sides in an effort to end a very public war.

Conclusion

One can see in the Alvarado case the ways in which actors outside the policymaking body can have a significant impact on the development of legislation. While the government may be unwilling or unable to make a dramatic change, the amount of political influence brought by organizations and ordinary citizens can be enough to prompt a change in policy. It is one of the most interesting aspects of the ways in which the government's position can be modified from sole decision-maker to participation in a debate over policy. By making use of the resources she had at her disposal, Alvarado was able to stand up to a rigid and often unforgiving asylum system. Non-governmental organizations were able to apply pressure to the administration to make certain concessions on gender-motivated crimes as a basis for asylum.

This change of heart would not have been possible without the extraordinary power that can be started when a few organizations band together to fight an injustice.

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