

# **Petition No. P-1490-05**

*Before the*

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
ORGANIZATION OF AMERICAN STATES**

**JESSICA RUTH GONZALES**

**vs.**

**THE UNITED STATES OF AMERICA**

## **AMICI CURIAE BRIEF IN SUPPORT OF PETITIONER**

Presented by

**Legal Momentum, World Organization for Human Rights USA,  
Break the Cycle, Harriet Buhai Center for Family Law,  
California Women's Law Center, The Feminist Majority Foundation,  
The Allard K. Lowenstein International Human Rights Clinic,  
National Center for Women & Policing,  
The National Congress of Black Women, Inc.,  
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## INTEREST OF AMICI

*Amici curiae* are local, national, and international women's and human rights organizations,<sup>1/</sup> all of whom recognize the world consensus (reflected in treaties and customary international law) that domestic violence violates the basic human rights of women and children and that nation states must provide effective protection from such violence. On July 24, 2007, the Commission issued a favorable decision on admissibility in Jessica Gonzales' case and agreed to determine the merits of her case. *Amici* now urge the Commission to determine that the police failure to enforce the restraining order issued by a Colorado court against Ms. Gonzales's estranged husband, which led to her husband's murder of their three girls, violated the United States' obligations under the American Declaration and international human rights norms.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Historically, domestic violence has been treated as a private issue which does not merit or require police or judicial intervention. Police indifference and/or failure to enforce domestic violence laws and protective orders continues to varying degrees throughout the world. Without police action, protection of women from gender-based

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<sup>1/</sup> Descriptions of the individual *amici* are set forth in the attached Appendix.

violence cannot be afforded -- no matter what the laws passed by the legislature might provide. Indeed, it is established that States' international obligations to protect women from violence include not only having laws on the books or protection orders issued, but also enforcing those laws and orders. The police failure to enforce the protective order in this case, together with the United States' failure to provide a judicial remedy for this lack of enforcement, violate established international human rights treaties and standards, under which States are required to respect, protect, and fulfil women and girls' rights to be free from gender-based violence, including domestic violence.

## STATEMENT OF THE CASE

*Amici* incorporate by reference the factual and procedural background set forth in Jessica Gonzales's petition and declaration, both of which illustrate the Castle Rock police department's repeated indifference to, and failure to enforce, a restraining order against Ms. Gonzales's estranged husband, despite at least seven requests for police intervention by Ms. Gonzales in a single evening. On one occasion, a police detective took a dinner break rather than search for Ms. Gonzales's three children, who had been abducted by their father in violation of a court order. (Gonzales Decl., ¶ 68.)

## ARGUMENT

### I.

UNDER INTERNATIONAL HUMAN RIGHTS LAW, NATION STATES HAVE A DUTY TO PROTECT WOMEN AND CHILDREN FROM, AND PROVIDE AN EFFECTIVE REMEDY FOR, GENDER-BASED VIOLENCE, INCLUDING EXERCISING DUE DILIGENCE TO ENSURE THAT DOMESTIC VIOLENCE LAWS ARE EFFECTIVELY IMPLEMENTED AND ENFORCED.

- A. **In this Hemisphere, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women Requires States to “Prevent, Punish, and Eradicate” Gender-based Violence, Including Domestic Violence.**

As the Commission has recognized, an international and regional consensus has developed in human rights law “that gender-based violence is an open and widespread problem requiring State action to ensure its prevention, investigation, punishment, and redress.” Org. of American States, Inter-Am. C.H.R., *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II., doc. 68, 1 (2007) [hereinafter *Access to Justice*]. The “due diligence” standard embodied in these

documents includes the responsibility to prevent and prosecute domestic violence.

In this hemisphere, specifically, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women recognizes that “[e]very woman has the right to be free from violence in both the public and private spheres,” including domestic violence, “[t]he right to have the inherent dignity of her person respected and her family protected,” and “[t]he right to simple and prompt recourse to a competent court for protection against acts that violate her rights.” Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, arts. 3, 4, June 9, 1994, 33 I.L.M. 1534 (entered into force Mar. 5, 1995). The State parties to the convention “agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence,” including applying “due diligence to prevent, investigate and impose penalties for violence against women” and adopting “legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity.” *Id.* art. 7.<sup>2/</sup>

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<sup>2/</sup> The United States is a member of the Organization of American States (OAS), but has not ratified the Convention. See Inter-American Commission of Women, *Status of Signing and Ratification of the Convention of Belém do Pará*, <http://www.oas.org/cim/English/Laws.Rat.Belem.htm> (last visited Dec. 3, 2007). Nonetheless, as the Commission has recognized in this case, the United States’ membership in the OAS obligates it to promote  
(continued...)

**B. Treaties and Other Authoritative Documents Beyond the Inter-american Convention Demonstrate an International Consensus Recognizing States' Obligations to Protect Against Domestic Violence and to Provide Effective Remedies for its Victims.**

**1. Broad human rights documents.**

The consensus reached in the Americas reflects a broader international view concerning States' responsibility to protect women from gender-based violence. The United Nations Charter, to which the United States and most other nations of the world are bound, was the first to affirm among its core principles and objectives "the equal rights of men and women," "the dignity and worth of the human person," and the realization of fundamental human rights. *See Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. GAOR,*

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2/ (...continued)

the rights set forth in the organization's human rights conventions. *Jessica Gonzales v. United States*, Petition No. 1490-05, Inter-Am. C.H.R., Report No. 52/07, OEA/SER.L./V/II.128, doc.19 ¶ 56 (2007) ("[A]ccording to the well-established and long-standing jurisprudence and practice of the Inter-American system, the American Declaration is recognized as constituting a source of legal obligations for OAS member states, including in particular those states that are not parties to the American Convention on Human Rights."). *See generally* Thomas Buergenthal & Sean D. Murphy, *Public International Law in a Nutshell* 145-51 (3rd ed. 2002) ("[a] member state of the OAS that has not ratified the American Convention is nevertheless deemed to have an OAS Charter obligation to promote the human rights that the American Declaration proclaims.").

3d Sess., 1st plen. mtg., Supp. No. 13, U.N. Doc A/810 (Dec. 12, 1948).<sup>3/</sup>

The Universal Declaration of Human Rights, the authoritative bill of rights adopted by the United Nations General Assembly in 1948, likewise states that “[e]veryone has the right to life, liberty and security of person,” “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law,” and “[e]veryone has the right to an effective [domestic] remedy . . . for acts violating the fundamental rights granted [ ] by the constitution or by law.” Universal Declaration of Human Rights, *supra*, arts. 3, 7, 8.<sup>4/</sup>

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<sup>3/</sup> *Fernandez v. Wilkinson*, 505 F. Supp. 787, 796 (D. Kan. 1980) (“One important document by which the United States is bound is the United Nations Charter. This document ‘stands as the symbol of human rights on an international scale.’ The Charter . . . resolves to reaffirm faith in fundamental human rights and in the dignity of the human person. Almost all nations in the world are now parties to the U.N. Charter.”) (citations omitted).

<sup>4/</sup> The Universal Declaration of Human Rights is “‘an authoritative statement of the international community’ . . . [and] has become, *in toto*, a part of binding, customary international law.” *Filartiga v. Pena-Irala*, 630 F.2d 876, 883 (2d Cir. 1980) (citations omitted); *see also* Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 Am. U. L. Rev. 1, 16-17 (1982) (“The [Universal] Declaration . . . is now considered to be an authoritative interpretation of the U.N. Charter, spelling out in considerable detail the meaning of the phrase ‘human rights and fundamental freedoms,’ which Member States agreed in the Charter to promote and observe. The Universal Declaration has joined the Charter . . . as part of the constitutional structure of the world community. The Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding on all states, not only on members of the United Nations.”).

In the 1990s, the United Nations specifically made clear that the international human rights recognized in the Charter and Universal Declaration encompass the right of women and girls to be free from violence, including domestic violence, and that nations have an affirmative obligation to protect that right.<sup>5/</sup>

The 1993 Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights announced that “[t]he human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights” and that “[g]ender-based violence . . . [is] incompatible with the dignity and [the] worth of the human person, and must be eliminated.” World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶ 18, U.N. Doc. A/CONF.157/24 (Part I) (Oct. 13, 1993).<sup>6/</sup> The

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<sup>5/</sup> Gender-based violence—and domestic violence in particular—is common throughout the world. “In every country where reliable, large-scale studies on gender violence are available, upwards from 20 per cent of women have been abused by the men they live with.” United Nations Population Fund (UNFPA), *Violence Against Women and Girls: A Public Health Priority*, at 10 (1999).

<sup>6/</sup> Such declarations constitute authoritative statements of the world community. *See Filartiga*, 630 F.2d at 883 (“U.N. declarations are significant because they specify with great precision the obligations of member nations under the Charter. . . . [A] U.N. Declaration is . . . ‘a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated.’ . . . Thus, a Declaration creates an expectation of adherence, and ‘insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon (continued...)”

World Conference on Human Rights “stresse[d] the importance of working towards the elimination of violence against women in public and private life” and urged that “the full and equal enjoyment by women of all human rights” should “be a priority for Governments and for the United Nations.” *Id.* ¶¶ 36, 38.

Moreover, the United States, along with 150 other State parties, has ratified the International Covenant of Civil and Political Rights (ICCPR), which, as part of the International Bill of Rights, is a cornerstone human rights document designed to give effect to the principles in the Universal Declaration of Human Rights. *See* Ana Maria Merico-Stephens, *Of Federalism, Human Rights, and the Holland Caveat: Congressional Power to Implement Treaties*, 25 Mich. J. Int’l L. 265, 280 (2004); *see generally* Ruth Bader Ginsburg, *An Open Discussion with Justice Ruth Bader Ginsburg*, 36 Conn. L. Rev. 1033, 1040-41 (2004) (noting that The United States’ own Bill of Rights “has influenced human rights charters all over the world, notably, the U.N. documents composed in the wake of World War II – the U.N. Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights”) (footnotes omitted). As a ratified treaty, the ICCPR constitutes part of the supreme law of the United States. U.S. Const. art. VI, cl. 2 (“[a]ll Treaties made, or which shall be made, under

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6/ (...continued)  
the States.’”) (citations omitted).

the authority of the United States, shall be the supreme law of the land.”).

Under the ICCPR, the United States has obligated itself to “ensure the equal right of men and women to the enjoyment of all civil and political rights” in the Covenant, including the rights to life, to be free of torture or inhuman or degrading treatment, to liberty and security of the person, to “equal protection of the law . . . [including] equal and effective protection against discrimination on [the basis of] . . . sex,” to equality “of rights and responsibilities of spouses . . . during marriage,” and to the rights of children “to such measures of protection as are required by [the child’s] status as a minor . . . .”<sup>7/</sup>

International Covenant on Civil and Political Rights arts. 3, 6, 9, 23, 24,

<sup>7/</sup> Although the ICCPR does not specify that domestic violence constitutes gender discrimination, read together with the Women’s Convention and other U.N. documents which specifically identify violence against women as a form of gender discrimination, it also can be understood to include protection against this type of violence.

The affirmative duty to protect women from violence is also consistent with the 2005 World Summit Outcome adopted by the United Nations General Assembly. That document imposed on individual States a broad responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.” UN General Assembly 2005 World Summit Outcome, Sept. 14-16, 2005, ¶ 138 (Sept. 15, 2005). In addition to recognizing this historic “responsibility to protect,” the 2005 World Summit Outcome also “recognize[d] the need to pay special attention to the human rights of women and children and undertake to advance them in every possible way,” and called upon “States to continue their efforts to eradicate policies and practices that discriminate against women and to adopt laws and promote practices that protect the rights of women and promote gender equality.” *Id.* ¶¶ 119, 122, 128, 134.

26, *opened for signature* Dec. 19, 1966, G.A. res. 2200A(XXI), at 52, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (signed by the U.S. Oct. 5, 1977, entered into force, Mar. 23, 1976) [hereafter ICCPR].

As a party to the ICCPR, the United States must “respect and [] ensure to all individuals within its territory . . . the rights recognized in the present Covenant,” “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,” including judicial remedies, for such violations, and “ensure that the competent authorities shall enforce such remedies.” *Id.* art. 2. Recently, the United States government has acknowledged and reaffirmed these obligations, stating that “[i]t shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR . . . .” Exec. Order No. 13,107; 61 Fed. Reg. 68,991 (Dec. 10, 1998).

The Human Rights Committee, which is charged with interpreting and administering the ICCPR, has made clear that the ICCPR allows each state party to “choose their method of implementation” of the ICCPR within its territory. Comm., *Compilation of General Comments and General Recommendations, Implementation at the National Level*, general cmt. 3, art. 2 (13th Sess. 1981) (*adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 4 (1994)), *available*

at <http://www1.umn.edu/humanrts/gencomm/hrcom3.htm> (last visited Dec. 3, 2007). However, State parties must take affirmative action – whatever the form – to promote enjoyment of the rights guaranteed under it.<sup>8/</sup> As the Human Rights Committee has explained:

The Covenant cannot be viewed as a substitute for domestic[,] criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights . . . . There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of

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<sup>8/</sup> See, e.g., OHCHR, Human Rights Comm., *Compilation of General Comments and General Recommendations*, general cmt. 4, art. 3 (13th Sess. 1981) (adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 4 (1994)), available at <http://www1.umn.edu/humanrts/gencomm/hrcom4.htm> (last visited Dec. 3, 2007) (Those articles which “primarily deal with the prevention of discrimination on a number of grounds, among which sex is one, require[] not only measures of protection but also affirmative action designed to ensure the positive enjoyment of [those] rights. This cannot be done simply by enacting laws.”); OHCHR, Human Rights Comm., *Equality of Rights Between Men and Women*, general cmt. 28, art. 3, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), available at <http://www1.umn.edu/humanrts/gencomm/hrcom28.htm> (last visited Dec. 3, 2007) (Articles 2 and 3 of the ICCPR “require[] that State parties take all necessary steps to enable every person to enjoy those rights. . . . The State party must not only adopt measures of protection but also positive measures in all areas so as to achieve the effective and equal empowerment of women.”).

those rights, as a result of State Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.

OHCHR, Human Rights Comm., *Nature of the General Legal Obligation on States Parties to the Covenant*, general cmt. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), available at <http://www1.umn.edu/humanrts/gencomm/hrcom31.html> (last visited Dec. 3, 2007).

In ratifying the ICCPR, the United States Senate recognized that, in the United States' federal system of government, implementation of these principles may fall to states like Colorado as well.<sup>9/</sup> The responsibility for complying with the ICCPR ultimately remains with the federal government, however. *See* Restatement (Third) of Foreign Relations Law of the United States § 321, cmt. b (1986) ("A state is

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<sup>9/</sup> The United States Senate ratified the ICCPR with the express understanding that it "shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments." 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992); *see also* Margaret Thomas, Comment, "Rogue States" Within American Borders: Remediating State Noncompliance with the International Covenant on Civil and Political Rights, 90 Cal. L. Rev. 165, 173 (2002) (explaining that the Senate's ratification approach "merely displaces the primary implementation burden from the national government to each of the states"). Indeed, the ICCPR itself contemplates that the treaty's obligations extend to the states as well as the federal government. *See* ICCPR, *supra*, art. 50 ("The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.").

responsible for carrying out the obligations of an international agreement. A federal state may leave implementation to its constituent units but the state remains responsible for failures of compliance.”).

This case presents one of the “circumstances in which a failure to ensure covenant rights . . . give[s] rise to [a] violation[ ] by [a] state[ ] part[y] of those rights.” Colorado sought to protect Ms. Gonzales and her children from domestic violence through the restraining order, and then to ensure enforcement of the order through its mandatory arrest statute. These affirmative steps to protect against domestic violence were consistent with the state’s obligations under the ICCPR. But Colorado failed in its obligations when the Castle Rock police, who were charged with enforcing the restraining order and implementing Colorado’s mandatory arrest statute, refused to make that protection a reality. The federal government, in accordance with its own obligations under the ICCPR, therefore should have stepped in to provide an effective remedy – in the form of a federal civil rights claim – for the domestic violence suffered by Ms. Gonzales and her children.

## **2. Documents specifically relating to women’s and children’s rights.**

In addition to human rights documents that have been interpreted to encompass a state duty to protect women from gender-based violence, in the last twenty years a number of international

instruments have specifically articulated a duty to protect women and girls from violence (including domestic violence).

The Declaration on the Elimination of Violence Against Women adopted by the United Nations General Assembly in 1993 defined “violence against women” to mean “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women . . . whether occurring in public or in private life,” including “violence occurring in the family, [such as] battering.” Declaration on the Elimination of Violence Against Women, arts. 1, 2, G.A. Res. 48/104, at 217, U.N. GAOR, 48th Sess., Supp. No. 49, U.N. Doc. A/48/49 (Dec. 20, 1993) [hereinafter DEVAW].

The Declaration went beyond simply recognizing the right to be free from violence. It called on nation states to “pursue by all appropriate means and without delay a policy of eliminating violence against women,” including “*exercis[ing] due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.*” *Id.* art. 4 (further urging states to “[d]evelop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions”) (emphasis added).

In 1994, the Commission on Human Rights appointed the first U.N. Special Rapporteur on Violence Against Women, entrusting her with the task of analyzing and documenting the phenomenon, and holding governments accountable for violations against women. *See* Office of the High Comm’r for Human Rights [OHCHR], U.N. ESCOR, 42d plen. mtg., U.N. Doc. E/DEC/1994/254 (July 22, 1994).<sup>10/</sup>

The Fourth World Conference on Women in Beijing in 1995 also included elimination of all forms of violence against women as one of its twelve strategic objectives.<sup>11/</sup> The Beijing Declaration reflected the commitment of the 180 participating governments (including the United States) to “[e]nsure the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms” and to “prevent and eliminate all forms of violence against women and girls.” Fourth World Conference on Women, Sept. 4-15, 1995, ¶¶ 9, 29, *Beijing*

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<sup>10/</sup> In so doing, the Commission called for “Governments . . . to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons, and to provide access to just and effective remedies and specialized assistance to victims.” OHCHR, Comm’n on Human Rights, *Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women*, U.N. CHR, 50th Sess., 56th mtg. at 3, U.N. Doc. E/CN.4/RES/1994/45 (Mar. 4, 1994).

<sup>11/</sup> *See generally* Minn. Advocates for Human Rights, *Summary of the Beijing Declaration and Platform for Action 2* (January 1996) (noting that the Beijing Declaration and Platform for Action reflect the views of over 180 countries and therefore constitute “consensus document[s]”).

*Declaration and Platform for Action*, U.N. Doc. A/CONF. 177/20 (Sept. 15, 1995) and U.N. Doc. A/CONF. 177/20/Add.1 (Sept. 15, 1995).

Again, importantly, the nations stressed their own affirmative obligations to ensure the right of women to be free from violence. The Conference's Platform for Action called for governments to "exercise due diligence to prevent, investigate and . . . punish acts of violence against women," "[e]nact and/or reinforce penal, civil, labour, and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society," and "[p]rovide women who are subjected to violence with access to the mechanisms of justice and . . . to just and effective remedies for the harm they have suffered." *Beijing Declaration and Platform for Action, supra*, ¶¶ 125(b), (c), (h).

The first treaty to focus exclusively on the rights of women was the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention or CEDAW), which was adopted by the United Nations General Assembly and opened for signature in 1979.<sup>12/</sup> The State Parties to the Women's Convention

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<sup>12/</sup> The treaty has been ratified by 185 countries. See CEDAW: *Treaty for the Rights of Women*, [http://www.womenstreaty.org/facts\\_countries.htm](http://www.womenstreaty.org/facts_countries.htm) (last visited Dec. 3, 2007). The United States has signed but not ratified the Women's Convention. See Clare Dalton & Elizabeth M. Schneider, *Battered Women and the Law* 1009 (Foundation Press 2001). As a signatory to the Women's Convention, the United States "is obliged to refrain from acts  
(continued...)

condemned “discrimination against women in all its forms” and agreed to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise,” “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.” Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), art. 2, Dec. 18, 1979, G.A. Res. 34/180, at 193, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (entered into force Sept. 3, 1981).

In 1992, the U.N. Committee charged with interpreting the Women’s Convention made clear that the Convention specifically obligated States to protect women and girls from family violence and abuse. In General Recommendation 19, the Committee on the Elimination of Discrimination against Women declared that:

[g]ender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men. . . . [and, in particular,] [f]amily violence is one of the most insidious

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12/ (...continued)

which would defeat [its] object and purpose.” Vienna Convention on the Law of Treaties, art. 18, May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (signed by the U.S. April 24, 1970, entered into force Jan. 27, 1980); *United States v. Yousef*, 327 F.3d 56, 94 n.28 (2d Cir. 2003) (The United States has signed but not ratified the Vienna Convention on the Law of Treaties; nonetheless, the “U.S. Department of State long has taken the position that ‘the Convention is the authoritative guide to current treaty law and practice.’”).

forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence . . . . These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

CEDAW, *General Recommendation 19: Violence Against Women*, ¶¶ 1, 23, (11th Sess. 1992) U.N. Doc. A/47/38 at 1 (1993) *reprinted in* *Compilation of General Comments and General Recommendations (adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev. 6 at 243 (2003))*. The Committee therefore recommended that state parties “ensure that laws against family violence and abuse . . . give adequate protection to women.” *Id.* ¶ 24(b). The Committee reminded State parties that “article 2 (e) [of] the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” and that “[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.” *Id.* ¶ 9.

Most recently, and of direct relevance to the present case, the General Assembly adopted a Resolution concerning the Elimination of Domestic Violence Against Women which “requires States to take serious action to protect victims and prevent domestic violence.”

Elimination of Domestic Violence Against Women, G.A. Res. 58/147, ¶ 1(d), U.N. GAOR, 58th Sess., U.N. Doc. A/Res/58/147 (Feb. 19, 2004). The Resolution stressed “that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of domestic violence against women and to provide protection to the victims.” *Id.* ¶ 5. The U.N. General Assembly called upon states to “establish[] adequate legal protection against domestic violence,” “ensure greater protection for women, inter alia, by means of, where appropriate, orders restraining violent spouses from entering the family home,” “establish and/or strengthen police response protocols and procedures to ensure that all appropriate actions are taken to protect victims of domestic violence and to prevent further acts of domestic violence,” and “take measures to ensure the protection of women subjected to violence, access to just and effective remedies, inter alia, through compensation and indemnification and healing of victims.” *Id.* ¶¶ 7(a), (e), (i), (j).

The Convention on the Rights of the Child (CRC), which enjoys near-universal acceptance by the community of nations,<sup>13/</sup> offers further protection from domestic violence against girls.

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<sup>13/</sup> With 192 countries ratifying it, the CRC is the most widely accepted human rights instrument in history. See UNICEF, *Convention on the Rights of the Child (CRC)*, available at [http://www.unicef.org/crc/index\\_30197.html](http://www.unicef.org/crc/index_30197.html) (last visited Dec. 4, 2007). Only the United States and Somalia have signed but not ratified it. See *id.*

Article 19 of the CRC provides that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse . . . while in the care of [the] parent(s), legal guardian(s) or any other person who has the care of the child.” Convention on the Rights of the Child art. 19, G.A. Res. 44/25, U.N. GAOR. 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (No. 20, 1989) (signed by the U.S. Feb. 16, 1995, entered into force Sept. 2, 1990). Under Article 2, State parties are required to “respect and ensure the rights set forth” in the CRC “without discrimination of any kind, irrespective of the child’s . . . sex . . .” *Id.* art. 2. The Committee on the Rights of the Child has said that State parties must “ensur[e] that all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced.” U.N. CRC, Comm. on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child* (arts. 4, 42, 44, para. 6), ¶ 1, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003).

### **3. Regional treaties and declarations.**

Finally, like the Inter-American Convention in this hemisphere and the United Nations documents described above (*ante*, pp. 4, 5-19), other regional treaties and declarations similarly place gender-based violence, including domestic violence, squarely within nations’ international human rights responsibilities.

The Council of Europe's Committee of Ministers has issued a Recommendation to member states which reaffirms the Council's "determination to combat violence against women" and "[r]ecognises[s] that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims." Council of Eur., Comm. of Ministers, *Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the Protection of Women Against Violence* (Apr. 30, 2002), available at <https://wcd.coe.int/ViewDoc.jsp?id=280915> (last visited Dec. 4, 2007). The Committee of Ministers further recommends that member states should "ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered" and consider "enabl[ing] the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas." *Id.* ¶¶ 36, 58.a; *see also* Resolution on Violence Against Women, Eur. Parl. Doc. A2-44/86, 1986 O.J. (C 176) ¶ 13 (calling on national authorities "to ensure improvements in training of police officers dealing with . . . reports of sexual violence," including requiring the police "to respond actively when requests of help are received").

In 2003, a Protocol on the Rights of Women in Africa was added to the African Charter on Human and Peoples' Rights. The Protocol

requires State parties to “enact and enforce laws to prohibit all forms of violence against women” and “ensure . . . effective access by women to judicial and legal services” to remedy the violence. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2d Ord. Sess. of the Assemb. of the Union, arts. 4, 8, a d o p t e d 2 0 0 3 , a v a i l a b l e a t <http://www.achpr.org/english/women/protocolwomen.pdf> (last visited Dec. 3, 2007).

Taken together, these international and regional treaties and documents establish that domestic violence is recognized as a violation of human rights throughout the world. More importantly for this case, they establish that, under international human rights law, nation states have a responsibility to prevent, investigate, and punish violations of those rights and to provide remedies and compensation to those whose rights have been violated.<sup>14/</sup>

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<sup>14/</sup> See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Annex & art. 9, G.A. Res. 53/144, U.N. GAOR, 53d Sess., U.N. Doc. A/RES/53/144 (Dec. 9, 1999) (stressing that “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State” and “everyone has the right . . . to benefit from an effective remedy and to be protected in the event of the violation of those rights”); Responsibility of States for International Wrongful Acts arts. 12-15, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp.No. 10 U.N. Doc. A/56/49(Vol.I)/Corr.4 (Dec. 12, 2001) (adopting the International Law Commission Articles on the responsibility of States for internationally wrongful acts as the summary and (continued...)

Here, consistent with international norms, the state of Colorado provided a mechanism for protecting Ms. Gonzales and her children from violence at the hands of her estranged husband – it enacted a statute allowing a judge to issue a restraining order with a mandatory enforcement requirement. However, this only partially fulfilled Colorado’s responsibilities – after the restraining order was issued, the local police refused to enforce it.<sup>15/</sup> Without an effective remedy for

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14/ (...continued)

codification of international law, which provide in part that a state may breach an international obligation “through a series of actions or omissions” or by failing “to prevent a given act” which it is obligated to prevent under international law); Stephanie Farrior, *State Responsibility for Human Rights Abuses by Non-State Actors*, 92 Am. Soc’y Int’l L. Proc. 299, 301 (1998) (“Virtually all the main human rights instruments contain language creating positive obligations to control certain activities of private individuals so as to protect against human rights abuses.”); *id.* at 302 (“Over the course of the last century, states have been found responsible under a due diligence standard for inaction or inadequate action in a range of situations, including failure to provide police protection to prevent private violence . . . . A finding of state responsibility has been accompanied by a requirement that the state provide compensation.”); Amnesty Int’l, *Making Rights a Reality: The Duty of States to Address Violence Against Women*, AI Index Act 77/049/2004, June 3, 2004 (explaining and elaborating on state responsibility to protect women from violence by non-state actors).

15/ As we explain further in Section II, this breakdown of legal protections from domestic violence at the police level is not unique to Colorado or the United States. According to the World Health Organization, internationally, “[a]fter support services for victims, efforts to reform police practice are the next most common form of intervention against domestic violence. Early on, the focus was on  
(continued...)

this lack of enforcement, the protection promised by Colorado became illusory.

**C. International Human Rights Courts and Commissions Have Held Nations to Be in Violation of Treaty Obligations by Failing to Protect Women from Gender-based Violence.**

International human rights courts and commissions charged with interpreting and administering human rights treaties have found treaty violations by nations failing to provide or enforce protections against gender-based violence, including domestic violence.<sup>16/</sup>

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<sup>15/</sup> (...continued)

training the police, but when training alone proved largely ineffective in changing police behaviour, efforts shifted to seeking laws requiring mandatory arrest for domestic violence and policies that forced police officers to take a more active stand.” World Health Org., *World Report on Violence and Health* 105 (Etienne G. Krug et al. eds., 2002).

<sup>16/</sup> In grappling with constitutional issues of state protection of women and children from, and remedies for, gender-based violence and discrimination, high courts of numerous countries also have considered and accorded substantial weight to the human rights obligations set forth in various international human rights instruments. *See, e.g., State v. Baloyi*, 2000 (2) SA 425 (cc); 2000 (1) BCLR 86 (cc) (S. Afr. 1999) at 14, 16-18, 31-40 (in upholding a statutory interdict (restraining order), mandatory arrest, and subsequent criminal conviction and sentencing procedure for violations of the interdict, noting “South Africa’s international obligations requir[e] effective measures to deal with the gross denial of human rights (continued...)”) (continued...)

In *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser./L/V/II.111, doc. 20 rev. (2000), this Commission concluded that Brazil had violated Ms. Fernandes' rights under the Inter-American Convention on the Prevention, Punishment,

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16/ (...continued)

resulting from pervasive domestic violence” and reasoning that giving full effect to the interdict procedure ensures South Africa’s compliance with its obligations under the Universal Declaration of Human Rights, DEVAW, CEDAW, and the African Charter to protect women from domestic violence); *see also R. v. Ewanchuk*, [1999] 1 S.C.R. 330 (Can.) (interpreting Canadian sexual assault laws and the Canadian Charter of Rights and Freedoms in light of the guarantees under CEDAW – to which Canada is a party – as well as international norms concerning violence against women, and determining that there is no defense of “implied consent” to a sexual assault charge); *Vishaka v. State of Rajasthan*, A.I.R. 1997 S.C. 3011, ¶¶ 5-10 (India) (determining that the Indian Constitution’s guarantee of equality for women should be interpreted in light of “global acceptance” of the principle that “[g]ender equality includes protection from sexual harassment,” as reflected in both CEDAW and the Beijing Declaration and Platform; finding that the complete absence of a sexual harassment law and damages remedy violated these norms and constitutional guarantees; and deciding to prepare interim sexual harassment law with the Indian government); *see generally* United Nations Development Fund for Women [UNIFEM], *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Part II, The Courts* (Ilana Landsberg-Lewis ed. 1998), *a v a i l a b l e a t* [http://www.unifem.org/attachments/products/BringingEqualityHome\\_eng.pdf](http://www.unifem.org/attachments/products/BringingEqualityHome_eng.pdf) (last visited Dec. 3, 2007) (summarizing these and other domestic court decisions that have relied on international women’s rights instruments to analyze and apply domestic protection for violence against women).

and Eradication of Violence Against Women by delaying for more than 15 years the prosecution of her abusive husband for her attempted murder. The Commission concluded that “this violation form[ed] a pattern of discrimination evidenced by the condoning of domestic violence against women in Brazil through ineffective judicial action.” *Id.* ¶ 3. The Commission therefore recommended “prompt and effective compensation for the victim, and the adoption of measures at the national level to eliminate tolerance by the State of domestic violence against women.” *Id.*; see also *MZ v. Bolivia*, Case 12.350, Inter-Am. C.H.R. OEA/Ser./L/V/II.114, doc. 5 rev. (2001) (determining that, if the allegations concerning the judicial overturning of a rape conviction in the face of overwhelming evidence were true, violations of the Inter-American Convention by Bolivia would be established); Inter-Am. C.H.R., *The Situation of the Rights of Women in Ciudad Juarez, Mexico: The Right to Be Free from Violence and Discrimination*, Inter-Am. C.H.R. OEA/Ser. L/V/II.117, doc. 44 (Mar. 7, 2003) (denouncing the Mexican government’s indifference to widespread gender-based violence in Ciudad Juarez as a violation of Mexico’s international human rights obligations).<sup>17/</sup>

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<sup>17/</sup> A number of reports from independent human rights organizations have similarly determined that nations’ failures to enforce domestic violence laws constitute violations of, inter alia, the Universal Declaration of Human Rights, the Women’s Convention, and the International Covenant on Civil and Political Rights (ICCPR). See, e.g., Amnesty Int’l, *Mexico: Intolerable Killings: Ten Years of Abductions and Murders of Women in Ciudad Juárez and Chihuahua*, AI (continued...)

Likewise, in *M.C. v. Bulgaria*, 2003-I Eur. Ct. H.R. 646 (2004), the European Court of Human Rights held Bulgaria to be in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms by failing to fully and effectively investigate the alleged rapes of a 14-year old girl. The prosecutor had refused to proceed with a criminal investigation because he had determined that, absent physical evidence of force or threats, it would be too difficult to establish that she in fact had not consented to have sex. *See M.C. v. Bulgaria* ¶¶ 61, 64, 65, 179, 180.

The court concluded that Bulgaria had violated the girl's rights under the Convention to be free from "inhuman or degrading treatment" and her right to respect for her private life, reasoning that the effectiveness of "the investigation of the applicant's case and, in particular, the approach taken by the investigator and the prosecutors

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17/ (...continued)

Index AMR 41/026/2003, Aug. 11, 2003 (chronicling police and prosecutor indifference to repeated rapes, murders, and violence against young women and girls in the U.S.- Mexican border state and explaining how the state's failure to protect women in the region violates Mexico's international human rights obligations); Minnesota Advocates for Human Rights (MAHR), *Domestic Violence in Albania* (Apr. 1996); MAHR, *Domestic Violence in Armenia* (Dec. 2000); MAHR, *Domestic Violence in Bulgaria* (Apr. 1996); MAHR, *Domestic Violence in Poland* (July 2002); MAHR, *Domestic Violence in Macedonia* (Sept. 1998); MAHR, *Domestic Violence in Moldova* (Dec. 2000); MAHR, *Domestic Violence in Nepal* (Sept. 1998); MAHR, *Lifting the Last Curtain: A Report on Domestic Violence in Romania* (Feb. 1995); MAHR, *Domestic Violence in Ukraine* (Dec. 2000); MAHR, *Domestic Violence in Uzbekistan* (Dec. 2000) (all available at <http://www.mnadvocates.org/> (last visited Dec. 3, 2007)).

in the case fell short of the requirements inherent in the States' positive obligations – viewed in the light of the relevant modern standards in comparative and international law – to establish and apply effectively a criminal-law system punishing all forms of rape and sexual abuse.” *Id.* ¶¶ 109, 110, 182, 185, 187. The court further stated that, “[w]hile the choice of the means to secure compliance with [international human rights law] . . . is in principle within the State’s margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection.” *Id.* ¶ 150. Having found a violation of the Convention, the court awarded the girl damages against Bulgaria to compensate her for her “distress and psychological trauma,” which resulted “at least partly from the shortcomings in the authorities’ approach” to the criminal investigation. *Id.* ¶¶ 191, 194.<sup>18/</sup>

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<sup>18/</sup> See also *Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A) ¶¶ 9, 24, 28 (1979) (holding that Ireland violated Mrs. Airey’s right to access to the courts for purposes of petitioning for a decree of separation from her abusive and alcoholic husband by failing to provide her with legal aid to do so); *Case of E. and Others v. United Kingdom*, 2002-II Eur. Ct. H.R. 763 ¶¶ 88, 92, 96, 100, 101 (2003) (holding the United Kingdom liable in damages for its failure to intervene on behalf of a family of children who had suffered severe cases of physical and sexual child abuse, in light of social services’ specific knowledge of past abuse by the same individual).

## II.

CONTRARY TO INTERNATIONAL LAW, DOMESTIC VIOLENCE HAS BEEN AND CONTINUES TO BE TREATED AS A PRIVATE FAMILY MATTER IN WHICH THE POLICE AND THE COURTS SHOULD NOT INTERVENE. A FAVORABLE RULING IN THIS CASE WOULD SEND A POWERFUL MESSAGE THAT, TO COMPLY WITH THEIR INTERNATIONAL OBLIGATIONS, AND PROVIDE WOMEN AND CHILDREN WITH EFFECTIVE PROTECTION FROM GENDER-BASED VIOLENCE, STATES MUST BOTH ENACT AND ENFORCE DOMESTIC VIOLENCE LEGISLATION.

**A. State Authorities' Longstanding Treatment of Domestic Violence as a Private Family Matter Remains One of the Chief Obstacles to Enforcing International Human Rights Norms and Protecting Women from Violence.**

As the Commission recognized in its 2007 report, *Access to Justice for Women Victims of Violence in the Americas*, even though many "States have formally and legally recognized that violence against women is a priority challenge, the judicial response to the problem has fallen far short of its severity and prevalence. The IACHR has found that in many countries in the region, a pattern of systematic impunity persists

with respect to the judicial prosecution of cases involving violence against women. The vast majority of such cases are never formally investigated, prosecuted and punished by the administration of justice systems in this hemisphere.” *Access to Justice, supra*, at 6. But “the States’ duty to provide judicial remedies is not fulfilled merely by making those remedies available to victims on paper; instead, those remedies must be adequate to remedy the human rights violations denounced.” *Id.* at 11.

Traditionally, domestic violence has been conceptualized as a private or family matter beyond the reach of the state. In order to ensure effective enforcement of women’s human rights, the Commission has repeatedly “suggested an examination of [this] traditional dichotomy between private acts and public acts, a dichotomy in which private, domestic, or intimate matters are considered beyond the purview of the State. In this dichotomy between public and private acts, the family is regarded as the geographic epicenter of domestic matters and a realm in which the state is not to intrude. The misguided reasoning is that the State should refrain from any interference in family matters out of respect for personal autonomy.” *Id.* at 26; *see also Maria da Penha Maia Fernandes, Inter-Am. C.H.R., Report No. 54/01 ¶¶ 55, 56.*<sup>19/</sup>

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<sup>19/</sup> Of course, “[v]iolence against women in the family is not a private matter but a human rights violation. Where it occurs, human rights are not fully protected.” Amnesty Int’l, *Russian Federation: Nowhere to Turn to - Violence Against Women in the Family*, AI Index EUR (continued...)

In the Americas, this attitude towards intrafamily violence has created widespread failure among the States to enforce protective orders like the one obtained by Jessica Gonzales:

In many cases, women end up becoming the victims of fatal assaults even after having sought preventive protection from the State; all too often protective measures may be ordered on a woman's behalf only to be improperly implemented or monitored. On the matter of prevention and protection, the Commission has found that State authorities – the police in particular – fail to fulfill their duty to protect women victims of violence against imminent threats. Enforcement and supervision of restraining orders and other court-ordered protective measures are seriously flawed, which can have particularly disastrous consequences in cases of intrafamily violence. The inaction on the part of the State authorities is partially attributable to an inherent tendency to be suspicious of the allegations made by women victims of violence and the perception that such matters are private and low priority.

*Access to Justice, supra*, at ix.

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19/ (...continued)  
46/056/2005, Dec. 14, 2005.

As we now explain, this historical indifference persists within the United States as well as in other countries throughout the world, thereby threatening the safety of women and children.

**B. The Historical Treatment of, and Continued Police Indifference to, Domestic Violence in the United States.**

The United States' early legacy of explicit approval of and, later, utter indifference to, acts of domestic violence traces its roots back to Roman times. In 753 B.C., Ancient Rome created the Laws of Chastisement, which expressly permitted husbands to strike their wives as a method of preventing the wife from exposing her husband to criminal and civil liability. Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will It Work This Time?*, 31 Pepp. L. Rev. 709, 714 (2004).

William Blackstone, the eighteenth century English legal scholar, subsequently endorsed and codified "domestic chastisement" as a form of behavior modification that was a tolerable and crucial part of the male-dominated family structure. 1 William Blackstone, *Commentaries* \*432-33; *see also* White, *supra*, 31 Pepp. L. Rev. at 715. Under English common law, a man was allowed to beat his wife with a rod no wider than his thumb or small enough to pass through a wedding band; hence, the notorious "rule of thumb." *See* Marion Wanless, Note, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But Is It Enough?*, 1996 U. Ill. L. Rev. 533, 535-36 (1996); *see also* James Martin

Truss, Comment, *The Subjection of Women . . . Still: Unfulfilled Promises of Protection for Women Victims of Domestic Violence*, 26 St. Mary's L.J. 1149, 1157 (1995); Faith E. Lutze & Megan L. Symons, *The Evolution of Domestic Violence Policy Through Masculine Institutions: From Discipline to Protection to Collaborative Empowerment*, 2 Criminology & Pub. Pol'y 319, 321-22 (2003) ("It has been a male privilege to use violence against women, in the name of discipline, for centuries. The basic argument is that through marriage women become men's responsibility and therefore men have the right to assert their authority in the home in whatever manner necessary to achieve control. This was encoded in English common law as the 'rule of thumb' that guided men to use instruments no larger than the thickness of their thumb to enforce obedience from their wives. Court cases throughout the mid-1800s upheld the legal right of men to physically discipline their wives. Around the turn of the twentieth century, courts began to abandon support for physical chastisement, but still supported disputes within marriage as a private matter.") (citations omitted). The law permitted corporal punishment as long as the husband did not inflict "permanent injury" upon his wife. See Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 Yale L.J. 2117, 2118 (1996). The colonists later brought this common law doctrine to America. Vito Nicholas Ciraco, Note, *Fighting Domestic Violence with Mandatory Arrest, Are We Winning?: An Analysis in New Jersey*, 22 Women's Rts. L. Rep. 169, 172 (2001).

Colonial America's permissive attitude toward domestic violence and wife abuse continued well into the mid-nineteenth century. See Ciraco, *supra*, 22 Women's Rts. L. Rep. at 172; see also Wanless, *supra*, 1996 U. Ill. L. Rev. at 535-36. This tradition was reflected in a number of cases from the states' highest courts. See, e.g., *Bradley v. State*, 1 Miss. 156, 1824 WL 631, \*1 (1824) (upholding husband's entitlement to "exercise the right of moderate chastisement"); *Joyner v. Joyner*, 59 N.C. 322, 1862 WL 892, \*3 (1862) (declaring that "the law gives the husband power to use such a degree of force as is necessary to make the wife behave herself and know her place"). As one court explained, "when the wife is ill treated on account of her own misconduct, her remedy is a reform of her own manners." *Skinner v. Skinner*, 5 Wis. 449, 1856 WL 3888, \*3 (1856).

By the end of the nineteenth century, wife-beating was no longer sanctioned by the doctrine of domestic chastisement, but courts continued to turn a blind eye to domestic abuse under the theory that doing so preserved the so-called "sanctity of the home," protected the "privacy of the marriage relationship," and served to "promote domestic harmony." Truss, *supra*, 26 St. Mary's L.J. at 1157-59; Siegel, *supra*, 105 Yale L.J. at 2120.

According to prevailing reasoning, domestic violence was a private family matter, and the government was loathe to interfere in the sanctified realm of the family. See Betsy Tsai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 Fordham L. Rev. 1285, 1288-89 (2000); see also Deborah

Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 Wm. & Mary L. Rev. 1843, 1850-51 (2002); Dep't of Justice, *Final Report: Attorney General's Task Force on Family Violence* 3 (1984) (“[T]he traditional position, universal until [the Twentieth] century, [was] that what goes on within the home is exempt from public scrutiny or jurisdiction. If a husband beat his wife . . . , that is a private matter. This view is still widely held by the public and, although decreasingly, by some law enforcement officers, prosecutors, and judges.”). As one court declared: “We will not inflict upon society the greater evil of raising the curtain upon domestic privacy, to punish the lesser evil of trifling violence.” *State v. Rhodes*, 61 N.C. 453, 1868 WL 1278, \*4 (1868); see also *Bradley*, 1824 WL 631 at \*1 (noting that “family broils and dissensions” were not the business of the court); *State v. Oliver*, 70 N.C. 60, 1874 WL 2346, \*2 (1874) (stating that “[i]f no permanent injury has been inflicted, . . . it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive”).

Once domestic violence was finally recognized as a crime, women were still unlikely to gain protection because of law enforcement's widespread under-enforcement of domestic violence laws.<sup>20/</sup> Women regularly encountered police officers who treated

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<sup>20/</sup> See, e.g., *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984) (police refusal to respond to woman's repeated requests for protection; police watched as estranged husband stabbed and kicked her in the neck, throat, and chest, paralyzing her from the neck down and causing permanent disfigurement); Yumi Wilson, *When Court Order Isn't Enough*, S.F. Chron., Sept. 20, 1996, at A1 (recounting  
(continued...))

domestic violence as “non-serious, non-criminal, or as a private matter best settled within the home.” Truss, *supra*, 26 St. Mary’s L.J. at 1189.<sup>21/</sup>

All too often, police responded to domestic violence calls either by taking no action at all, by purposefully delaying their response in the hope of avoiding confrontation, or, by merely attempting to mediate the situation and separate the parties so they could “cool off.” See Machaela M. Hctor, Comment, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 Cal. L. Rev. 643, 649 (1997); Daniel D. Polsby, *Suppressing Domestic Violence with Law Reforms*, 83 J. Crim. L. & Criminology 250, 250-51 (1992) (“Spousal quarrels usually occur in private; and officers called to the scene of domestic quarrels have traditionally limited themselves to curbstome social work, conciliating and mollifying as best they could before

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<sup>20/</sup> (...continued)

woman murdered by her ex-boyfriend after she reported that he had violated restraining order against him several times, yet police took no action).

<sup>21/</sup> See generally, Rebecca Emerson Dobash, *Domestic Violence: Arrest, Prosecution, and Reducing Violence*, 2 Criminology & Pub. Pol’y 313, 315 (noting that since the 1970s the United States has focused on the problem of violence between intimate partners: these efforts have “display[ed] mixed views about the role of the justice system in seeking solutions to this form of violence. [This is not surprising [given the] long historical backdrop in which the problem of ‘violence against wives’ was deemed a private matter and not one deserving the time or attention of the justice system. . . . [S]ome of the resistance to new approaches and failures of innovations that involve law and law enforcement may, at their heart, contain remnants of historical notions that this form of violence is not and should not be a matter for the justice system”).

leaving the scene.”); Dennis P. Saccuzzo, *How Should the Police Respond to Domestic Violence: A Therapeutic Jurisprudence Analysis of Mandatory Arrest*, 39 Santa Clara L. Rev. 765, 767 (1999) (“[T]he classic response of the police to domestic violence [in the United States] can be summed up by three characteristics: ‘(a) relatively few of the potential universe of domestic violence cases were ever formally addressed by the police, the majority being screened out, (b) the police did not desire to intervene in family disputes, and (c) there was a strong, sometimes overwhelming bias against making arrests.’”); Lutze, *supra*, 2 Criminology & Pub. Pol’y at 321-22 (“The agencies of the criminal justice system functioned to enforce the cultural or legal bias encoded in the law. The police, often the first responders to incidents of DV, often did not view DV as a police matter so officers were reluctant to respond, if they responded they did little once on the scene, and they often left the incident without taking any formal action.”).

As a Report by the United States Attorney General explained:

A law enforcement agency is usually the first and often the only agency called upon to intervene in family violence incidents. Yet, in a large number of law enforcement agencies around the country, calls involving family violence are usually given a low priority because police have traditionally reflected community attitudes which considered violence within the family a private, less serious matter than violence between strangers. Police dispatchers and emergency call operators, carrying out the community’s priorities and law enforcement agency practices, may often give the impression that a family

violence call is a nuisance. . . . Consequently, intervention by the patrol officer may be slow and inconsistent.

*Final Report: Attorney General's Task Force on Family Violence, supra*, at 18-19.

Data collected by several agencies suggested that police seldom made arrests in cases of domestic violence to which they actually responded—as little as three to fourteen percent of the time. *See Sarah Mausolff Buel, Recent Developments, Mandatory Arrest for Domestic Violence*, 11 Harv. Women's L.J. 213, 217 (1988) (citing various studies on low arrest rates by police). When an arrest was made, it was usually because the abuser was belligerent or violent to the officers themselves, not as a result of the obvious abuse inflicted upon the woman. Hoctor, *supra*, 85 Cal. L. Rev. at 649. Other anecdotal evidence suggested that officers openly blamed the wives for being victims of domestic violence or made comments implying that they deserved to be beaten by their husbands. *See Amy Eppler, Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won't?*, 95 Yale L.J. 788, 798 n.46 (1986); *see also Joan Zorza, The Criminal Law of Misdemeanor Domestic Violence, 1970-1990*, 83 J. Crim. L. & Criminology 46, 47-52 (1996) (discussing police response to domestic violence calls); Alyce D. LaViolette & Ola W. Barnett, *It Could Happen to Anyone: Why Battered Women Stay* 53-54 (2d ed. 2000) ("Police departments and social services agencies traditionally have viewed family violence as noncriminal, noninjurious, inconsequential, and primarily verbal. In general, police have been reluctant to get involved in family problems

for reasons rooted in myth, misogyny, and misinformation: (a) If he beats her and she stays, there are no real victims; (b) it may be her fault; (c) it is not the best solution to the problem; and (d) it is too dangerous for police to intervene. In one study, police ignored victims' arrest preferences in 75% of the intimate assault cases, but in only 40% of the stranger assault cases.") (citations omitted).

Therefore, not only were battered women threatened by the violence they faced, but they were also struggling against a tradition of police indifference--even open hostility--that severely limited the efficacy of the criminal justice system. Significantly, law enforcement's dismissive approach to domestic violence calls and the cries of battered women for protection was not attributable to a few "rogue officers." Hocror, *supra*, 85 Cal. L. Rev. at 649. To the contrary, throughout the 1960s, 1970s, and 1980s, law enforcement policies characterized domestic violence as a private matter between the parties in which it should not interfere. *Id.*

In 1967, the International Association of Chiefs of Police declared in its training manual that "in dealing with family disputes, the power of arrest should be exercised as a last resort."<sup>22/</sup> Lawrence W. Sherman,

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<sup>22/</sup> Even the characterization of domestic violence as a "family dispute" attributed to the continuing notion that domestic violence was not a crime but a private matter less deserving of law enforcement's attention. The International Association of Chiefs of Police has since renounced its earlier position on this issue. Today, the organization pronounces to all of America's law enforcement officers: "Protecting victims of domestic violence is a critical part of our job. (continued...)

*The Influence of Criminology on Criminal Law: Evaluating Arrests for Misdemeanor Domestic Violence*, 83 J. Crim. L. & Criminology 1, 10 (1992), reprinted in Nancy K.D. Lemon, *Domestic Violence Law* 499 (2001). This position was later endorsed by the American Bar Association, whose 1973 *Standards for the Urban Police Function* stated that police should “engage in the resolution of conflict such as that which occurs between husband and wife . . . in the highly populated sections of the large city, without reliance upon criminal assault or disorderly conduct statutes.” *Id.* The Oakland, California, Police Department’s 1975 training manual described the role of a police officer in a domestic violence case as “more often that of a mediator and peacemaker than enforcer of the law. . . . Normally, officers should adhere to the policy that arrests shall be avoided[.]” Zorza, *supra*, 83 J. Crim. L. & Criminology at 48. Similarly, Michigan’s policy directed officers to “[a]void arrest if possible” and to “[a]ppeal to their [complainant’s] vanity” in discouraging arrest and the initiation of criminal proceedings. *Id.* at 49.

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22/ (...continued)

The actions you take in these situations can clearly save lives. Orders of protection are issued to ensure the safety of victims of domestic violence. We need to enforce these orders to the best of our abilities.” See Violence Against Women Online Resources, *Protecting Victims of Domestic Violence: A Law Enforcement Officer’s Guide to Enforcing Orders of Protection Nationwide*, <http://www.vaw.umn.edu/documents/protect/protect.html> (last visited Dec. 3, 2007) (emphasis omitted).

While the law no longer expressly granted men the right to beat and terrorize their partners, these law enforcement protocols continued to implicitly condone domestic violence and the actions of the abusers. *See* Eppler, *supra*, 95 Yale L.J. at 792-93. The end result was that domestic violence calls were assigned a low priority by police officers and were not treated as real crimes with potentially lethal consequences. Zorza, *supra*, 83 J. Crim. L. & Criminology at 47. Moreover, police officers considered domestic violence calls to be “unglamorous, nonprestigious, and unrewarding” as compared to other offenses. *Id.*

The civil protective order was one of the earliest innovations that was developed to attempt to ensure domestic violence would be treated seriously. *See* David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 Ohio St. L.J. 1153, 1170 (1995). In 1970, the District of Columbia passed the first law providing for protective orders in cases of domestic violence. *See* D.C. Code §§ 16-1001 to 16-1005; *see also* *United States v. Harrison*, 461 F.2d 1209 (Ct. App. D.C. 1972). Before that time, the only civil tools available to battered women were injunctions issued in conjunction to divorces or legal separations — remedies that provided limited relief, were difficult to enforce, and useless to women who were not married to their abusers. Leigh Goodmark, *Law is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 St. Louis U. Pub. L. Rev. 7, 10 n.14 (2004). By 1989, all 50 states and the District of Columbia had enacted

statutes authorizing civil protective orders as a means of protecting victims of domestic violence and preventing further abuse. *See id.* at 10; *see also* Sandra S. Park, *Working Towards Freedom From Abuse: Recognizing a "Public Policy" Exception to Employment-At-Will for Domestic Violence Victims*, 59 N.Y.U. Ann. Surv. Am. L. 121, 147 n.123 (2003) (listing current protective order statutes from all 50 states).

The civil protective order remains one of the most widely available and commonly used interventions for victims of domestic violence today. *See* Goodmark, *supra*, 23 St. Louis U. Pub. L. Rev. at 10-11; *see also* Tsai, *supra*, 68 Fordham L. Rev. at 1292. Indeed, orders of protection have been recognized as "the front line in the war against the abuse of women." Christopher Shu-Bin Woo, Comment, *Familial Violence and the American Criminal Justice System*, 20 U. Haw. L. Rev. 375, 392 & n. 116 (1998). Courts have broad discretion in tailoring a protective order to meet the unique circumstances of the battered woman and her family. *Id.* at 393-94. Among other things, an order of protection can include provisions restricting contact; prohibiting abusive behavior; determining child custody and visitation issues; mandating offender counseling; and even forbidding firearm possession. U.S. Dep't of Just., Office for Victims of Crime, Legal Series Bulletin 4, Enforcement of Protective Orders 1 (Jan. 2002), *available at* <http://www.ojp.usdoj.gov/ovc/publications/bulletins/legalseries/bulletin4/ncj189190.pdf> (last visited Dec. 3, 2007).

The mere issuance of protective orders alone can reduce the incidence of future violence and play a key role in improving a victim's own sense of safety. Studies have shown that in the majority of cases, victims feel that civil protective orders protect them against repeated incidents of abuse and are valuable in helping them regain their emotional well-being, sense of security, and overall control of their lives. U.S. Dep't of Just., Nat'l Inst. of Just., *Research Preview: Civil Protection Orders: Victim's Views on Effectiveness*, Jan. 1998, <http://www.ncjrs.gov/pdffiles/fs000191.pdf> (last visited Dec. 3, 2007).

One of the most serious limitations of civil protective orders, however, has been the widespread lack of enforcement by police.<sup>23/</sup> U.S. Dep't. of Just., Nat'l Inst. of Just., *Research Report: Legal Interventions in Family Violence: Research Findings and Policy Implications* 43, July 1998, available at <http://www.ncjrs.gov/pdffiles/171666.pdf>. Absent

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<sup>23/</sup> Unfortunately, Jessica Gonzales's case is not the only recent case of demonstrated police indifference to domestic violence restraining orders in the United States. For example: "On April 15, 1996, Avelino Macias shot and killed his ex-wife Maria Teresa Macias and injured her mother Sara Hernandez, before shooting and killing himself. Ms. Macias's diary indicated that she had called deputies at least fourteen times in the last three months of her life to report that her husband was stalking, harassing, and threatening to kill her. Ms. Macias had filed for several restraining orders, one of which was misplaced by deputies. Although the sheriff's department had a written policy to arrest offenders in such cases, Avelino was never arrested." Jamie Zenger, Note, *Estate of Macias v. Ihde: Do Police Officers Have a Duty to Protect Victims of Domestic Violence?*, 3 J.L. & Fam. Stud. 97, 97 (2001) (footnotes omitted).

enforcement of the protective orders through arrest, the orders become worthless pieces of paper. Law enforcement officers' power to arrest is the "first link in a vital chain of institutional interventions that save the lives of battered women and children[.]" Barbara J. Hart, *Arrest: What's the Big Deal*, 3 Wm. & Mary J. Women & L. 207, 211 (1997); see also Truss, *supra*, 26 St. Mary's L.J. at 1188 & n.121 (noting that law enforcement officers are domestic violence victims' "first line of defense" and only direct link to the criminal justice system). Arrest is critical for aiding domestic violence victims and sends a message to the batterer that society does not tolerate domestic violence; when police do not enforce existing laws, the very foundation of the state's justice system is threatened." Jennifer R. Hagan, *Can We Lose the Battle and Still Win the War?: The Fight Against Domestic Violence After the Death of Title III of the Violence Against Women Act*, 50 DePaul L. Rev. 919 (2001).

"In an attempt to remedy this problem, state legislatures have enacted statutes mandating that police departments create protocol for how to react to domestic violence incidents." Catherine Popham Durant, Note, *When to Arrest: What Influences Police Determination to Arrest When There is a Report of Domestic Violence?*, 12 S. Cal. Rev. L. & Women's Stud. 301, 302. Moreover, in particular, mandatory arrest laws, which were designed to remove or otherwise restrict an officer's discretion in determining whether to make an arrest when responding to a domestic violence call, have been enacted to counteract the systemic problem of police indifference. Goodmark, *supra*, 23 St. Louis U. Pub. L. Rev. at 15; see also Wanless, *supra*, 1996 U. Ill. L. Rev. at 542.

Today, Colorado is one of the more than 20 states and the District of Columbia that have statutes mandating arrest in domestic violence situations. But even these laws cannot guarantee protection if – as in Jessica Gonzales’s case – they are ignored.

**C. Despite the Mandate of International Human Rights Instruments, Police in Other Countries Continue to Treat Domestic Violence as a Private Matter that Does not Merit Intervention.**

While “[a]t the international level, violence against women is finally being seen as a violation of the rights and fundamental freedoms of women as well as an impairment or nullification of their enjoyment of those rights and freedoms,” domestic violence continues to be treated as a private or family matter by police in many countries – beyond the United States. Yuhong Zhao, *Domestic Violence in China: In Search of Legal and Social Responses*, 18 UCLA Pac. Basin L.J. 211, 211 (2001). Indeed, “[m]arital violence seems to occur in nearly every nation. Most societies accept wife abuse as part of the culture and do not define it as criminal. . . . wife assault is more likely to be permitted in societies where men control family economic resources, where conflicts are solved by means of physical force, and where women do not have an equal option to divorce.” LaViolette, *supra*, at 75; see also Sonja K. Hardenbrook, Comment, *The Good, Bad, and Unintended: American Lessons for Cambodia’s Effort Against Domestic Violence*, 12 Pac.

Rim L. & Pol'y J. 721, 721-22 (2003) ("spousal abuse 'is a nearly universal phenomenon [that] exists in countries with unduly varying political, economic, and cultural structures'").

In China, for example, "[d]omestic violence is an issue that has long been ignored by the government and wrongly perceived by Chinese society as acceptable until very recently." Zhao, *supra*, 18 UCLA Pac. Basin L.J. at 211. "The tradition of male superiority is so deep-rooted that it continues to guide people's behavior even in current society. Husbands view it as their right to resolve domestic disputes by violence." *Id.* at 220. "Judges tend to view domestic violence as a domestic problem. 'The view that it is a lesser crime for a man to break his wife's jaw than his neighbor's predates the invention of the wheel.' Very often, battered wives' cases do not end in prosecutions as the police usually advise people to solve their problems peacefully and without official involvement. Even when they end up in court, offenders are likely to get a light sentence." *Id.* at 232 (footnote omitted). In short, "'domestic violence' has been viewed by judicial and law enforcement officers as a private family matter rather than a general social harm. This lack of awareness of the social impact of domestic violence helps explain the reason for heretofore inadequate anti-domestic violence legislation as well as ineffective implementation of existing laws." *Id.*

Intervention by arrest and prosecution seldom occurs unless serious consequences such as death or serious bodily injury result. Even then, police intervention is not guaranteed:

[This] can be shown by a case represented by the Women's Legal Research and Service Center of Peking University Law School. The victim, Zhang Xiulan, was pushed down on the floor and brutally battered by her husband because she returned home from work too late – around 8:00 o'clock in the evening, September 18, 1988. After a round of beating, the abuser, Wang Shugen, splashed a bottle of gasoline over Zhang's face and body, and set her on fire. Zhang was seriously burnt and sent to hospital for treatment. As soon as she was awake, she sought help from the public security bureau, but was told that because Wang had injured her because of his suspicion of her private life this was a family dispute and not within the control of the public security bureau.

Zhao, *supra*, 18 UCLA Pac. Basin L.J. at 231. Given these circumstances, “[l]egislation alone cannot protect women from the epidemic of domestic violence. It needs cooperation between and coordination from law enforcement institutions, including the police, the prosecutors, and the courts.” *Id.* at 243; *see also id.* at 244 (“Chinese anti-domestic violence law lacks provisions mandating active intervention into domestic violence cases by the public security bureaus.”).

Likewise, “[n]o specific laws against domestic violence exist in Haiti and most domestic violence cases are never reported to the police. Furthermore, even if an attack was reported, it is likely that the attacker would not be prosecuted because of the dominant view that domestic violence is a private family matter.” Mary Clark, Comment, *Domestic Violence in the Haitian Culture and the American Legal Response: Fanm Ayisyen Ki Gen Kouraj*, 37 U. Miami Inter-Am. L. Rev. 297, 305-06 (2006) (footnotes omitted).

Nor is the toleration of family violence a new phenomenon in other parts of Asia, Europe, or the Americas. For example, “[v]iolence against women in the family. . . [in the Russian Federation]. . . existed during tsarist times as well as in the Soviet Union. Today, some people claim that the basis for this form of violence was laid in the 16th century, when the so-called *Domostroi* was written, a manual on how to discipline family and servants. Legal practice and existing codes of conduct in society affirmed the right of husbands to beat their wives.” *Russian Federation: Nowhere to Turn to - Violence Against Women in the Family*, *supra*, AI Index EUR 46/056/2005, Dec. 14, 2005. In Georgia, there is a “widespread belief that domestic violence is a ‘family matter’ that should be solved inside the family,” which results in an “inadequate police response”; and “[i]n some cases police reportedly [do] not react to calls about domestic violence at all, especially when they had frequently received calls from the same family where previous police interventions had not changed the situation.” Amnesty Int’l, *Georgia: Thousands Suffering in Silence: Violence Against Women in*

*the Family*, AI Index EUR 56/009/2006, Sept. 25, 2006 (emphasis omitted); see also MAHR, *Domestic Violence and Child Abuse in Georgia: An Assessment of Current Standings of Law and Practice* (Dec. 2006), at 13 (“[T]raditionally, police policy in domestic violence cases had been to refrain from interfering in the family unless injuries were repeated or severe.”).<sup>24/</sup>

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<sup>24/</sup> Similar attitudes persist in numerous other countries as well. See Amnesty Int’l, *Sexual Violence Against Women and Girls in Jamaica - ‘Just a Little Sex,’* AI Index AMR 38/002/2006, June 22, 2006 (“Violence against women in Jamaica persists because the state is failing to tackle discrimination against women, allowing social and cultural attitudes which encourage discrimination and violence.”); Amnesty Int’l *Hong Kong: Amnesty International Briefing to the UN Committee on the Elimination of Discrimination Against Women*, AI Index ASA 19/001/2006, June 1, 2006 (noting the “inadequate legal protection to prevent, investigate and punish” domestic violence as well as the serious concern raised by “[t]he attitude of police when handling cases of gender-based violence in the home . . . . Amnesty International has received testimonies from many survivors who were persuaded by the police to drop their cases or never had their cases filed. The tragic death of Jin Shu-ying . . . demonstrates the insensitivity of personnel who work directly with female victims. . . . Jin had repeatedly requested assistance from the police and a government-run shelter before she and her two daughters were killed by her husband”); Amnesty Int’l, *Hungary: Cries Unheard: The Failure to Protect Women From Rape and Sexual Violence in the Home*, AI Index EUR 27/002/2007, May 10, 2007 (“One Hungarian study on official responses to domestic violence found many cases in which the police refused to pursue investigations on the grounds that the woman’s complaint [of domestic violence] provided an insufficient basis for arresting the suspect. The police appeared to reach this conclusion simply because they did not believe the complainant.”) (endnote omitted); U.S. Dep’t of State, *Turkey: Country Report on Human Rights Practices 2004*, at 15, available at (continued...)

Some countries do not even recognize domestic violence as a crime. See Human Rights Watch, *Crime or Custom: Violence Against Women in Pakistan* 4, 12 (1999) (“In the absence of explicit criminalization of domestic violence, police and judges have tended to

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24/ (...continued)

<http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm> (last visited Dec. 3, 2007) (“Spousal abuse was considered an extremely private matter involving societal notions of family honor, and few women went to the police in practice. Police were reluctant to intervene in domestic disputes and frequently advised women to return to their husbands.”); Amnesty Int’l, *Turkey: Women Confronting Family Violence*, AI Index EUR 44/013 2004, June 2, 2004 (“Violence against women is widely tolerated and even endorsed by community leaders and at the highest levels of government . . . .” “Police officers often believe that their duty is to encourage women to return home and ‘make peace’ and fail to investigate the women’s complaints [of domestic violence].”); Amnesty Int’l, *Spain: More Than Words. Making Protection and Justice a Reality for Women Who Suffer Gender-Based Violence in the Home*, AI Index EUR 41/005/2005, May 12, 2005 (“Spanish society has not succeeded in addressing gender-based violence in the home as a human rights violation. Despite the public visibility and the increasing horror produced by the violent deaths of many women at the hands of their current or former partners, the idea that violence in a couple’s [sic] relationship is a private matter that needs to be sorted out without public intervention remains deeply entrenched.”); Eur. Parl., Comm. on Women’s Rights and Equal Opportunities, *Report on Women in South-East Europe*, at 13, Eur. Parl. Doc. 2003/2128 (INI) (Mar. 24, 2004) (prepared by Anna Karamanou) (“Traditional cultures in the countries of South-East Europe often support violent behaviour towards women (and children). . . . Domestic violence is often dramatic but mostly an inadequately approached and treated problem. . . . The obvious problem, which diminishes the fight against violence against women, is high acceptance of violence against women and lack of institutional reaction and protection of victims.”).

treat it as a non-justiciable, private or family matter or, at best, an issue for civil, rather than criminal, courts”; “[r]egistering complaints of domestic violence can be even more difficult than registering rape by a stranger, because, as a result of gender bias and a lack of training, the police almost always fail to recognize domestic violence as any kind of crime.”); Amnesty Int’l, *Albania: Violence Against Women in the Family: It’s Not Her Shame*, AI Index EUR 11/002/2006, Mar. 30, 2006 (noting the absence of a law criminalizing domestic violence, and observing that the police generally fail to recognize violence in the family as a criminal matter and fail to investigate allegations of domestic violence.); Amnesty Int’l, *Belarus: Domestic Violence – More than a Private Scandal*, AI Index EUR 49/014/2006, Nov. 9, 2006 (“The Belarusian Criminal Code does not define or criminalize domestic violence and no distinction is made between violent crimes perpetrated by strangers and those by family members”; “domestic violence continues to be viewed as a private matter and something that many people are reluctant to speak about.”); Int’l Helsinki Fed’n for Human Rights, *Women 2000 – An Investigation into the Status of Women’s Rights in Central and South-East Europe and the Newly Independent States: Estonia* 169 (2000), available at [http://www.ihf-hr.org/viewbinary/viewdocument.php?doc\\_id=2058](http://www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=2058) (last visited Dec. 3, 2007) (noting that in Estonia “[d]omestic violence is not prosecuted as a distinct criminal offence” even though the “most common form of violence against women is domestic violence, which

often goes unrecognised and is accepted as part of the order of things”).

Other countries have domestic violence laws which are not enforced. In Cambodia, for example, the law is favorable to domestic violence victims but “[t]he progressive guarantees of equality and protection in Cambodia’s Constitution, laws and international agreements are rarely, if ever, enforced to protect victims or punish abusers.” Hardenbrook, *supra*, 12 Pac. Rim L. & Pol’y J. at 721-22. This is in part due to “a common misconception among Cambodians that domestic violence is an internal family problem — immune from state law. Most police officers in Cambodia believe they cannot intervene in domestic violence because it is a private matter. Consequently, officers often allow domestic violence to go unchecked. Even when the police or courts do intervene, criminal laws prohibiting violence are not enforced because the same social and cultural attitudes that foster domestic violence pervade the police and judiciary. One abused woman was told by police, ‘I cannot arrest him because you have no injury. Only a kick or a punch, no injury.’ Another victim recalled police telling her that because her husband had a gun they would prefer not to help her.” *Id.* at 732 (footnotes omitted); *see also* MAHR, *Domestic Violence in Poland* (July 2002) (“Although Poland has recognized domestic violence as a criminal offense in the law, criminal justice officials do not generally treat domestic violence seriously. . . . [and believe] that a crime committed between intimates is less serious than the same crime committed between unrelated

persons.”); Human Rights Watch, *Reconciled to Violence: State Failure to Stop Domestic Abuse and Abduction of Women in Kyrgyzstan* 19-20, 36, 44-49, vol. 18, no. 9(b) (Sept. 2006) (observing that a 2003 domestic violence law makes Kyrgyzstan one of the most progressive states in the area concerning violence against women, but that “officials remain unsympathetic to the problems of victims of domestic violence. . . . Police do not view domestic violence as a law enforcement issue and often blame women for the violence against them. Police do not effect orders of protection, one of the main innovations of the 2003 law, they discourage women from seeking investigations into domestic violence, and take other measures to ensure that perpetrators of domestic violence are not prosecuted”; many police “view family arguments that involve violence as normal and a private matter”).

Similarly, in Mexico “in theory, men and women share equal rights and protections . . . [but] this is not always the reality. Historically, domestic violence in Mexico was viewed as a personal problem that should be dealt with within the home.” Mary C. Wagner, *Belém Do Pará: Moving Toward Eradicating Domestic Violence in Mexico*, 22 Penn. St. Int’l L. Rev. 349, 353 (2003); see also Amnesty Int’l, *Papua New Guinea: Violence Against Women: Not Inevitable, Never Acceptable!*, AI Index ASA 34/002/2006, Sept. 4, 2006 (noting that intimate partner violence “is regarded as an inevitable dimension of domestic relationships and violence is considered by many to be a valid way for men to assert authority over partners who are deemed lazy, insubordinate or argumentative”; many police send women reporting

incidents of domestic violence home, telling them such problems are “family matters,” even though official police standing orders instruct police to treat domestic assaults with the same seriousness as any other assault); U.N. Econ. & Soc. Council, Div. for the Advancement of Women, *Expert Paper: Addressing Domestic Violence in South Africa: Reflections on Strategy and Practice*, <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/vetten.vaw.pdf> (prepared by Lisa Vetten, last visited Dec. 3, 2007) (describing comprehensive domestic violence law but noting that the effectiveness of the law “has been undermined by other factors, including police perceptions of domestic violence”).

Thus, in some countries, the state fails to even recognize domestic violence as a separate crime, while “[o]thers have legislation specifically addressing intimate violence towards women. Most, however, have ineffective enforcement mechanisms. Often, due to cultural mores and societal attitudes, legal recourse is available only in theory. Even in countries with more progressive legal systems, there remains a lingering unwillingness of state actors to interfere in what has historically been considered a private sphere.” Rebecca Adams, *Violence Against Women and International Law: The Fundamental Right to State Protection from Domestic Violence*, 20 N.Y. Int’l L. Rev. 57, 72 (2007) (footnotes omitted). A favorable ruling in Jessica Gonzales’s case would send a powerful message that states must not only promulgate but effectively enforce domestic violence legislation.

## CONCLUSION

For the foregoing reasons, as well as those stated in the petition of Jessica Gonzales, *amici* urge that the United States be deemed in violation of its duties under international human rights law, and that Ms. Gonzales be granted the monetary and declaratory relief she seeks.

January 4, 2008

Respectfully submitted,

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# APPENDIX

## INTEREST OF AMICI CURIAE

### LEGAL MOMENTUM

Legal Momentum advances the rights of women and girls by using the power of the law and creating innovative public policy. Legal Momentum advocates in courts, federal and state legislatures, as well as with unions and private business, to improve the protection afforded victims of domestic violence, and is a leading authority on the rights of immigrant victims of such violence. Legal Momentum was one of the lead advocates for the Violence Against Women Act and its reauthorizations, which seek to redress the historical inadequacy of the justice system's response to domestic violence in the United States. Legal Momentum's *amicus curiae* brief in *Town of Castle Rock v. Gonzales* urged the U.S. Supreme Court to consider relevant international law, and the United States' obligations under such law, in assessing the constitutional claims raised by Jessica Gonzales. As with its submission in the case of *Valdés Diaz v. Chile*, Legal Momentum here seeks to provide relevant, persuasive authority from international human rights and comparative law to assist the Commission.

## WORLD ORGANIZATION FOR HUMAN RIGHTS USA

World Organization for Human Rights USA (Human Rights USA) is a non-profit organization based in Washington, DC that is dedicated to securing U.S. compliance with international human rights norms through innovative litigation in U.S. and international courts. In this capacity, the group seeks refugee protection for women fleeing severe forms of gender-based violence in their countries of origin and supports efforts to hold States accountable for failing to protect women from gender-based abuse.

Human Rights USA is the U.S. affiliate of the World Organization Against Torture (OMCT). In this capacity, the group reports regularly to the UN Human Rights Committee and Committee Against Torture on U.S. compliance under ICCPR and CAT. Human Rights USA regularly provides guidance to U.S. courts on the applicability of international human rights norms to U.S. law. The group submitted amicus curiae briefs to the Supreme Court in the three most recent juvenile death penalty cases before that Court, including *Roper v. Simmons*, 543 U.S. 551 (2005), the Supreme court decision invalidating the juvenile death penalty in part based on international legal standards. Additionally, Human Rights USA was counsel of record in *Nwaokolo v. Ashcroft*, 34 F.3d 303 (7th Cir. 2002), the Seventh Circuit decision calling female genital mutilation a form of torture and extending immigration relief to women trying to protect their daughters from the practice.

Human Rights USA has also pursued U.S. accountability through litigation in the Inter-American system. In March, 2007, in the case of Frank Igwebuike Enwonwu (Precautionary Measures No. 44-07), the Inter-American Commission requested that the U.S. government take precautionary measures to prohibit the deportation of Human Rights USA's client as he pursued judicial review of his claims under the Convention Against Torture.

### **BREAK THE CYCLE**

Break the Cycle is an innovative national nonprofit organization whose mission is to engage, educate, and empower youth to build lives and communities free from domestic and dating violence. Break the Cycle achieves this mission through national efforts to affect public policy, legal systems and support systems through training, technical assistance and advocacy. Further, Break the Cycle works directly with young people, ages 12 to 24, providing them with preventive education, free legal services, advocacy and support. Break the Cycle envisions a world in which young people are empowered with the rights, knowledge and tools to achieve healthy, nonviolent relationships and homes. It is only through partnership with governmental agencies who work to protect the public that individuals can exercise their rights to live free from violence.

Break the Cycle's early intervention legal services offer sensitive, confidential and free legal advice, counsel and representation to young

people who are experiencing abuse in their relationships or homes in protective order cases and related family law matters. Our 10 years of experience providing legal support to young victims of domestic abuse guide our support of this brief. Through our direct legal services, we understand the importance of protection orders as a critical tool in protecting the safety of the victim and providing justice. The issuance of the order demonstrates a judicial finding that the victim is at risk for continuing abuse and, also, demonstrates the support of the judiciary for the rights of the victim to live free from violence. However, the order of protection is useless in protecting life and health if it is not given respect and enforced by police and the justice system. It is unconscionable that our police would ignore the dangers faced by victims of domestic violence and, in so doing, would fail to protect the human right to life and bodily integrity. As such, we join in this amicus ([www.breakthecycle.org](http://www.breakthecycle.org)).

## **HARRIETT BUHAI CENTER FOR FAMILY LAW**

The Harriett Buhai Center for Family Law (the Center) is a non-profit public interest organization that has for 25 years provided legal assistance to low-income families in Los Angeles County, California. The mission of the Center is to assure these families access to the courts, reduce poverty among children and single parents, and stop domestic violence directed toward women and children. Self-empowerment of low-income persons, and in particular, low-income victims of domestic violence is a key component of the Center's mission. Sixty-five percent of the Center's clients and seventy-three percent of the Center's female clients report domestic violence in their relationships.

The present case concerns the ability of domestic violence victims to obtain effective restraining orders. Without the guarantee of police enforcement, restraining orders are merely pieces of paper that leave victims and their children in serious danger. Many of the Center's clients have restraining orders and rely on police enforcement to keep their families safe. Therefore, the Center has a compelling interest in this case.

## CALIFORNIA WOMEN'S LAW CENTER

The California Women's Law Center (CWLC) is a statewide, nonprofit law and policy center that works to ensure, through systemic change, that life opportunities for women and girls are free from unjust social, economic and political constraints. CWLC was established in 1989 to address the comprehensive civil rights of women and girls in the following priority areas: Violence Against Women, Sex Discrimination, Women's Health, Women's Economic Security, Race and Gender and the Exploitation of Women. Since its inception, CWLC has placed a strong emphasis on protecting the rights and safety of domestic violence victims and their children.

In 1999, CWLC established its Murder at Home Project to advance legal, community, and media responses to domestic violence and domestic violence homicide. One of the primary objectives of the Murder at Home Project is to ensure that legal protections for victims of domestic violence and their families are as effective as possible. The resolution of issues raised in this case affects a victim's ability to enforce a domestic violence restraining order – one of the most common protections awarded by courts in the U.S. The failure to effectively enforce valid restraining orders places victims and their child at serious risk of harm, violating their basic and fundamental human rights. Therefore, CWLC has a compelling interest in this case and joins the amicus curiae brief filed by Horvitz and Levy LLP and Legal Momentum.

## **THE FEMINIST MAJORITY FOUNDATION**

The Feminist Majority Foundation (FMF), founded in 1987, is the largest feminist research and action organization dedicated to women's equality, empowerment, and non-violence. FMF's programs focus on advancing the legal, social and political equality of women with men. To carry out these aims, FMF engages in research and public policy development, public education programs, grassroots organizing projects, and leadership training and development programs, and has filed numerous briefs amicus curiae in the United States Supreme Court and the federal circuit courts to advance the opportunities for women and girls. FMF's Global Empowering Women programs aim to secure domestic and international policies that promote women's rights, including stopping violence against women. FMF was nominated for the Nobel Peace Prize in 2002 for its campaign to bring to the world's attention the brutal gender apartheid policies of the Taliban regime.

## **THE ALLARD K. LOWENSTEIN**

### **INTERNATIONAL HUMAN RIGHTS CLINIC**

The Allard K. Lowenstein International Human Rights Clinic (the Clinic) is a Yale Law School course that gives students first-hand experience in human rights advocacy under the supervision of international human rights lawyers. The Clinic undertakes litigation and research projects on behalf of human rights organizations and individual victims of human rights abuses. The Clinic has prepared briefs and other submissions for the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, and various bodies of the United Nations, as well as for national courts, including courts in the United States and in other countries in the Americas. The Clinic has a longstanding commitment to protecting the human rights of women and children.

### **NATIONAL CENTER FOR WOMEN & POLICING**

National Center for Women & Policing (NCWP), founded in 1994, promotes increasing the number of women at all ranks of law enforcement, improving police response to violence against women, reducing police brutality, strengthening community policing reforms and ensuring equal policing services for women. With research showing that women officers respond more effectively to domestic violence incidents, the under-representation of women in policing has significant implications for women victims of domestic violence.

Through leadership development programs, research, training conferences, and outreach to criminal justice researchers and educators, prosecutors, public officials and community leaders, the NCWP promotes strategies to increase women's participation in policing and reform law enforcement policies.

### **THE NATIONAL CONGRESS OF BLACK WOMEN, INC.**

The National Congress of Black Women, Inc. (NCBW) is a 501(c)(3) organization dedicated to furthering the rights of women, their daughters and their families through education, promotion of the rights of women and by recognizing and honoring their achievement. We participate in litigation of the rights of women and their families. The NCBW was organized in 1984, and since that time the organization has been involved in stopping violence against women in all of its forms. NCBW has led the campaign against violence against women in the media and misogyny; and has led efforts to improve media images of women and their families. NCBW supported passage, funding and reauthorization of the Violence Against Women Act. NCBW frequently sponsors and participates in conferences addressing issues of violence against women and their families. Domestic violence is one of the key initiatives of NCBW, and we constantly work to assist women who find themselves in such a dilemma. We provide counseling and legal referrals for women. Some of our members have been victims of violence, so NCBW has a keen interest in ensuring the

protection of our members and their daughters, as well as other women and girls in our communities. We assist women in obtaining protective orders and believe such orders should be fully enforced.

**NATIONAL ORGANIZATION FOR WOMEN FOUNDATION, INC.**

The National Organization for Women Foundation (NOW Foundation) is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States. Since its inception in 1986, a major goal of NOW Foundation has been to stop violence against women in all of its forms. In furtherance of that goal, NOW Foundation supported passage, funding and reauthorization of the Violence Against Women Act. We have also sponsored events and conferences, such as the Young Feminist Summit Against Violence to address this issue. We have a strong interest in ensuring that women and girls are protected against violence, especially violence from family members, and that protective orders are properly and fully enforced.

## **NATIONAL WOMEN'S LAW CENTER**

The National Women's Law Center (NWLC) is a non-profit legal advocacy organization dedicated to the advancement and protection of women's rights and the corresponding elimination of sex discrimination from all facets of American life. Since 1972, NWLC has worked to secure equal opportunity for women in education, the workplace, and other settings, including through the litigation of cases brought to enforce women's statutory and constitutional rights. Because of its deep and abiding interest in insuring that these rights are fully enforced, NWLC supports this effort to use international law where U.S. law has not provided a remedy.

## **WOMEN LAWYERS ASSOCIATION OF LOS ANGELES**

Women Lawyers Association of Los Angeles (WLALA) is a non-profit organization comprised primarily of attorneys and judges in Los Angeles County, California. It is the largest local women's bar association in the State of California. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. In particular, WLALA places a high priority on protecting women's rights in the family law area. To further these goals, WLALA has joined amicus curiae briefs in appellate cases having a significant impact on women's rights. For

example, in *Zelig v. County of Los Angeles*, WLALA joined the respondents in urging the California Supreme Court to recognize the risk of separation violence in family law proceedings and the role courthouse security measures might play in ensuring women's access to justice.

Here, WLALA urges that full effect be given to domestic violence restraining orders.