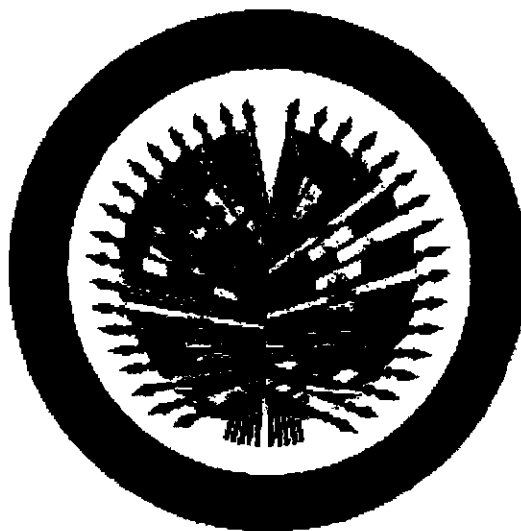


RESPONSE OF THE GOVERNMENT OF
THE UNITED STATES OF AMERICA
TO THE INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS REGARDING
JESSICA GONZALES
PETITION # P-1490-05



RESPONSE OF THE GOVERNMENT OF THE UNITED STATES OF
AMERICA TO THE INTER-AMERICAN COMMISSION ON HUMAN
RIGHTS REGARDING JESSICA GONZALES, PETITION NO. P-1490-05

Summary of Argument

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- III. Petitioner Does Not State Facts that Demonstrate that the United States has Breached Any Duty Under the American Declaration.
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 - c. Petitioner’s inability to prevail in her complaint filed in U.S. federal court and her failure to pursue all available forms of domestic relief do not mean that she lacked access to the courts or that victims of domestic violence lack effective remedies or access to the courts to pursue them.

d. Even under the most expansive interpretations of the duty of the United States under the American Declaration, the actions of the U.S., the State of Colorado, and the Castle Rock Police Department have satisfied such a duty in this case.

IV. Conclusion: Petition Should Be Determined to be Inadmissible and the Request for Relief Should be Denied.

ATTACHMENTS:

TAB A: Jessica Gonzales/Dispatch, Tape Transcription

TAB B: CRPD Incident Report 06/22/99, 19:42 hrs

TAB C: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR# 99-3226, Call from Officer Brink to Jessica Gonzales

TAB D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Third Call at 21:57 hrs., CR# 99-3226

TAB E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99

TAB F: Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs

TAB G: Statement signed by Cpl. Patricia A. Lisk

The Government of the United States appreciates the opportunity to provide the following response to your request of April 17, 2006, regarding the above referenced petition of Jessica Gonzales.

As a preliminary matter, it should be noted that there can be no question that the Government of the United States recognizes that the murders of Jessica Gonzales' three daughters, Leslie, Katheryn and Rebecca are unmistakable tragedies. The United States sympathizes with Ms. Gonzales for her horrific loss. In light of the horrible tragedy that resulted in the deaths of her three daughters, it is understandable that Ms. Gonzales feels that this tragedy should never have occurred and that more should have been done to prevent this loss. However, any petition must be assessed on its merits and based on the evidentiary record. For the following reasons the United States believes the facts alleged by Ms. Gonzales in her petition are not supported by the evidence of the information available to the Castle Rock Police Department at the time the events arose, and that the petition itself is inadmissible for failure to state a breach of a duty by the United States under the American Declaration of the Rights and Duties of Man ("American Declaration"). Accordingly, the United States respectfully requests that the petition be determined inadmissible and the request for relief denied.

I. Factual and Procedural Background

a. Summary of Facts

The evidentiary record of the events that occurred prior to the tragic murders of Ms. Gonzales' three daughters, Leslie, Katheryn and Rebecca, on June 23, 1999 do not support the allegations contained in Ms. Gonzales' petition. Rather, the police reports and transcripts of conversations between Ms. Jessica Gonzales and her estranged husband, Mr. Simon Gonzales, clearly document that Ms. Gonzales informed the Castle Rock Police Department ("CRPD") that she had agreed that Mr. Gonzales could see their three daughters that evening, and that the visit was consistent with the restraining order. Furthermore, the evidentiary record demonstrates that throughout the evening of June 22, 1999 and the early hours of June 23, 1999, the CRPD responded professionally to the information Ms. Gonzales provided it and that the information available at the time revealed no

indication that Mr. Gonzales was likely to commit this tragic crime against his own children.

The evidentiary record demonstrates that, contrary to Ms. Gonzales' assertions she had in fact agreed that Mr. Gonzales could visit the children that evening, and that, consequently, he had not violated the restraining order when he picked up his daughters for a mid-week dinner visit. Ms. Gonzales' first call to members of the CRPD occurred at approximately 7:40 p.m. when she spoke to the CRPD dispatcher on duty, Cindy Dieck. The transcript of that call demonstrates that, contrary to Ms. Gonzales' allegations in the petition that there had been "[n]o advance notice or arrangements ... for Mr. Gonzales to have parenting time with the children that evening,"¹ Ms. Gonzales informed the CRPD that she had in fact granted Mr. Gonzales permission to see the children that evening for a mid-week dinner visit, and that she had discussed with him the logistics for picking up the girls.² Specifically, in that initial call she told the dispatcher that even though Mr. Gonzales did not normally see his daughters on Tuesday nights, she had agreed to it because she was being "nice."³ Ms. Gonzales explained that they had agreed that, due to the restraining order, Mr. Gonzales would wait for the children in his car across the street.⁴ Additionally, in her subsequent conversations with Officer Brink, one of the officers dispatched to her house, Ms. Gonzales later confirmed that she had agreed that her husband could take the children out for dinner.⁵

Although the restraining order granted Ms. Gonzales "temporary sole physical custody" of the children, it granted Mr. Gonzales "parenting time with the minor children on alternating weekends commencing after work on Friday evening and continuing through 7:00 p.m. Sunday evening." Importantly, it also granted Mr. Gonzales a "mid-week dinner visit" to be "arranged by the parties." Finally, it also granted Mr. Gonzales two weeks of "extended parenting time during the summer."⁶ Accordingly, since Ms. Gonzales consented to the mid-week dinner visit, Mr. Gonzales did not

¹ Petition, at 9.

² Jessica Gonzales/Dispatch, Tape transcription, Tab A.

³ *Id.*

⁴ *Id.*

⁵ CRPD Incident Report 6/22/99, 19:42 hrs., Tab B; Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.

⁶ Petition, Exhibit B.

violate the restraining order by taking his daughters out for the evening, a fact Ms. Gonzales later acknowledged to the CRPD.⁷

The evidentiary record further demonstrates that, contrary to Ms. Gonzales' assertions, members of the CRPD were responsive to her numerous requests for assistance that evening, were sensitive to her concerns, and took her concerns seriously. In response to Ms. Gonzales' initial call to the CRPD, Ms. Dieck dispatched two officers to Ms. Gonzales' house. While they were enroute to Ms. Gonzales' house, Ms. Dieck recounted that Ms. Gonzales had indicated that the children may be at her husband's house. In response, one officer, Officer Brink, went to Mr. Gonzales' house, while another, Officer Ruisi, went to Ms. Gonzales' house. After knocking several times and finding no one at Mr. Gonzales' residence, Officer Brink joined Officer Ruisi at Ms. Gonzales' residence. Although Ms. Gonzales' petition states that "she handed [the officers] a copy of the restraining order and asked that it be enforced as the law required"⁸ at no point did she show the officers a restraining order. In fact, in a later phone conversation with Officer Brink, Ms. Gonzales subsequently acknowledged that Officer Brink had not seen the order.⁹ Instead, in his report of his visit to Ms. Gonzales' house, Officer Brink noted that Ms. Gonzales had "stated she had made a verbal agreement with [Mr. Gonzales] that he could take their daughters for the evening."¹⁰ In his report, Officer Brink also noted that Ms. Gonzales "seemed calm" and indicated that she would be heading to work and that her neighbor would be at her house when her daughters were dropped off.¹¹ Contrary to Ms. Gonzales' allegations that the officers did not document Ms. Gonzales' statements or their visits to Ms. Gonzales' home,¹² Officer Brink documented this visit in a police report as well as the fact that he and Sergeant Ruisi then drove throughout the town of Castle Rock looking for Mr. Gonzales' pick up truck.¹³

Shortly thereafter, at approximately 8:43 p.m., Ms. Gonzales called the CRPD and informed the dispatcher that she had received a phone call

⁷ Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.

⁸ Petition, at 10.

⁹ Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.

¹⁰ CRPD Incident Report 6/22/99, 19:42 hrs., Tab B.

¹¹ *Id.*

¹² Petition, at 10.

¹³ CRPD Incident Report 6/22/99, 19:42 hrs., Tab B.

from her husband and that he was with the children at Elitch's amusement park in Denver. After being informed of the call by dispatch, Officer Brink returned to the police department and returned Ms. Gonzales' call.¹⁴ The transcript of this phone call does not support Ms. Gonzales' account of the conversation as described on page 11 of the petition. At no point did Ms. Gonzales mention any conversation with Rosemary Young, nor did she mention any concerns about Mr. Gonzales' mental state or the safety of her children, nor did she request that Officer Brink dispatch an officer to locate Mr. Gonzales at the amusement park or enlist the assistance of other police departments. Instead, the transcript of the call indicates that after Ms. Gonzales told Officer Brink of the girls' whereabouts she expressed concern that there was something wrong with the fact that Mr. Gonzales had taken them to the amusement park given that it was a school night. When she learned that Mr. Gonzales had dropped one of the girl's playmates off at her own house rather than taking her with them, Ms. Gonzales stated it was "cruel" of him not to have taken her to the amusement park, indicating that she did not believe the girls were in any danger.¹⁵

The transcript of the call then indicates that Ms. Gonzales again acknowledged that she had granted Mr. Gonzales permission to see his children and that the visit was not in violation of the restraining order. Officer Brink specifically asked whether the visit was consistent with the custodial arrangement under which they had made the "verbal agreement" for the visit that night. Ms. Gonzales responded that she was the legal custodian but that she intended to file for full custody because joint custody left all of these decisions to mutual agreement. At that point she mentioned the restraining order, which they both acknowledged Officer Brink had not seen. Officer Brink reminded her of the fact that she had granted permission to Mr. Gonzales to see the children, to which she responded "Exactly." Officer Brink then continued, "Ok, so there's no violation there." Ms. Gonzales responded, "No." Later, Officer Brink then said, "Well unfortunately there, it doesn't sound like there's anything criminally I can go after him for." Ms. Gonzales agreed, explaining, "No, I was just so worried." Officer Brink offered words of reassurance, "at least you know where the kids are right now," to which Ms. Gonzales replied "yeah". Ms. Gonzales then thanked Officer Brink for all his help.¹⁶

¹⁴ Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C

¹⁵ *id.*

¹⁶ *id.*

At 9:57 p.m. that evening Ms. Gonzales called the CRPD again and spoke to the dispatcher, not to Officer Brink, as she alleged on page 12 of the petition. Her account on page 12 of the petition differs dramatically from the transcript of the call. The transcript makes clear that Ms. Gonzales informed the dispatcher that the children were still not home and that she was a "little wiggled out." Ms. Gonzales also acknowledged that there was "nothing in the restraining order" that dealt with the situation.¹⁷ She again expressed frustration that her husband had taken her daughter's playmate home and that her daughter, Rebecca, must have been heartbroken over that. However, she did not mention that she was concerned about the safety of any of the children. Nor did she request that the CRPD put out an "APB" [all points bulletin to other police departments]. Ms. Gonzales then indicated that she was going to work. When asked by the dispatcher how Ms. Gonzales would know if the children made it home, Ms. Gonzales replied that a friend would be waiting. The dispatcher then asked that Ms. Gonzales call when the girls got home or to call back by midnight if they weren't home by then.¹⁸

As indicated above, during her initial conversations with members of the CRPD Ms. Gonzales explicitly and repeatedly acknowledged that there was no violation of the restraining order. Moreover, as described above, Ms. Gonzales implicitly acknowledged that there was no restraining order violation when she explained to the CRPD dispatcher in her first call to the CRPD and in her subsequent conversations with Officer Brink that she had agreed to the visit.¹⁹ Additionally, Ms. Gonzales later explicitly acknowledged that there was no restraining order violation when Officer Brink returned her phone call after learning that the children's whereabouts had been established.²⁰

Although in various places Petitioner states that Mr. Gonzales demonstrated threatening behavior towards Ms. Gonzales and her children, Ms. Gonzales did not make this information available to the CRPD during the numerous interactions she had with members of the CRPD between 7:00

¹⁷ Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Third call at 2157 hrs, CR# 99-3226, Tab D.

¹⁸ *Id.*

¹⁹ Jessica Gonzales/Dispatch, Tape transcription, Tab A; CRPD Incident Report 6/22/99, 19:42 hrs., Tab B.

²⁰ Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.

p.m. and midnight the evening of June 22, 1999. Rather, the CRPD records indicate that Ms. Gonzales did not appear to be concerned about the safety of her children, but was troubled instead by the fact that she did not know where her husband had taken them, and that she was concerned about the whereabouts of a playmate of her daughter's, who she soon realized Mr. Gonzales had taken home.²¹ It was not until much later in the evening, at approximately 12:30 a.m., Wednesday, June 23rd, as detailed below, that she expressed concern about Mr. Gonzales' emotional state, but even at that point Ms. Gonzales explicitly stated that she did not fear for the children's safety.²² Finally, the fact that the restraining order granted such regular and substantial parenting time to Mr. Gonzales would lead a reasonable person to conclude that at the time the restraining order was modified to permit such custodial arrangements neither Ms. Gonzales nor the court considered Mr. Gonzales a threat to his children.

Around midnight, Ms. Gonzales called the CRPD again and spoke to a newly-hired dispatcher assigned to the graveyard shift, Melissa O'Neill. It was Ms. O'Neill's second night on the job and she was being trained by another dispatcher, Cpl. Patricia Lisk. Both Ms. O'Neill and Cpl. Lisk had been briefed on the situation involving Jessica Gonzales and her children by Ms. Dieck, the outgoing dispatcher. In a subsequent interview the next day by the District Attorney's Office with Ms. O'Neill and Cpl. Lisk about the shooting incident involving Mr. Gonzales later that evening, Ms. O'Neill recalled that during the midnight call, Ms. Gonzales "was very worried about her children" and that she wanted an officer to meet her outside Mr. Gonzales' residence. According to Ms. O'Neill, Ms. Lisk dispatched an officer in response to the call. However, Ms. Lisk also recalled that at the same time, three other calls were pending, including one that involved a domestic disturbance in progress with an injured child, and the officer was unable to respond immediately.²³

At approximately 12:30 a.m. on Wednesday, June 22, Ms. Gonzales showed up at the police department in tears.²⁴ Officer Ahlfinger was dispatched to meet with her and did so at approximately 12:36 a.m. After Ms. Gonzales told him that Mr. Gonzales had limited visitation of the

²¹ Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.

²² Castle Rock Police Department Incident Report 90623004, 6/23/99, 00:06 hrs, Tab F.

²³ Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/1/1999. Report by Karen Meskis, Date of offense: 6/23/99, Tab E.

²⁴ *Id.*

children, including a dinner night once a week, Officer Ahlfinger asked Ms. Gonzales if she knew where he might have taken the children and asked for a description of Mr. Gonzales' car. It was at this point that Ms. Gonzales first expressed concern about Mr. Gonzales' mental state saying that he had "lost it" and that he might be "suicidal."²⁵ When Officer Ahlfinger asked her whether she knew if her husband had any weapons, she said that she was not aware of any. Notably, when asked whether she thought Mr. Gonzales would hurt the children, she responded "no."²⁶

After speaking with Ms. Gonzales, Officer Ahlfinger requested that the dispatcher, Cpl. Lisk, send an "Attempt to Locate BOLO" [an acronym for "Be On the Look Out", which is directed to other jurisdictions so that they may notify the requesting police department if they locate the individual in question] for Mr. Gonzales and his vehicle. He further advised that if Mr. Gonzales was contacted, the officers were to check the welfare of the children and contact Jessica Gonzales.²⁷ In a subsequent statement Cpl. Lisk recalled that Officer Ahlfinger requested the attempt to locate at approximately 1:40 a.m.²⁸ Officer Ahlfinger then drove by Mr. Gonzales' residence and did not see his car, and called Mr. Gonzales both on his home phone and his cellular phone.²⁹

After Officer Ahlfinger left, Cpl. Lisk began investigating how to send the bulletin on the "attempt to locate" based on the information she had. During the next 1 hour and 45 minutes before Mr. Gonzales arrived at the police department and shots broke out, Cpl. Lisk tried to locate information on Mr. Gonzales' driver's license and valid license plate for the truck he was driving, including by sending requests to the Colorado Department of Motor Vehicles (DMV), necessary information required in order to enter an "attempt to locate" into the system. In fact, three minutes before Mr. Gonzales fired shots into the CRPD, she received a reply from the DMV that showed that the only license plate registered to Mr. Gonzales was for a Chevy, not the Ford truck Ms. Gonzales had identified. During this period, Cpl. Lisk was also responding to calls coming into dispatch and coordinating with the three officers and one trainee on duty during the graveyard shift and training the new dispatch officer.³⁰ Thus, although Cpl.

²⁵ Castle Rock Police Department Incident Report 90623004, 6/23/99, 00:06 hrs, Tab F.

²⁶ *id*

²⁷ *id*

²⁸ Statement signed by Cpl. Patricia Lisk, Tab G.

²⁹ Castle Rock Police Department Incident Report 90623004, 6/23/99, 00:06 hrs, Tab F.

³⁰ Statement signed by Cpl. Patricia Lisk, Tab G.

Lisk was preparing to enter the "attempt to locate" into the system at the time Mr. Gonzales arrived at the CRPD at approximately 3:25 a.m., she had not yet done so. However, her inability to make such an entry was not as a result of a lack of considerable effort on the part of members of the CRPD to identify the necessary information in order to accomplish the task.

According to the investigation by the Office of the District Attorney, Mr. Gonzales drove his pick-up truck to the CRPD at approximately 3:25 a.m. and fired shots through the window, resulting in an exchange of gunfire with officers who were called to the scene. Mr. Gonzales was fatally wounded. When the officers approached the truck they discovered the bodies of three young girls subsequently identified as Leslie, Katheryn and Rebecca Gonzales.

b. Procedural history of Jessica Gonzales' claims in U.S. federal court

By way of background to the statement of facts provided above, and the numerous and substantial inconsistencies between the evidentiary record and the allegations made by Ms. Gonzales in her petition, it is important to emphasize that the actual facts of the case were not addressed in the domestic litigation. At the district court level, the Town of Castle Rock filed a motion to dismiss the claim. In accordance with the usual rules of procedure for testing the legal sufficiency of a claim, in deciding the motion to dismiss, the District Court accepted the allegations as true and construed them in the light most favorable to the plaintiff. The court found that, as a matter of law, Ms. Gonzales had failed to state a claim upon which relief could be granted.³¹ Accordingly, the actual facts were not addressed in the litigation because the appeals process dealt with whether the federal law invoked by Ms. Gonzales was available based on the allegations set forth in her complaint.

Because Petitioner attached the relevant decisions to her petition, the United States will provide only a brief summary of the domestic litigation. For ease of reference, however, the following brief summary is provided. Ms. Gonzales filed a complaint in federal court alleging that a Colorado statute regarding the enforcement of restraining orders granted her a property interest in its enforcement by the police and that when the police

³¹ Gonzales v. City of Castle Rock, No. 00-D-1285 (D. CO. filed Jan. 23, 2001).

failed to enforce the restraining order, she was deprived of property without due process of law, in violation of the 14th Amendment to the U.S. Constitution. As noted above, the District Court granted the town's motion to dismiss, but a narrow majority of the *en banc* Court of Appeals for the Tenth Circuit reversed. The court concluded that state law had given her a "property interest in the enforcement of the terms of her restraining order," and that she had stated a cognizable claim that the police had denied her of that property interest without due process of law. At the same time, however, the Tenth Circuit ruled that the individual police officers in question (but not the City of Castle Rock) were entitled to the defense of qualified immunity on the grounds that a reasonable officer would not have known that a restraining order, together with the Colorado statute mandating its enforcement, would create a constitutionally protected property interest.³² The Town of Castle Rock sought review of the decision by the United States Supreme Court.

The Supreme Court, reversing the Tenth Circuit's decision, held that under the Due Process Clause of the 14th Amendment of the U.S. Constitution, Colorado's law on police enforcement of restraining orders did not give Jessica Gonzales a property interest in the enforcement of the restraining order against her husband. In reaching that conclusion, the Supreme Court carefully considered the Colorado statute in question and the pre-printed notice to law enforcement officers on the restraining order and determined that the statute granted police officers discretion in enforcing restraining orders, and determined that Jessica Gonzales therefore did not have a federal entitlement to enforcement of the restraining order.

The Supreme Court also noted that domestic abuse restraining orders still had value even if police have discretion in their enforcement. The Court reasoned that regardless of whether Ms. Gonzales "had a right to enforce the restraining order, it rendered certain otherwise lawful conduct by her husband both criminal and in contempt of court."³³ The Court continued, "[t]he creation of grounds on which he could be arrested, criminally prosecuted, and held in contempt was hardly 'valueless' – even if the prospect of those sanctions ultimately failed to prevent him from committing three murders and a suicide."³⁴ Additionally, the Court noted that the "deep-rooted nature of law-enforcement discretion, even in the presence of

³² 366 F.3d 1093 (10th Cir. 2004).

³³ *Town of Castle Rock, Colorado, v. Gonzales*, 125 S.Ct. 2796 (2005), 2805.

³⁴ *Id.*

seemingly mandatory legislative commands” had been previously recognized by the Supreme Court. The Court then opined, “It is hard to imagine that a Colorado police officer would not have some discretion to determine that – despite probable cause to believe a restraining order has been violated – the circumstances of the violation or the competing duties of that officer or his agency counsel decisively against enforcement in a particular instance. The practical necessity for discretion is particularly apparent in a case such as this one, where the suspected violator is not actually present and his whereabouts are unknown.”³⁵

c. Problem of domestic violence in the United States

It is indisputable that domestic violence is a significant problem in the United States, as it is elsewhere in the world. However, the available data does not support Petitioner’s allegations that the United States consistently and systemically treats crimes of domestic violence as less serious crimes than other crimes and fail to investigate such crimes, and arrest and prosecute the perpetrators.³⁶ Instead, a 2005 study by the Department of Justice’s Bureau of Justice Statistics demonstrates that the United States, at the federal, state and local levels, is establishing as high priorities the investigation and prosecution of these crimes and that severe penalties are imposed as a result of such efforts.³⁷

The study shows that while the problem of family violence remains acute, the rate of family violence actually fell between 1993 and 2002 from an estimated 5.4 victims to 2.1 victims per 1,000 U.S. residents age 12 or older. During this period, family violence accounted for 11% of all reported and unreported violence between 1998 and 2002.³⁸ Of these roughly 3.5 million violent crimes committed against family members, 49% were crimes against spouses, 11% were sons or daughters victimized by a parent, and 41% were crimes against other family members.³⁹

The study also demonstrates that the successful arrest and prosecution of perpetrators of family violence crimes is a priority in the United States

³⁵ *Id.*, at 2796.

³⁶ Petition at 32, 46, 81.

³⁷ Matthew DuRose et. al., U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Family Violence Statistics* (2005).

³⁸ *Id.*, at 1. (The study noted that approximately 60% of family violence victimizations were reported to police between 1998 and 2002): *Id.*, at 2.

³⁹ *Id.*, at 1.

and the data also indicates that perpetrators of family violence have served heavy sentences in prison or jail as a result of these successful prosecutions. It found that about 49% of family violence crimes recorded by police resulted in an arrest. Regarding prosecution of family violence at the state level, of the approximately 1500 defendants charged with felony assault during May 2000 in the State courts of 11 large counties, about a third were charged with family violence. Among the 1500 felony assault cases, the probability of the case leading to conviction (felony or misdemeanor) was greater for family assault defendants (71%) than nonfamily assault defendants (61%).⁴⁰ Regarding federal prosecution of domestic violence,⁴¹ federal courts convicted 90% of defendants adjudicated for an interstate domestic violence offense. Of 47 Federal defendants sentenced for an interstate domestic violence offense between 2000 and 2002, 91% received a prison term with a median length of 60 months.⁴² Of the nearly 500,000 men and women in State prisons for a violent crime in 1997, 15% were there for a violent crime against a family member. Additionally, convicted family violence offenders made up about 22% of the nearly 86,500 convicted violent offenders in local jails in 2002. Most (60%) of these approximately 18,700 jail inmates incarcerated for family violence were in jail for an aggravated assault.⁴³

II. U.S. legal framework regarding domestic violence – availability of domestic judicial remedies and other protections against domestic violence under federal and state law

When it comes to measures the United States has taken to protect individuals from domestic violence, the commitment of the United States is beyond question. The following is a brief description of some of the judicial remedies available to victims of domestic violence in the United States, both at the federal level, as well as in the State of Colorado, who find themselves in situations similar to that alleged by Ms. Gonzales. It is possible that some of these remedies would have been available to Ms. Gonzales herself had the factual circumstances of her case actually warranted them. Additionally, a brief description of additional remedies and protections for victims of

⁴⁰ *Id.*, at 2.

⁴¹ The report notes that persons suspected of domestic violence made up 4% of the total 18,653 Federal suspects referred to U.S. attorneys for alleged violent crimes from 2000 to 2002. Of the 757 suspects referred during this period, most were firearm-related domestic violence offenses rather than interstate domestic violence offenses.

⁴² *Id.*, at 2.

⁴³ *Id.*, at 3.

domestic violence at the national and state level, including in the State of Colorado, is provided. The comprehensive programs at the federal, state and local levels, and the billions of dollars devoted to implement these programs, demonstrate that Petitioner's allegations that the United States fails to prioritize crimes of domestic violence, that U.S. law enforcement agencies lack the tools to effectively address and prosecute these crimes, and that victims of domestic violence lack legal avenues to ensure protection of their rights are unfounded.

a. Federal level

i. Judicial Remedies

In the United States, most criminal laws and civil tort remedies are matters of state and local, rather than federal, law. With respect to the availability of domestic judicial remedies, it is important to understand that the holding of the Supreme Court in *Town of Castle Rock, Colorado, v. Gonzales*,⁴⁴ was limited to the particular claims raised by Ms. Gonzales, including regarding the particular Colorado statutory regime concerning enforcement of restraining orders, and should not be construed to mean that there are no remedies available to victims of domestic violence in the United States or that restraining orders in such cases offer no protection to their beneficiaries. The Court did not address alternative remedies that would have been available to Petitioner, including for example, a civil suit in state court against the police officers under state tort law, which is discussed more fully below.

Additionally, in other cases, federal courts have provided remedies to victims of domestic violence where victims have alleged a failure to protect by police officers. There are a number of such cases where victims of domestic violence have established liability of police for failure to protect when they have successfully demonstrated that the police treated domestic violence and stalking cases differently from other assault cases or that a police policy of failing to protect domestic violence or stalking victims had a discriminatory impact on women because they are most often the victims of such crimes. One of the first such cases was successfully brought by Tracey Thurman, a Connecticut woman who sued police officers in her local police department and the City for failing to protect her from brutal assaults by her

⁴⁴ 125 S.Ct. 2796 (2005)

estranged husband.⁴⁵ In a subsequent case the U.S. Court of Appeals for the Ninth Circuit found a potential equal protection violation in a case alleging that the police treated emergency domestic violence calls with less priority than non-domestic emergency calls.⁴⁶

Accordingly, Ms. Gonzales' failure to pursue alternative remedies does not mean that such remedies do not exist for individuals in the United States who have legitimate claims. Alternatively, it may mean that she was aware that her case against the police officers and the City of Castle Rock for their alleged inaction and insensitivity or discriminatory treatment was not actually supported by the evidentiary record.

ii. Federal Legislation: Overview of the Violence Against Women Acts of 1994, 2000, and 2005

In addition, at the national level, Congress has enacted three major pieces of legislation that recognize the seriousness of domestic violence and the importance of a nationwide response: the Violence Against Women Act of 1994 (VAWA),⁴⁷ the Violence Against Women Act of 2000,⁴⁸ (VAWA 2000), and the Violence Against Women and Department of Justice Reauthorization Act of 2005⁴⁹ (VAWA 2005). VAWA itself is a comprehensive legislative package, which addressed numerous facets of the problem of violence against women. Among its many provisions, VAWA strengthened federal penalties for repeat sex offenders; provided for mandatory restitution; required states and territories to enforce protection orders issued by other states, tribes, and territories; created relief for battered immigrants that prevented abusers from using immigration law to control victims; and established the toll-free National Domestic Violence Hotline. In addition, VAWA authorized funds to support domestic violence shelters, rape prevention education, domestic violence intervention and prevention programs, and programs to improve law enforcement, prosecution, court, and victim services responses to violence against women.

VAWA 2000 strengthened the original law by improving protections for battered immigrants, sexual assault survivors, and victims of dating

⁴⁵ *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D.C.T. 1984).

⁴⁶ *Fajardo v. County of Los Angeles*, 179F.3d 698 (9th Cir. 1999).

⁴⁷ Pub. L. No. 103-322, tit. IV.

⁴⁸ Pub. L. No. 106-386

⁴⁹ Pub. L. No. 109-162

violence. VAWA 2000 also re-authorized for five years key grant programs created by VAWA and subsequent legislation and established new programs to address elder abuse, violence against individuals with disabilities, the need for safe visitation and exchange of children in cases of domestic violence, child abuse, sexual assault or stalking, and legal assistance for victims.

VAWA 2005 improved and expanded legal tools and grant programs addressing domestic violence, dating violence, sexual assault, and stalking. VAWA 2005 reauthorized grant programs created by the original VAWA and subsequent legislation and strengthened federal criminal and immigration laws. The Act also authorized numerous new programs, with an increased emphasis on violence against Indian women, sexual assault, and youth victims.

iii. Federal Funding for Projects Targeted at Improving the Issuance and Enforcement of Protection Orders

In 1995, the Office on Violence Against Women (OVW) was created within the U.S. Department of Justice to implement VAWA and provide national leadership in combating domestic violence, dating violence, sexual assault, and stalking. In 2003, Congress directed that OVW become a separate and distinct office within the Department, with a Presidentially-appointed, Senate-confirmed director.⁵⁰ At present, OVW administers one formula grant program and eleven discretionary grant programs authorized by VAWA 1994 and VAWA 2000, as well as related legislation.⁵¹ All twelve of these programs respond to different facets of the problem of violence against women and the needs of victims; two, however, have a particular focus on funding projects that address domestic violence and protection orders.

First, the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant program awards grants to states to develop and strengthen the criminal justice system's response to violence against women and to support and enhance services for victims.⁵² Each state and territory must allocate 25 percent of the grant funds for law

⁵⁰ 42 U.S.C. 3796gg-0.

⁵¹ See Higher Education Amendments of 1998, Pub. L. No. 105-222 § 826 (previously codified at 20 U.S.C. 1152) and the PROTECT Act of 2003, Pub. L. No. 108-21 § 611 (codified at 42 U.S.C. 13975).

⁵² 42 U.S.C. § 3796gg.

enforcement, 25 percent for prosecution, 5 percent for courts, and 30 percent for victim services. The remaining 15 percent is discretionary within statutory parameters. All states, territories, and the District of Columbia are eligible to apply for a STOP formula grant award; monies are distributed using a population-based formula.⁵³ To be eligible for funds, states must certify that their state laws and practices meet certain minimum requirements, including that they do not require victims of domestic violence to bear the cost of filing for a protection order.⁵⁴

States may use STOP funding for projects that meet certain statutory program purpose areas, including a number directly pertinent to issues where Petitioner claims the United States is deficient: (1) training law enforcement officers, judges, and prosecutors to respond to domestic violence, (2) developing special units of law enforcement officers, judges, or prosecutors to target domestic violence, (3) developing and implementing more effective police, court, and prosecution policies specifically devoted to responding to domestic violence, (4) developing data collection systems to track protection orders and violations of those orders, and (5) providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted.⁵⁵

Furthermore, in direct response to the tragic murder of Jessica Gonzales' daughters, Congress added a new statutory purpose area to the STOP program in VAWA 2005. Under this new provision, states will be able to use STOP funds to place special victim assistants, known as "Jessica Gonzales Victim Assistants," in local law enforcement agencies to serve as liaisons between victims of domestic violence and the agencies, in order to improve the enforcement of protection orders. The activities of these victim assistants may include developing standardized response policies for local law enforcement, including triage protocols to ensure that dangerous or potentially lethal cases are identified and prioritized.⁵⁶

Second, the Grants to Encourage Arrest Policies and Enforcement of Protection Orders program (Arrest program) encourages jurisdictions to treat

⁵³ *Id.* at § 3796gg-1.

⁵⁴ *Id.* at § 3796gg-5.

⁵⁵ 42 U.S.C. § 3796gg(b).

⁵⁶ 42 U.S.C. § 3796gg(b)(13); *see also* H.R. Rep. No. 109-233, at 652 (2005) (Statement of Rep. Nadler supporting provision).

domestic violence as a serious violation of criminal law.⁵⁷ States, Indian tribal governments, state and local courts, and units of local government are eligible to receive Arrest program funding.⁵⁸ All applicants for grants, however, must certify that their laws, policies, or practices meet certain minimum standards. Applicants cannot receive funding unless their laws or official policies, among other things, encourage or mandate arrests of domestic violence offenders who violate the terms of a protection order, discourage the issuance of mutual restraining orders, and do not require victims of domestic violence to bear the cost of filing for a protection order.⁵⁹

By statute, Arrest programs funds must be used for projects that address certain purpose areas. As with the STOP program, a number of these purpose areas focus on improving the issuance and enforcement of protection orders. In particular, the statute requires that grants fund projects that (1) implement pro-arrest programs and policies in police departments, including policies for protection order violations, (2) develop special domestic violence units of police officers, prosecutors, probation and parole officers, or judges, (3) educate judges about domestic violence, and (4) provide technical assistance and computer and other equipment to police departments, prosecutors, courts, and tribal jurisdictions to facilitate the widespread enforcement of protection orders.⁶⁰

In addition, OVW funding under many of its other grant programs is directed toward ensuring that appeals for protection by victims of domestic violence are not ignored by law enforcement, prosecution, and courts. For example, most of OVW's programs place a significant emphasis on training professionals to improve their response to victims. During just the six-month period between January and June, 2005, OVW grantees reported training over 110,000 people, including 18,789 law enforcement officers, 2,130 prosecutors, and 2,112 court personnel. Moreover, for calendar year 2004, subgrantees of the STOP formula program reported training over 300,000 people, including 105,566 law enforcement officers, 6,842 prosecutors, and 8,943 court personnel.

⁵⁷ 42 U.S.C. § 3796hh(a). VAWA 2005 amended the Arrest program statute to cover dating violence, sexual assault, and stalking, as well as domestic violence. VAWA 2005, Pub. L. No. 109-162, § 102(b)(1). OVW has not yet awarded Arrest funding for these new program purposes.

⁵⁸ *Id.* at § 3796hh(b).

⁵⁹ *Id.* at § 3796hh(c).

⁶⁰ 42 U.S.C. § 3796hh(b).

Since 1995, OVW alone has awarded more than \$2.4 billion in grants authorized by VAWA and related legislation. Moreover, since the passage of VAWA, the United States has committed an increasingly large amount of funding to VAWA programs, enabling OVW to provide grants and technical assistance to more communities nationwide than ever before. For example, during fiscal years 2001 through 2004, OVW awarded nearly \$1.25 billion in grants and cooperative agreements, compared to approximately \$930,000,000 in the four years prior to that. During fiscal years 1997 through 2000, OVW made approximately 1500 such awards; during fiscal years 2001 through 2004, that number grew to nearly 2400.⁶¹ In particular, during fiscal years 2001 through 2004, OVW awarded 816 grants totaling over \$363 million under the Arrest program alone.

In addition to grant programs, the Department of Justice, through OVW, has funded a number of special projects to improve both inter- and intrastate enforcement of protection orders. Five of these illustrate the breadth and intensity of the Department's commitment to improving the effective issuance and enforcement of protection orders nationwide.

The National Center for Full Faith and Credit was created in 1997 with OVW funding to respond to the mandate in VAWA that states enforce protection orders issued by other jurisdictions. Although the Center focuses on interstate enforcement, it provides nationwide technical assistance to any entity or person experiencing challenges around enforcing protection orders. Among its other work, the Center provides training to law enforcement and judges, provides onsite technical assistance to jurisdictions, and tracks state protection order legislation and forms. The National Center on Full Faith and Credit has received approximately \$5.5 million dollars in support, and an additional \$653,000 is being processed at this time. Additionally, other full faith and credit projects have been supported over the last 8 years for more than \$1.5 million.

In 2005, with funding from OVW, the National Council of Juvenile and Family Court Judges (NCJFCJ) issued "A Guide for Effective Issuance & Enforcement of Protection Orders." This publication, known as the Burgundy Book, was developed to give communities and professional tools and strategies they can implement to broaden the effectiveness of protection

⁶¹ Statement of Diane M. Stuart, Director, Office on Violence Against Women Department of Justice, before the Committee on the Judiciary, United States Senate, Concerning Reauthorization of the Violence Against Women Act (July 19, 2005), available at www.usdoj.gov/ovw/pressreleases.htm.

orders. The Burgundy Book, which was developed over the course of four years with extensive input from national domestic violence experts, is divided into chapters focusing on advocates, civil attorneys, courts and judiciary, law enforcement and prosecutors. 4420 copies of the book have been provided to professionals working in the domestic violence field thus far.

The National Center for State Courts, with OVW funding, established "Project Passport" to encourage courts to issue uniform protection orders and thereby enhance nationwide enforcement. Through Project Passport, six of eight regions nationally have held meetings to promote the adoption of uniform protection order coversheets. Such coversheets have been adopted in 22 states and the District of Columbia.

OVW also funded the International Association of Chiefs of Police to develop, and subsequently revise, a guide for law enforcement officers on enforcing protection orders. IACP has distributed the booklet to law enforcement agencies across the country and used it as the basis for training.

Finally, OVW funds NCJFCJ, in partnership with the Family Violence Prevention Fund, to conduct National Judicial Institutes on Domestic Violence. Now in its seventh year, the Judicial Institutes train judges from every state and the District of Columbia on issues related to domestic violence, including protection order enforcement and issuance. Institutes also serve to create a national community of judges leading the nation in responding to domestic violence. Since 1998, the Judicial Institutes training project has received \$9.2 million dollars in support from OVW. An additional \$653,000 is being processed at this time to carry the project through the end of 2008. Since 1999, more than 5,500 judges have been trained through this Judicial Institutes program.

b. State Responses to Domestic Violence

As noted above, in the United States, most criminal laws and civil tort remedies are matters of state and local, rather than federal, law. Therefore, most laws that protect persons in the United States from domestic violence and provide civil remedies against perpetrators and other responsible parties are state and local laws and ordinances.

Over the past two decades, states have adopted a host of new laws to improve the ways that the criminal and civil justice systems respond to domestic violence. Between 1997 and 2003 alone, there were over 700 new domestic-violence related enactments.⁶² For example, 39 states have adopted laws specifically directed at domestic violence, even though many other criminal statutes would apply to acts of domestic violence. These laws provide for enhanced penalties and “ensure equality of treatment for victims of domestic violence.”⁶³ Since 1990, every state has adopted a stalking law to deal with the harassment and implicitly threatening behavior that may accompany domestic violence.⁶⁴ As of 2000, in response to concerns that police were not making arrests in domestic violence cases, all states now authorize warrantless arrests of domestic violence offenders based only on a probable cause determination.⁶⁵ In 21 states and the District of Columbia, arrest in such cases is mandatory.⁶⁶ Violation of a court order of protection is a crime in most states, and state laws in all but one state and the District of Columbia explicitly authorize warrantless arrests based on a probable cause determination that the order has been violated.⁶⁷

c. State of Colorado

i. Judicial remedies

As noted above, the Supreme Court’s decision in *Town of Castle Rock, Colorado vs. Jessica Gonzales* was limited to the federal constitutional claims raised by Ms. Gonzales in her petition and did not address the remedies and protections that were available to Ms. Gonzales under Colorado law.

Although Ms. Gonzales chose not to pursue such a claim, had she been able to establish that the Castle Rock police officers acted “willfully and wantonly” outside the scope of their employment, she could have filed a civil suit against them in state court. In the context of the general allegations contained in Ms. Gonzales’ petition, this avenue certainly existed and the

⁶² Neil Miller, Institute for Law and Justice, *Domestic Violence: A Review of State Legislation Defining Police and Prosecution Duties and Powers*, June 2004 at 1, available at http://www.ilj.org/publications/DV_Legislation-3.pdf.

⁶³ *Id.*, at 14.

⁶⁴ *Id.*, at 19.

⁶⁵ *Id.*, at 27.

⁶⁶ *Id.*, at 28.

⁶⁷ *Id.*, at 31.

Colorado Governmental Immunity Statute would have permitted such a suit had she been able to meet this standard.⁶⁸ In order to file such a suit, notice of intent to sue must be given to the public entity and its attorneys within 180 days of the incident in order to bring a tort or negligence suit.⁶⁹ Ms. Gonzales never filed such a notice. Additionally, Ms. Gonzales never even filed a formal administrative complaint with the CRPD or the Town of Castle Rock for mishandling the events that night. The United States is not in a position to speculate on what accounts for Ms. Gonzales' failure to file an administrative claim against the officers or to file a civil suit in state court in light of her allegations that the police "did nothing" and "failed to investigate the children's disappearance."⁷⁰

Finally, it should be noted that had Mr. Gonzales himself not been killed in the shoot-out he initiated at the Castle Rock police department on Wednesday, July 23rd, 1999, there would have been an additional range of available remedies. As is true of all states, Colorado has a wide array of criminal statutes that would have been potentially applicable (some of which would have turned on whether Ms. Gonzales was able to establish that Mr. Gonzales had actually violated the restraining order). They include homicide statutes, found at C.R.S. § 18-3-102 *et seq.*, assaults at C.R.S. §§ 18-3-201 *et seq.*, kidnapping at § 18-3-301 *et seq.*, false imprisonment at § 18-3-303, violation of custody order or order relating to parental responsibilities, § 18-3-304, and child abuse, § 18-6-401 *et seq.* Furthermore, as observed by the Supreme Court, had Mr. Gonzales not murdered his children and been killed himself and had Ms. Gonzales been able to establish that there was an actual violation of the restraining order, either civil or criminal contempt proceedings could have been brought against Mr. Gonzales. Violation of restraining orders is a crime in Colorado pursuant to C.R.S. § 18-6-803.5, and is a class 2 misdemeanor, unless the restrained person has previously been convicted of a restraining order or no contact order violation, or the restraining order was issued pursuant to C.R.S. § 18-1-1001, in which the case the violation is a class 1 misdemeanor.

Additionally, like many other states, Colorado has specific criminal statutes relating to domestic violence. In Colorado, domestic violence is defined to mean "an act or threatened act of violence upon a person with

⁶⁸ C.R.S. § 24-10-102 *et seq.*

⁶⁹ C.R.S. § 24-10-109.

⁷⁰ Petition, at 4.

whom the actor is or has been involved in an intimate relationship.” It includes “any other crime against a person or against property or any municipal ordinance violation against a person or against property, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.”⁷¹ Among other aspects of Colorado’s statute are the increased penalties it establishes for persons convicted of crimes involving acts of domestic violence, including that the individual must complete a treatment program.⁷²

ii. Training of police officers in the State of Colorado

As a matter of Colorado state law, of the 80 hours of training mandated for every peace officer, each student is required to complete 28 hours on human and victim’s rights, which includes a minimum of eight hours of training on domestic violence. These standards are mandated by Colorado’s Commission on Peace Officer Standards and Training (POST), which monitors all peace officer training in the State of Colorado. The goal of the training is that the student will demonstrate the ability to effectively assess and intervene in incidents of domestic violence.

In order to successfully complete the training, each peace officer must demonstrate an understanding of a range of issues directly relevant to responding to incidents of domestic violence. These include the following: the duty to report; mandatory arrest procedures; victim’s rights; injury identification and documentation; victim/witness interviews; the fast track system; safe houses; restraining orders, including out-of-state orders; stalking and harassment; predominant aggressor; domestic violence dynamics; witness intimidation; children’s issues. Additionally, through the use of field exercises, each student must demonstrate the proper and effective response to domestic violence incidents and the ability to document the event in a written report. In addition to the required source material mandated by the statute, it is a recommendation by POST that officers are provided with the Colorado Coalition Against Domestic Violence (CCADV) publication on domestic violence training.

⁷¹ C.R.S. § 18-6-800.3

⁷² C.R.S. § 18-6-801

In conjunction with the mandatory training highlighted above, there are several elective training programs that many police departments in Colorado provide as additional training to officers. A brief description of some of these programs is provided below.

The Colorado Coalition Against Domestic Violence (CCADV) is a non-profit organization dedicated to the elimination of domestic violence in all of its forms and provides domestic violence extensive training to peace officers in Colorado. In conjunction with this training, they publish two manuals that provide essential training devoted to responses to domestic violence: i) the *Law Enforcement Training Manual on Domestic Violence*⁷³ that POST recommends as supplemental material for all peace officers and ii) *The Ending Violence Against Women (EVAW) Project, Domestic Violence Training Manual*. The *Law Enforcement Training Manual* is comprehensive, and the CCADV has strongly encouraged law enforcement groups to utilize it in their training, as it explores in depth the dynamics of domestic violence and the legislative history of Colorado statutory provisions on domestic violence, the law enforcement response, domestic violence risk factors, restraining and protection orders, full faith and credit, violation of protection orders, other Colorado statutes governing protection orders, and the procedure of enforcement of protection orders and other considerations. In addition, the manual provides officers detailed procedures for conducting on scene investigations that includes a Domestic Violence Investigation Checklist, specifics on how to deal with recanting victims, what factors should be considered in an arrest decision, victim assistance, information on peace officer and law enforcement agency civil liability and many additional vital training on specific issues that arise in domestic violence cases.

Another Colorado organization active in training of police officers in the State of Colorado is Project Safeguard, a community-based non-profit agency dedicated to ending violence experienced by women in intimate relationships. This agency has been actively training police officers in issues relating to domestic violence and protection orders for over 25 years. Project Safeguard provides legal advocacy to victims in the form of protection order and courtroom assistance, phone crisis intervention, divorce & custody clinics, CourtWatch (a program in which advocates observe

⁷³ The updated *Law Enforcement Training Manual*, 2nd Edition was published in October 2003 and is available online at www.ccadv.org/publications/law_enforcement_manual_11-03.pdf

courtroom procedures, make recommendations for improvements and recognize best practices), Fatality Review (a program which reviews details of homicides or suicides where domestic violence is identified to determine when/if community intervention may have positively effected the outcome and how to use this information to prevent future deaths), counseling, and community outreach. Specific to peace officers and protection orders, Project Safeguard provides periodic training at police academies and change of shift roll calls. These trainings include an overview of what victims go through to obtain a protection order (revealing their most frightening secret to strangers, beginning their lives over, facing financial burdens and parenting challenges as well as the criminal and or civil justice system), the enforcement of protection orders, Full Faith and Credit, the reasons for protection orders, when to refer someone for a protection order, details of the dedicated protection order court rooms and statistics regarding the effectiveness of protection orders. Last year, training on risk assessment/safety planning and dynamics of domestic violence was also accomplished for the Colorado Regional Community Policing Institute.

In short, it is the goal of Project Safeguard to insure that officers and other system or community based agencies who come in contact with domestic violence victims have the most current and accurate information regarding protection orders so that victims may be safe and receive the best services available.

- III. Petitioner does not state facts that demonstrate that the United States has breached any duty under the American Declaration
- a. No provision of the American Declaration imposes a duty on the United States to have successfully prevented the murders of the Gonzales daughters.

Petitioner's claims that the "preventable deaths of petitioner's children and harms suffered by petitioner"⁷⁴ violated numerous rights under the American Declaration are without merit. She cites no provision of the Declaration that imposes an affirmative duty on States to actually prevent the commission of individual crimes by private parties such as the tragic and criminal murders by Mr. Simon Gonzales of his three daughters. As noted

⁷⁴ Petition, at 46.