

*Before the*

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**Jessica Gonzales,**  
*in her individual capacity and on behalf of her deceased daughters,*  
**Katheryn, Rebecca, and Leslie Gonzales**

**vs.**

**The United States of America**

Case No. 12.626

**BRIEF OF WOMEN EMPOWERED AGAINST VIOLENCE (WEAVE)  
AS AMICUS CURIAE IN SUPPORT OF  
JESSICA GONZALES**

October 17, 2008

Amy Myers  
Elizabeth Keyes  
Morgan Lynn  
Women Empowered Against Violence\*  
1111 16<sup>th</sup> Street NW, Suite 200  
Washington, DC 20036  
United States of America  
(202) 452-9550

\* Counsel are grateful to Rosa Theofanis, Sarah Solon, Lisa Ioannilli, and Monica Martinez for their enormous contributions to this brief.

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STATEMENT OF INTEREST OF AMICUS CURIAE<sup>1</sup>

## SUMMARY OF ARGUMENT

Ms. Gonzales's brief explains that the Castle Rock Police Department's (CRPD) actions (or, rather, inaction) on the night of June 22, 1999, violated her human rights and those of her daughters. The subsequent Supreme Court decision in *Town of Castle Rock v. Gonzales*, Ms. Gonzales argues, leaves Ms. Gonzales and domestic violence victims in the United States with no effective legal remedy by which they can hold police and other state actors accountable for their failures to protect domestic violence victims. We concur in her legal arguments.

Our brief shows that Ms. Gonzales's experiences with the CRPD and the judiciary are not exceptional in that judicial and police response to domestic violence in the United States is, at best, not uniform and, at worst, detrimental to survivors. The CRPD's actions are representative of systematic failures of the United States to exercise due diligence to protect domestic violence victims, who are disproportionately women of color and immigrant women. The Supreme Court decision in *Gonzales* highlights federal and state courts' foreclosure of legal remedies available to victims. The experiences of Ms. Gonzales, a woman of Mexican and Native American descent, demonstrate the severe limitation of civil legal remedies available to all domestic violence survivors. This brief reviews and discusses this limitation in remedies and the peculiar challenges faced by women of color and immigrant women in obtaining appropriate governmental services to protect themselves from domestic violence. Although police response and judicial protections are imperfect for all, this brief argues that women of color and immigrant women are particularly poorly served by the State. The failure of judicial and law enforcement measures to address the epidemic of domestic violence in the United States or

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Petitioner has consented to the filing of this brief.

to provide adequate legal remedies for victims results in a denial of the basic protections mandated by international human rights standards and in a violation of women's rights to safety.

I. DOMESTIC VIOLENCE IS AN EPIDEMIC IN THE UNITED STATES AND CONSTITUTES A VIOLATION OF HUMAN RIGHTS.

Domestic violence is an epidemic in the United States that severely impacts

are reported less than other violent crimes.<sup>5</sup> There are a myriad of reasons that victims do not report the abuse at all, and specifically to state agencies. Many victims feel shame and fear stigmatization. Victims are often dependent on their abusers either financially or for their legal immigration status. Our clients often share children or other family ties with their abusers that make complete separation nearly impossible. Moreover, as a following section addresses, those victims who experience the highest rates of abuse often have the fewest resources and greatest barriers when reporting and seeking help. For these and many other reasons, victims often choose not to or are unable to disclose the reality of their abusive situations.

Victims' experiences with law enforcement officers are a primary factor underlying the under-reporting of domestic violence. Our clients often find that, when they do call the police, they are disbelieved and not offered appropriate assistance. Police officers, the overwhelming majority of whom are men, tend to support traditional patriarchal gender roles, making it difficult for them to identify with and help female victims.<sup>6</sup> This bias towards patriarchal roles can also lead to erroneous interpretation of events and encounters, which in turn leads to mistaken conclusions, including assuming that the victim is not in danger or that no serious violent act has occurred.<sup>7</sup> Police biases, assumptions and judgments constitute further discrimination toward domestic violence victims, who do not receive the same level of objectivity as victims of other crimes.

Another important factor for domestic violence victims is that the alleged abuser is rarely prosecuted. In a 2000 survey, only 7.5% of women who were raped by an intimate partner, 7.3% of the women who physically assaulted by an intimate partner, and 14.6% of women who were stalked by an intimate partner reported that their attacker was criminally prosecuted.<sup>8</sup> Many of WEAVE's clients have expressed a belief that there is no recourse for them and no punishment for their abusers. This belief is especially strong among some of our clients of color and immigrant clients who feel that police and the judiciary devalue their victimization because they are people of color or immigrants. These experiences help to explain victims' reluctance to report occurrences of domestic violence and seek outside assistance.

A. Domestic Violence is a Crime Against Women and Constitutes Impermissible Discrimination Against Women.

Notwithstanding its prevalence, domestic violence in the United States is predominantly a crime against women. The overwhelming majority of victims are women. According to the federal government, between 1998 and 2002, women accounted for 73% of the victims of physical violence within the family, 84% of spouse abuse victims, and 86% of victims of violence against a relationship partner (boyfriend or girlfriend) in the

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<sup>6</sup> Martha Smitley, Susanne Green, & Andrew Giacomazzi, National Criminal Justice Reference Service, *Collaborative Effort and the Effectiveness of Law Enforcement Training Toward Resolving Domestic Violence* 19 (Jan. 14, 2002), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/191840.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> Patricia Tjaden & Nancy Thoennes, U.S. Department of Justice, *Bureau of Justice Statistics Special Report, Full Report of the Prevalence, Incidence and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey*, NCJ-183781 (Nov. 2000), available at <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf>.



U.S.<sup>9</sup> Women are five to eight times more likely than men to be victims of domestic violence.<sup>10</sup>

Moreover, domestic violence against women victims is significantly more severe and causes more serious injuries than that against men.<sup>11</sup> Women are far more likely than men to be the victims of battering at the hands of an intimate partner resulting in death.<sup>12</sup> Between 1976 and 2005, the U.S. Department of Justice reports one-third of all female murder victims were killed by an intimate partner, compared to only three percent of male murder victims.<sup>13</sup> Such extraordinary disparities underline the fact that domestic violence victims are experiencing terrible discrimination on account of gender.

Domestic violence is demonstrably a highly gendered experience. Therefore, the State response to this violence – whether good or poor – has a significantly disproportionate effect on women and their exercise of their human rights. When the State fails to respond adequately and appropriately to crimes of domestic violence, it is perpetuating unlawful discrimination.

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<sup>9</sup> Matthew R. Durose et al., U.S. Department of Justice, *Bureau of Justice Statistics, Family Violence Statistics: Including Statistics on Strangers and Acquaintances* 10 NCJ 207846 (June 2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fvs.pdf>.

<sup>10</sup> Lawrence A. Greenfeld et al., U.S. Department of Justice, *Bureau of Justice Statistics Factbook: Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends* 38 NCJ-167237 (Mar. 1998), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vi.pdf>.

<sup>11</sup> Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, with request for an investigation and hearing of the merits (Dec. 23, 2005) at 21-22 [hereinafter Gonzales Petition].

<sup>12</sup> Leonard J. Paulozzi, Linda E. Saltzman, Martie P. Thompson, & Patricia Holmgren, Center for Disease Control, *Surveillance for Homicide Among Intimate Partners, - United States, 1981 – 1998*, 50 (SS03); 1-16 ¶ 4 (Oct. 12, 2001), <http://www.cdc.gov/MMWR/preview/mmwrhtml/ss5003a1.htm>. See also, South Carolina Coalition Against Domestic Violence and Sexual Assault, *Prevalence of Domestic Violence*, available at <http://www.sccadvasa.org/articles/59.pdf> (last visited Oct. 15, 2008).

<sup>13</sup> U.S. Department of Justice, Office of Justice Programs, *Bureau of Justice Statistics, Homicide Trends in the U.S.: Intimate Homicide*, available at <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm> (last visited Oct. 15, 2008).

B. A Victim's Experience of Domestic Violence is Impacted by her Race, Gender, Class and Immigration Status.

Gender, class, race, and immigration status are significant determinants of the likelihood that a person will experience domestic violence and how the state will respond to her experiences. Domestic violence affects every racial, ethnic, religious, and immigrant community, crosses every income level and ag

African American and Caucasian counterparts.<sup>18</sup> WEAVE's experience is consistent with this reporting data, as disproportionately high numbers of women of color (and immigrant women) seek WEAVE services.

Women living in poverty experience domestic abuse at much higher rates than women in households with high incomes.<sup>19</sup> In the United States between 1993 and 1998, women with annual household incomes of less than \$7,500 were nearly seven times as likely as women with annual household incomes over \$75,000 to experience domestic violence.<sup>20</sup> During times when abusers experience financial or job instability, violence increases within the home.<sup>21</sup> These rates of violence, extremely high in every community, show that women living in poverty and women of color are more likely to experience domestic violence. Unfortunately, those who need services the most have the least access to services.<sup>22</sup>

Immigrant women are particularly likely to be underserved by the systems that are in place to protect victims and ensure accountability for the perpetrators of domestic violence. The nature of this phenomenon springs from two sources. First, immigrant women are less likely to avail of police and court protections than others because they do

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<sup>18</sup> Tjaden & Thoennes, *supra* note 8 at iv. *See also*

not trust those systems. They have justifiable fears related to the possibility of being deported. Many have limited English proficiency. Many experience stigma from their communities when they engage these systems. The effect of these combined factors on willingness to engage with the criminal justice system is already well-documented.<sup>23</sup>

The second source is less well understood: when immigrant women *do* report crimes and seek enforcement of protection orders, the response that they experience from the system very often puts them in a worse position than they were before reporting. A series of incidents from 2007 and 2008 drawn from WEAVE's own client base in the Washington, D.C. metropolitan area, amply illustrates some of these forces at work:

“Ana,<sup>24</sup>” a Latina woman with lawful permanent residence, received death threats from her husband, a retired military man and a U.S. citizen. She returned home one day to find every picture of the two of them in the house ripped to pieces, and she sought a protective order. Her husband admitted everything to the Judge, but said that he had just acted out of anger. He and the Judge discussed his military background, suggesting to Ana that the Judge connected with her husband and imputed credibility to him because of his military status. The Judge paid little heed to the bags of ripped photos our client had with her. The Judge denied her a protective order. The client told WEAVE, “I felt unheard because I was an immigrant.”

“Maria,” another Latina woman, also married to a U.S. citizen, endured five minutes of her husband crushing her leg in a doorway before police arrived. When

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<sup>23</sup> See, e.g., Leslye Orloff & Janice Kaguyutan, *Offering A Helping Hand: Legal Protections For Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL'Y & L. 95, 157 (2001).

<sup>24</sup> Names have been changed to protect client confidentiality.



client was able to call the police. Instead of enforcing the protection order, the responding officer, who spoke her language (Spanish), told her she would be better off talking to the abuser and trying to maintain a more peaceful relationship. This experience left the woman enormously fearful that her protection order was worthless, and that she was at her abuser's mercy.

WEAVE's immigrant clients have made an enormous leap of faith simply to engage the criminal justice system, but in too many cases, they were then met with disbelief and disrespect from police, prosecutors, judges, and juries. They endured accusations of manipulating the system for immigration purposes. Most horrifyingly, in cases where they were unable to prevail because of accusations and assumptions like these, they rightly fear that they have made their abusers more angry and more likely to strike back at them, whether here in the United States or in their home country if either party is deported.

These experiences demonstrate the necessity for each part of the judicial and law enforcement system to respond appropriately. In Fatima's story, above, the police responded well, and the prosecutor believed her, swiftly bringing her abuser to trial. He did not, however, anticipate the power of the defendant's arguments that the victim was somehow playing the system to get immigration status. Fatima was let down by the jury. The answer in that case might have been to bring in an expert on immigration law to explain to the jury how the criminal trial could not determine her immigration status.

Overloaded with cases and unfamiliar with immigrant victims' experiences, the prosecutor Overloaded with



intervention.<sup>25</sup> In recent decades, the women's movement in the United States has raised the public consciousness of domestic violence and advocated state responses that condemn rather than condone such violence. Although the public discourse has shifted slowly, there has been a significant change in the American public's awareness of domestic violence and a liberalization of public attitude toward state intervention in the home. These factors contributed to the development of local legislation that opened some legal remedies to domestic violence victims and put in place much stronger policies and structures in police agencies.<sup>26</sup>

Although the public discourse has shifted, law enforcement has continued to respond in ways that reflect earlier understandings about domestic violence as a private issue. Police officers responding to a victim's call often fail to treat the abuse as criminal. Many officers encourage informal resolution between the parties, urging the victim to work it out with the abuser.<sup>27</sup> As recently as 1984, only ten percent of large city police departments in the U.S. encouraged officers to make arrests for crimes of domestic violence.<sup>28</sup> Forty percent explicitly encouraged mediation; one half had no formal policy on domestic violence.<sup>29</sup> Arrests of abusers were rare in multiple studies.<sup>30</sup> Studies estimate that arrests occurred in only three to fourteen percent of all intimate partner cases to which

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<sup>25</sup> See Brief of National Coalition Against Domestic Violence and National Center for Victims of Crime as Amici Curiae Supporting Respondent at 16, [hereinafter Brief of NCADV] (citing Machaela M. Hctor, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 CAL. L. REV. 643, 649 (1997)).

<sup>26</sup> "According to the 1990 Law Enforcement Management and Administrative Statistics Survey (LEMAS), 93% of the large local police agencies (agencies with more than 100 officers) and 77% of the sheriffs' departments have written policies concerning domestic disturbances. In addition, 45% of the large local police agencies and 40% of the sheriffs' departments have special units to deal with domestic violence." Zawitz, *infra* note 74.

<sup>27</sup> Machaela M. Hctor, Comment, *Domestic Violence As a Crime Against the State: The Need for Mandatory Arrest in California*, 85 CAL. L. REV. 643, 650 (1997).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*



officers actually responded.<sup>31</sup> This failure of law enforcement to treat domestic violence as a crime was a primary impediment to effectively addressing domestic violence,<sup>32</sup> and reflects a history of wrongly disparate treatment of this particular crime as compared to other violent crimes.

To remedy this failure, many states and the District of Columbia have enacted legislation that requires police officers to make an arrest when there is probable cause to believe that one person has committed domestic violence or has violated a restraining order, also called a civil protection order.<sup>33</sup> These “mandatory arrest laws” eliminate police discretion. Some of these mandatory and pro-arrest policies were adopted in response to the federal Violence Against Women Act (VAWA), which specifically required these policies as a condition for various grants to states and local governments.<sup>34</sup> They illustrate public frustration with the inadequacy of police response and encourage police to treat domestic violence as a crime.

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<sup>30</sup> Deborah Epstein, *Procedural Justice: Tempering the State’s Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1852 (2002).

<sup>31</sup> *Id.* (citing Eve S. Buzawa & Carl G. Buzawa, Introduction, in *Domestic Violence: The Changing Criminal Justice Response* vii, xvi (Eve S. Buzawa & Carl G. Buzawa eds., 1992)).

<sup>32</sup> Hoctor, *supra* note 27.

<sup>33</sup> Andrew R. Klein, *The Criminal Justice Response to Domestic Violence* 95 (Cengage Learning 2003). *See also* NEAL MILLER, WHAT DOES RESEARCH AND EVALUATION SAY ABOUT DOMESTIC VIOLENCE LAWS? A COMPENDIUM OF JUSTICE SYSTEM LAWS AND RELATED RESEARCH ASSESSMENTS 91, n.270 (Dec. 2005) (draft), *available at*

B. Civil Protection Orders Are an Essential Means of Protecting Battered Women.

In an effort to require police to effectively respond to domestic violence in the face

C. Inadequate Law Enforcement Responses Fail Survivors and Negate the Effectiveness of Civil Protective Orders.

Victims of domestic violence who obtain restraining orders depend on and rightly expect police assistance in the enforcement of these orders.<sup>39</sup> As the Gonzales Petition explains in further detail, police enforcement of restraining orders through arrest and other means is crucial to protecting women's safety, as an order alone does not guarantee that the

private nature of the relationship, their fear of retaliation from their abuser, and their feeling that the police would not respond adequately to the abuse.<sup>46</sup> This fear of inadequate response is based on the reality of survivors' experiences.

1. Frequent Failure to Respond or to Respond in a Timely Way to 911 Calls

When notified of an incidence of domestic violence, police fail to respond to about 10% of calls from intimate violence victims.<sup>47</sup> A national study shows that, “[a]ll too often, police responded to domestic violence calls either by taking no action at all, by purposefully delaying response in the hope of avoiding confrontation....”<sup>48</sup> In a 2004 survey of 74 clients at the Domestic Violence Intake Center at the Superior Court of the District of Columbia, four clients reported that the police did not show up after they called to report an incident of domestic violence.<sup>49</sup> One person reported having to call the police four times within an hour to get them to respond.<sup>50</sup> For those callers to whom the police responded, the average response time was 33.24 minutes – ranging from two minutes to three hours.<sup>51</sup>

2. Failure to Arrest

When police do respond to calls from domestic violence victims, they often respond inappropriately by failing to make an arrest or by incorrectly arresting the victim. As addressed *supra*, some jurisdictions have adopted mandatory arrest laws as a policy that

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<sup>45</sup> *Id.*

<sup>46</sup> Greenfeld et al., *supra* note 10.

<sup>47</sup> *Id.*

<sup>48</sup> See Brief of NCADV, *supra* note 25, citing Hocror, *supra* note 27, at 649.

<sup>49</sup> Survey conducted by Survivors and Advocates for Empowerment (SAFE), Washington, DC (2004) [hereinafter SAFE Survey].

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

promotes victims' safety.<sup>52</sup> These laws have had measurable success in increasing the rates of arrests. For example, before the District of Columbia adopted a mandatory arrest policy, police arrested abusers in only 5% of domestic violence cases.<sup>53</sup> After adoption of a mandatory arrest policy, police arrested abusers in 41% of cases.<sup>54</sup> After the adoption of a mandatory arrest policy in New York City, felony domestic violence arrests increased by 33% and arrests for violation of protection orders increased by 76%.<sup>55</sup>

Nonetheless, not every jurisdiction has a mandatory arrest policy, and even those with such a law on the books do not always yield effective, consistent practices. Despite a mandatory arrest policy in the District of Columbia, of the victims in the above-mentioned



to accompany her back to the apartment after hours of intensive argument with her advocate. The police officer also instructed Maria not to call the police against her abuser because he was being a good father and helping her with her rent. The officer then refused to arrest the abuser, although he was in clear violation of the civil protection order.<sup>66</sup>

There are several factors that may contribute to the likelihood of arrest following a domestic violence call. For instance, if an abuser behaves aggressively toward the police officers involved, arrest is more likely.<sup>67</sup> By contrast, certain factors may discourage the police from arresting an abuser. One Washington court noted that the more closely related the two parties are the less likely police officers are to arrest the perpetrator.<sup>68</sup>

Ability of the parties to communicate with the police may also weigh heavily on whether or not an abuser is arrested. An abuser who is able to communicate with the police and represent him or herself as the more reasonable party, perhaps because of language ability, may thereby diminish the likelihood of an arrest. If a party experiences communication difficulties, however, she may become frustrated. If it is a victim who shows his or her frustration, the police may perceive them as unreasonable, and thus an arrest may be less likely to occur.

Apart from the low arrest rate of abusers following a police report for domestic violence, another troubling trend is the practice of “dual arrest,” whereby the victim is arrested alone or alongside his or her abuser. In jurisdictions with mandatory arrest policies, police often will “either throw up their hands, arrest both parties, and leave it to the courts to sort out, or choose to arrest the woman because she may appear to be the

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<sup>65</sup> Name has been changed to protect client’s identity.

<sup>66</sup> Case details are withheld to protect WEAVE client’s confidential information.

<sup>67</sup> Brief of NCADV, *supra* note 25, at 15.

aggressor to the untrained eye.”<sup>69</sup> Research shows that most of the women who were arrested following reports of domestic abuse were acting in self-defense.<sup>70</sup> One study suggests the dual arrest rate for intimate partner violence is only about 2%,<sup>71</sup> but other sources indicate that in some areas women make up almost a quarter of domestic violence arrestees.<sup>72</sup> These practices are particularly harmful to battered women:

Problems for the battered woman do not end with the arrest; she also faces the prospect of having her children removed by child protective services, being charged inappropriately, being pressured to plea bargain, being wrongfully convicted, having her arrest and conviction history used against her in subsequent custody proceedings, losing her job, and having the batterer use the threat of criminal prosecution to continue to control her.<sup>73</sup>

The prospect of such a result can be daunting to all women, but particularly to women of color and immigrant women, who are already disproportionately affected by domestic abuse. Police, therefore, must respond appropriately to domestic violence calls and follow mandatory arrest policies by arresting the abuser, both to ensure public safety and to avoid exposing the victim to additional harm.

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<sup>68</sup> Donaldson v. City of Seattle, 831 P.2d. 1098, 1104 (Wash. Ct. App. 1992) (stating that the more closely related the two parties are the less likely officers are to arrest).

<sup>69</sup> Emily Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1680 (2004); accord Margaret Martin Barry, *Protective Order Enforcement: Another Pirouette*, 6 HASTINGS WOMEN’S L.J. 339, 344 (1995); see also 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, 23 (2004).

<sup>70</sup> Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 831 (2001); Joan Zorza, *Must We Stop Arresting Batterers? Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929, 980 (1994).

<sup>71</sup> D0e365(m)v Hircs65(m)h2.5(e)-25(m)l.3( etls).



### 3. Failures of Evidence Gathering and Record Keeping, Preventing Effective Judicial Investigations and Prosecution of Domestic Violence

Another problem exists where police officers do respond but fail utterly to conduct adequate investigations or keep appropriate records, thereby harming the victim's chances of obtaining meaningful protection. Although the police do take official reports in the majority of reported incidents, nationally, they are more likely to take reports when an incident involves strangers and not intimate partners.<sup>74</sup> In a 2002 survey of survivors in Santa Rosa, California, "a significant number of responding officers failed to carry out even the most fundamental requirements of victim protection and the most basic level of evidence gathering essential for prosecuting the cases."<sup>75</sup> In one-third of cases, the officers did not ask victims about the presence of firearms.<sup>76</sup> In almost half of cases, officers did not take photographs, even though victims had visible injuries.<sup>77</sup> In 27% of cases, officers

III. JUDICIAL RESPONSES TO DOMESTIC VIOLENCE ARE INADEQUATE AND DISCRIMINATORY.

The United States Supreme Court decisi

domestic violence disputes on the state level also has an important impact on judicial understanding of domestic violence; each jurisdiction adopts its own method of judicial education, as well as its own remedy.<sup>84</sup>

police do not need to seek out and arrest an abuser if he has already fled the scene of the abuse by the time the police arrive.<sup>91</sup>

This judicial accommodation of police discretion runs counter to research showing that mandatory arrest policies benefit women fleeing domestic violence. In addition to contravening public support for policies th



Although discrimination can happen at all levels, federal courts routinely handle matters involving immigration law and are more likely to be familiar with the correct interpretation of the extent of immigrants' access to the courts. Unlike many states, federal judges are not elected, and are therefore slightly removed from the political pressures against immigrants prevalent today; this relative insulation shows in the string of decisions supporting immigrants and the barring of consideration of imulati0 -70TD.mny kinds of proceedings.<sup>101</sup>

B. -7585(Under the Guise of Efficiency, Cour)]E11755101FD0092Te of0023kw(t to Often Rush Through outmardized forms, sometimes with the help of a clerk or lay advocate. While these formsmy increase efficiency and ke the court experience less frightening, they also limit the ability of woen to tell their full story. these forms, "coplicated patterns of abuse are reduced to a box-checking format that evisceratesmeaning from the content of the doestic violence experience."

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<sup>101</sup> Lozano v. City of Hazleton, 496 F.Supp.2d 477 (M.D. Pa. 2007) (striking down anti-immigrant



truncated proceedings, judges sometimes refuse to hear crucial evidence.<sup>108</sup> Courts may categorically refuse to hear some issues central to a given petitioner's case, like child support, or may issue a boilerplate order without considering what would actually constitute comprehensive relief based on the unique facts of a given case.<sup>109</sup> Truncated hearings are especially difficult for victims who need interpreters, as the process of interpreting itself takes up time, eating away the precious few minutes that a victim may have to tell her story.

Survivors also face judicial pressures to resolve their issues outside of the protection order process. Judges have also asked that battered women file separate protection order, divorce, and custody actions, further confusing and frustrating petitioners, many of whom appear *pro se*.<sup>110</sup> These separate proceedings are unnecessary hurdles for any petitioner. *Pro se* litigants have particular difficulty negotiating these separate proceedings, compounded by the fact that many of them fear facing their batterer face-to-face in court.<sup>111</sup> Moreover, judges often encourage survivors to negotiate with their batterers, even though many studies have documented the ways in which it is

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<sup>108</sup> See Memoli & Plotino, *supra* note 103 (noting that the average time for each domestic violence case to be heard in New Jersey was approximately 5 minutes and 45 seconds); Ptacek, *supra* note 104, at 161 (reporting that in some courts studied in Massachusetts, a judge disposed of 8 consecutive civil protection order hearings in less than 18 minutes. He makes a "favorable" comparison with another judge who took 1 hour and 45 minutes to dispose of the same number. The second judge spent an average of 13 minutes per hearing as opposed to approximately 2 minutes per hearing spent by the first judge).

<sup>109</sup> See, e.g., *V.C. v. H.C., Sr.*, 257 A.D.2d 27, 31 (N.Y. App. Div. 1999) (trial court refusing to consider exclusive use of the residence in a protection order hearing); see also Kit Kinports & Karla Fischer, *Orthout(rl).C. v. Yestic viole8r*





has found the Family Court system there violates the human rights of battered women by holding them to a higher standard than fathers, treating them with disrespect, pressuring them to use face-to-face mediation with their abusers, and allowing the men to continue the emotional and financial abuse through the legal system.<sup>116</sup>

Judicial attitudes about an assignment to domestic violence cases is similarly concerning. In the perceived pecking order of judicial assignments, family court is seen as having a lesser status; some judges see domestic violence work as less prestigious, even trivial in nature.<sup>117</sup>

education, judges struggle to understand the complicated dynamics of abuse, as well as the realities of the effect that such violence has on women of color and immigrants. For example, there is evidence that some judges

implausible, because they cannot imagine such factors inciting violence against an intimate partner.<sup>126</sup> The converse can be true as well. Judges can impose a provocation and response (cause and effect) framework onto the stories petitioners tell about domestic violence,<sup>127</sup> thereby blaming the victim for the abuse she suffered and contributing to a pattern of systemic revictimization.

When judges impose this provocation and response framework onto incidents of domestic violence, they can dangerously misconstrue abuse as an isolated assault, instead of seeing the violence as part of a larger systematic power and control dynamic.<sup>128</sup> This misunderstanding may downplay, in the judge's mind, the need for ongoing, comprehensive relief, and convince the judge instead that isolated punishment for the seemingly isolated instance of violence will be enough.

Judicial attitudes toward domestic violence cases also manifest themselves in the form of inappropriate and disrespectful comments made in open court. In North Dakota, a judge lectured a petitioner, telling her, "If you go back [to Respondent] one more time, I'll hit you myself."<sup>129</sup> Upon hearing evidence of spousal abusive, a judge in Georgia ordered the abusive defendant to take his battered wife out to dinner every week and "try to work it out."<sup>130</sup> A judge in New York began a domestic violence hearing by saying, "Well, well, well, we had a little domestic squabble, did we? Naughty, naughty. Let's kiss and make up

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<sup>126</sup> Karen Czapanskiy, *Domestic Violence, the Family, and the Lawyering Process: Lessons from Studies on Gender Bias in the Courts*, 27 FAM. L.Q. 247, 258-60 (1993).

<sup>127</sup> See Richard Delgado & Jean Stefancic, 39

and get out of my court.”<sup>131</sup> A petitioner in Florida was sentenced to a day in county jail for running from the court room crying after she was denied a protection order against her

Ankita's ordeal began in early 1998 when she arrived in the United States with her new husband, an Indian software engineer working for a prestigious Silicon Valley firm. For nearly two years he beat her almost daily; slapping, punching, and kicking her even when she was pregnant. She finally called the cops the day both her eardrums burst from his blows. But when he threatened to divorce her for 'ruining his life,' Ankita begged him to let her stay. 'I told him, "I'm sorry. I won't do this again," and fell at his feet crying,' she says. For Ankita, a noncitizen, divorce spells deportation. If her husband had been a citizen or permanent resident of the United States, she would have had the right to leave him and apply for her own green card to stay in the country. But her husband was in the country on an H-1B work visa . . . Because Ankita's visa, a spousal H-4, was inextricably

comparable representation, and in some cases representation at all.<sup>140</sup> Language barriers can inhibit victims' securing of representation, putting them at a disadvantage in court against represented opposing parties. Some immigrant survivors of domestic violence also worry about how much their abuser's defense of spousal abuse being appropriate in their home country will resonate with the judge hearing their case.<sup>141</sup>

Although the Violence Against Women Act (VAWA) created several immigration status options for survivors of domestic violence,<sup>142</sup> these options still require months of work by a lawyer to piece together applications, and months of waiting while immigration authorities review applications.<sup>143</sup> These waiting periods can be fraught with anxiety, and fear over approaching authorities or the inability to find a volunteer lawyer may still dissuade some immigrant victims of domestic violence from seeking this relief.

#### IV. CONCLUSION.

What Ms. Gonzales suffered is not, unfortunately, unique to her. Like so many domestic violence survivors of color and immigrant survivors in the United States, Ms. Gonzales, a woman of Mexican and Native American descent, was ignored and her case mishandled by police. Her legal remedies were curtailed by the United States Supreme Court. As her case demonstrates and as this brief has argued, the protections in place for domestic violence victims in the United States are flawed at best, and women of color and immigrant women remain at especially high risk for having their rights violated.

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> Violence Against Women Act of 2005, H.R. 3402, 109th Cong. §§ 801-834 (2005), *codified at* 42 U.S.C. § 3796hh.

<sup>143</sup> See Brief for New York Legal Assistance Group, *supra* note 34.

Women in the United States need effective judicial recourse and vigilant enforcement of their human rights. Amici respectfully request that the Inter-American Commission on Human Rights find that the Castle Rock Police Department's actions in Ms. Gonzales' case, and the subsequent United States Supreme Court decision, violated her human rights. We further request that the Commission confirm States' affirmative duties to exercise due diligence to protect domestic violence survivors' rights and affirm that, under international law, violence against women is a form of discrimination and States are responsible for protecting women against the human rights violations of non-state actors. We ask the Commission to recommend that the United States provide full, effective remedies for Ms. Gonzales including individual relief and legal and programmatic reform that will provide full, effective judicial remedies for domestic violence survivors in the U.S., as set forth in Ms. Gonzales's petition to the Commission.

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Respectfully submitted,

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Amy Myers  
Elizabeth Keyes  
Morgan Lynn  
Women Empowered Against Violence  
(WEAVE)  
1111 16<sup>th</sup> Street NW, Suite 200  
Washington, DC 20036  
United States of America

Counsel for Amicus Curiae