

Petition No. P-1490-05

Before the

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

JESSICA RUTH GONZALES

vs.

THE UNITED STATES OF AMERICA

AMICI CURIAE BRIEF IN SUPPORT OF PETITIONER

Presented by

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

HORVITZ & LEVY LLP
David S. Ettinger
Mary-Christine Sungaila
15760 Ventura Boulevard, 18th Floor
Encino, California USA 91436-3000
Phn: (818) 995-0800
Fax: (818) 995-3157
E-Mail:
dettinger@horvitzlevy.com
msungaila@horvitzlevy.com

LEGAL MOMENTUM
Jennifer Brown
Maya Raghu
395 Hudson Street, 5th Floor
New York, New York USA 10014-3669
Phn: (212) 413-7516
Fax: (212) 226-1066
E-mail:
jbrown@legalmomentum.org
mraghu@legalmomentum.org

ATTORNEYS FOR AMICI CURIAE

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INTEREST OF AMICI

Amici curiae are local, national, and international women's and human rights organizations,^{1/} all of whom recognize the world consensus (reflected in treaties and customary international law) that domestic violence violates the basic human rights of women and children and that nation states must provide effective protection from such violence. On July 24, 2007, the Commission issued a favorable decision on admissibility in Jessica Gonzales' case and agreed to determine the merits of her case. *Amici* now urge the Commission to determine that the police failure to enforce the restraining order issued by a Colorado court

^{1/} Descriptions of the individual *amici* are set forth in the attached Appendix.

violence cannot be afforded -- no matter what the laws passed by the legislature might provide. Indeed, it is established that States' international obligations to protect women from violence include not only having laws on the books or protection orders issued, but also enforcing those laws. Indeed, it is established that States' international obligations to protect women from violence include not only having laws on the books or protection orders issued, but also enforcing those laws.

2/ The United States is a member of the Organization of American States (OAS), but has not ratified the Convention. See Inter-American Commission of Women, *Status of Signing and Ratification of the Convention of Belém do Pará*,

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

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

5/ Gender-based violence– and domestic violence in particular--is common throughout the world. “In every country where reliable, large-scale studies on gender violence are available,

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

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

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

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

The affirmative duty to protect women from violence is also consistent with the 2005 World Summit Outcome adopted by the United Nations General Assembly. That document imposed on individual States a broad responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity." UN General Assembly 2005 World Summit Outcome, Sept. 14-16, 2005, ¶ 138 (Sept. 15, 2005). In addition to recognizing this historic "responsibility to protect," the 2005 World Summit Outcome also "recognize[d] the need to pay special att

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

As a party to the ICCPR, the United States must “respect and [] ensure to all individuals within its territory . . . the rights recognized in the present Covenant,” “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,” including judicial remedies, for such violations, and “ensure that the competent authorities shall enforce such remedies.” *Id.* art. 2. Recently, the United States government has acknowledged and reaffirmed these obligations, stating that “[i]t shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR” (Exec. Order No. 11935, 1 Fed. Reg. 68001 (Dec. 10, 1998)).

The Human Rights Committee, which is charged with interpreting and administering the ICCPR, has made clear that the ICCPR allows each state party to “choose their method of implementation” of the ICCPR within its territory. *Chandrasekaran v. United States*, 10 H.R. Comm. Dec. 10, 1998, at ¶ 10.1.

8/ See, e.g., OHCHR, Human Rights Comm., *Compilation of General Comments and General Recommendations*, general cmt. 4, art. 3 (13th Sess. 1981) (adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 4 (1994)), available at <http://www1.umn.edu/h>

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

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

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

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

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

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

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

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

11/ See generally

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

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

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

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

condemned “discrimination against women in all its forms” and agreed to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise,” “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutionsl trib

12/ (...continued)

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

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

The Council of Europe's Committee of Ministers has issued a Recommendation to member states which reaffirms the Council's "determination to combat violence against women" and "[r]ecognises[s] that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims." Council of Eur., Comm. of Ministers, *Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the Protection of Women Against Violence* (Apr. 30, 2002), available at <https://wcd.coe.int/ViewDoc.jsp?id=280915> (last visited Dec. 4, 2007). The Committee of Ministers further recommends that member states should "ensure that, in cases where the facts of violence have been established, victims receive appropriate comp0.00 0.F5(inis)Tj20.5200 0.0000 (0.

requires State parties to “enact and enforce laws to prohibit all forms of violence against women” and “ensure . . . effective access by women to judicial and legal services” to remedy the violence. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2d Ord. Sess. of the Assemb. of the Union, arts. 4, 8, adopted 2003, available at <http://www.achpr.org/english/women/protocolwomen>.

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

Here, consistent with international norms, the state of Colorado provided a mechanism for protecting Ms. Gonzales and her children from violence at the hands of her estranged husband – it enacted a statute allowing a judge to issue a restraining order with a mandatory enforcement requirement. However, this only partially fulfilled Colorado’s responsibilities – after the restraining order was issued, the local police refused to enforce it.

14/ (...continued)

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

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

15/ (...continued)

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

16/ In

and Eradication of Violence Against Women by delaying for more than 15 years the prosecuti

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

18/ See also *Airey v. Ireland*, 32 Eur. Ct. H.R. (ser. A) ¶¶ 9, 24, 28 (1979) (holding that Ireland violated Mrs. Airey'. rgBT143.0400 227.0400).

II.

CONTRARY TO INTERNATIONAL LAW, DOMESTIC
VIOLENCE HAS BEEN AND CONTINUES TO BE
TREATED AS A PRIVATE FAMILY MATTER IN

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

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

The United States' early legacy of explicit approval of and, later, utter indifference to, acts of domestic violence traces its roots back to Roman times. In 753 B.C., Ancient Rome created the Laws of Chastise~~an~~

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

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

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

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

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

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

Final Report: Attorney General's Task Force on Family Violence,

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

The civil protective order remains one of the most widely available and commonly used interventions for victims of domestic violence today. *See* Goodmark, *supra*, 23 St. Louis U. Pub. L. Rev. at 10-11; *see also* Tsai, *supra*, 68 Fordham L. Rev. at 1292. Indeed, orders of protection have been recognized as “the front line in the war against the abuse of women.” Christopher Shu-Bin Woo, Comment, *Familial Violence and the American Criminal Justice System*, 20 U. Haw. L. Rev. 375, 392 & n. 116 (1998). Courts have broad discretion in tailoring a protective order to meet the unique circumstances of the battered woman and her family. *Id.* at 393-94. As noted in *Doyle*, orders of protection can include provisions restricting contact; prohibiting abusive behavior; determining child custody and visitation issues; mandating

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

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

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

enforcement of the protective orders through arrest, the orders become worthless pieces of paper. Law enforcement officers' power to arrest is the "first link in a vital chain of institutional interventions that save the lives of battered women and children[.]" Barbara J. Hart, *Arrest: What's the Big Deal*, 3 Wm. & Mary J. Women & L. 207, 211 (190000 0.00000 1.00000 0.0000 0

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

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

While “[a]t the international level, violence against women is finally⁴⁵ not Merit W

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

In China, for example, “[d]omestic violence is an issue that has long been ignored by the government and wrongly perceived by Chinese society as acceptable until very recently.” Zhao, *supra*, 18 UCLA Pac. Basin L.J. at 211. “The tradition of male superiority is so deep-rooted that it continues to guide people’s behavior even in current society. Husbands view it as their right to resolve domestic disputes by violence.” *Id.* at 220. “Judges tend to view domestic violence as a domestic problem. ‘The view that it is a lesser crime for a man to break his wife’s jaw than his neighbor’s predates the invention of the wheel.’ Very often, battered wives’ cases do not end in prosecutions as the police usually advise people to solve their problems peacefully

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

[This] can be shown by a case represented by the Women's Legal Research and Service Center of Peking University Law School. The victim, Zhang Xiulan, was pushed down on the floor and brutally battered by her husband because she returned home from work too late – around 8:00 o'clock

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

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

24/ Similar attitudes persist in numerous other countries as well. See Amnesty Int'l, *Sexual Violence Against Women and Girls in Jamaica - 'Just a Little Sex,'* AI Index AMR 38/002/2006, June 22, 2006 ("Violence against women in Jamaica persists because the state is failing to tackle discrimination against women, allowing social and cultural attitudes which encourage discrimination and violence."); Amnesty Int'l *Hong Kong: Amnesty International Briefing to the UN Committee on the Elimination of Discrimination Against Women*, AI Index A

24/ (...continued)

<http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm> (last visited Dec. 3, 2007) (“Spousal abuse was considered an extremely private matter involving societal notions of family honor, and few women went to the police in practice. Police were reluctant to intervene in domestic disputes and frequently advised women to return to their husbands.”); Amnesty Int’l, *Turkey: Women Confronting Family Violence*, AI Index EUR 44/013 2004, June 2, 2004 (“Violence against women is widely tolerated and even endorsed by comR 4

treat it as a non-justiciable, private or family matter or, at best, an issue for civil, rather than criminal, courts”; “[r]egistering complaints of domestic violence can be even more difficult than registering rape by a stranger, because, as a result of gender bias and a lack of training, the police almost always fail to recognize domestic violence as any kind of crime.”); Amnesty Int’l, *Albania: Violence Against Women in the Family: It’s*

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

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

persons.”); Human Rights Watch, *Reconciled to Violence: State Failure to Stop Domestic Abuse*

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

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

CONCLUSION

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

January 4, 2008

Respectfully submitted,

HORVITZ & LEVY LLP

David S. Ettinger

Mary-Christine Sungaila

15760 Ventura Boulevard, 18th Floor

Encino, California USA 91436-3000

(818) 995-0800

LEGAL MOMENTUM

Jennifer Brown

Maya Raghu

395 Hudson Street, 5th Floor

New York, New York USA 10014-3669

(212) 413-7516

Attorneys for *Amici Curiae*

APPENDIX

WORLD ORGANIZATION FOR HUMAN RIGHTS USA

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

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

Human Rights USA has also pursued U.S. accountability through litigation in the Inter-American system. In March, 2007, in the case of

people who are experiencing abuse in their relationships or homes in protective order cases and related family law matters. Our 10 years of experience providing legal support to young victims of domestic abuse guide our support of this brief. Through our direct l

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CALIFORNIA WOMEN'S LAW CENTER

The California Women's Law Center (CWLC) is a statewide, nonprofit law and policy center that works to ensure, through systemic change, that life opportunities for women and girls are free from unjust social, economic and political constraints. CWLC was established in 1989 to address the comprehensive civil rights of women and girls in the following priority areas: Violence Against Women, Sex Discrimination, Women's Health, Women's Economic Security, Race and Gender and the Exploite com

THE FEMINIST MAJORITY FOUNDATION

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

THE ALLARD K. LOWENSTEIN

INTERNATIONAL HUMAN RIGHTS CLINIC

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

NATIONAL CENTER FOR WOMEN & POLICING

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

Through leadership development programs, research, training conferences, and outreach to criminal justice researchers and educators,

protection of our members and

NATIONAL WOMEN'S LAW CENTER

The National Women's Law Center (NWLC) is a non-profit legal
advocacy org

example, in *Zelig v. County of Los Angeles*, WLALA joined the respondents in urging the California Supreme Court to recognize the risk of separation violence in fam