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## The Role of International Bodies in Influencing U.S. Policy to End Violence Against Women

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## The Role of International Bodies in Influencing U.S. Policy to End Violence Against Women

### Cover Page Footnote

Lenora M. Lapidus is the Director of the American Civil Liberties Union Women's Rights Project where she focuses on economic justice for low-income women of color, violence against women, equal educational opportunities for women and girls, and women and girls in the criminal and juvenile justice systems. In each of these areas, Ms. Lapidus incorporates a human rights framework into her litigation and advocacy and has engaged in several international human rights processes including advocacy before the United Nations Human Rights Committee in its review of U.S. compliance with the ICCPR; the U.N. CERD Committee; the U.N. Commission on the Status of Women; U.N. Special Rapporteurs on Violence Against Women, Trafficking, Adequate Housing, and the Rights of Migrants; a U.S. Social Forum Court of Women; a Domestic Workers Human Rights Tribunal; and is currently counsel in *Gonzales v. United States*, a case pending before the Inter-American Commission on Human Rights. I would like to thank Joshua David Riegel for his assistance in preparing this essay. In addition, I would like to thank Jamil Dakwar, Steven Watt, and Chandra Bhatnagar, of the ACLU Human Rights Program, for helping me understand the international human rights systems and working with me to engage the various international bodies described herein; Laleh Ispahani, Director of Transparency and Integrity Fund at the Open Society Institute and formerly of the ACLU Racial Justice Program, for collaborating on several of these advocacy efforts and reviewing a draft of this essay; Ann Beeson, Director of the U.S. Program at the Open Society Institute and formerly the Associate Legal Director of the ACLU, for establishing the ACLU Human Rights Program and directing it in its formative years during which I had the opportunity to engage in many of the human rights mechanisms described herein; and Steven R. Shapiro, the Legal Director of the ACLU, and Anthony D. Romero, the Executive Director of the ACLU, for enabling me to participate in this important work of engaging international human rights mechanisms in an effort to influence U.S. policy and eradicate violence against women as part of my daily work. Further, I would like to thank Catherine Powell, Professor and Director of the International Law and the Constitution Initiative at Fordham Law School's Leitner Center on International Law and Justice, for organizing the Symposium and inviting me to present on the panel, *The Role of International Bodies in Influencing U.S. Policy*, and to submit this essay for publication. Finally, and most importantly, I would like to thank Jessica Lenahan, formerly *Gonzales*, for her courage, strength, and willingness to fight to ensure that police are held accountable if they fail to protect adequately women and children from domestic violence. It has been inspiring working with Jessica. Throughout this essay, I will refer to her as Jessica Gonzales as that is how she is known in legal proceedings and international human rights mechanisms.

# THE ROLE OF INTERNATIONAL BODIES IN INFLUENCING U.S. POLICY TO END VIOLENCE AGAINST WOMEN

*Lenora M. Lapidus\**

## INTRODUCTION

On June 27, 2005, the U.S. Supreme Court in *Town of Castle Rock v. Gonzales*,<sup>1</sup> held that police failure to enforce a domestic violence order of

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\* Lenora M. Lapidus is the Director of the American Civil Liberties Union Women's Rights Project where she focuses on economic justice for low-income women of color, violence against women, equal educational opportunities for women and girls, and women and girls in the criminal and juvenile justice systems. In each of these areas, Ms. Lapidus incorporates a human rights framework into her litigation and advocacy and has engaged in several international human rights processes including advocacy before the United Nations Human Rights Committee in its review of U.S. compliance with the ICCPR; the U.N. CERD Committee; the U.N. Commission on the Status of Women; U.N. Special Rapporteurs on Violence Against Women, Trafficking, Adequate Housing, and the Rights of Migrants; a U.S. Social Forum Court of Women; a Domestic Workers Human Rights Tribunal; and is currently counsel in *Gonzales v. United States*, a case pending before the Inter-American Commission on Human Rights.

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1. 545 U.S. 748 (2005).

protection as required by a state's mandatory arrest law did not violate the Due Process Clause of the U.S. Constitution. In a 7-2 decision authored by Justice Antonin Scalia, the Court found that, even though a court in Colorado had issued a protective order to Jessica Gonzales based on a finding that her ex-husband posed a threat to her and her children, and notwithstanding Colorado's mandatory arrest law, which requires the police to arrest or seek a warrant for the arrest of anyone who violates an order of protection, Jessica Gonzales had no procedural due process right to police enforcement of her protective order.

The facts of this case, the legislative history of Colorado's mandatory arrest law, and the continuing widespread problem of lack of police accountability for failing to protect women from domestic violence demanded that the Supreme Court's dismissal of her case not be the final word in Jessica Gonzales's quest for justice. Thus, in collaboration with the American Civil Liberties Union (ACLU), Jessica Gonzales has pursued claims against the United States through international and regional human rights mechanisms. After a brief summary of the case, this essay will discuss the advocacy efforts before those international bodies and the ways in which these efforts have influenced U.S. policy.

## I. PROCEEDINGS IN U.S. COURTS

### A. *Background Facts*

Jessica Gonzales lived in Castle Rock, Colorado. In May 1999, she obtained a domestic violence order of protection against her estranged husband, Simon Gonzales. The order required him to stay away from her and their three daughters, Leslie, who was seven, Katheryn, eight, and Rebecca, ten. The protective order reiterated Colorado law, which mandates that an "officer shall arrest, or . . . seek a warrant for the arrest" of an individual when probable cause exists to believe that the individual has violated a protective order.<sup>2</sup> Colorado's law, like mandatory arrest laws around the country, was adopted specifically to address the longstanding problem of police failure to treat domestic violence seriously, and in order to remove police discretion in such circumstances.

A few weeks after Jessica Gonzales had obtained the order, while the children were playing outside of her house, Simon Gonzales kidnapped the three girls. At about 5:30 p.m., Jessica Gonzales called the Castle Rock Police Department to inform them that she believed her ex-husband had taken the children in violation of her protective order and requested that the police search for the children and bring them home. Over the next ten hours, Jessica Gonzales repeatedly contacted the police, by phone and in person, and begged them to enforce her protective order. Each time, the police told her they could not do anything and that she should call them

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2. COLO. REV. STAT. § 18-6-803.5(3) (Supp. 1993).

back later if Simon Gonzales had not brought the children home. At 8:30 p.m., Jessica Gonzales reached her ex-husband on his cell phone and learned that he had the three girls at an amusement park in Denver. Jessica Gonzales immediately reported this information to the police and provided them with a description of Simon Gonzales's truck. Still, the police refused to act, this time saying that Denver was out of their jurisdiction. Finally, at 3:30 a.m., Simon Gonzales drove up to the police station and opened fire. The police shot back and killed him. When they looked in the cab of his truck, the police found the bodies of the three dead girls. The girls may have been killed by Simon Gonzales with a gun that he purchased that day, during the time that Jessica Gonzales had been pleading with the police to enforce her order of protection. It is also possible that the girls were killed by gun fire from the police barrage of bullets aimed at Simon Gonzales and his truck. Certainly, their bodies were riddled with bullet wounds from more than one gun. Because the Castle Rock Police Department has never conducted a thorough investigation of the occurrences of June 22 and 23, 1999, Jessica Gonzales remains uncertain as to the exact time, place, and manner of the deaths of her three daughters.

#### B. *District Court and Tenth Circuit Court of Appeals*

In June 2000, Jessica Gonzales filed a lawsuit against the Castle Rock Police Department alleging that the police failure to enforce her protective order violated her substantive and procedural due process rights. The U.S. District Court for the District of Colorado dismissed the action,<sup>3</sup> relying on *DeShaney v. Winnebago County Department of Social Services*.<sup>4</sup> In *DeShaney*, the Supreme Court held, in 1989, that the State had no constitutional duty to protect Joshua DeShaney from abuse by his father, even after receiving reports of such possible abuse, because an individual has no substantive due process right to protection by the State from harm committed by a private individual.<sup>5</sup>

The district court, following the reasoning of *DeShaney*, dismissed Jessica Gonzales's due process claims, holding that the Castle Rock Police Department had no duty to protect her or her children from harm caused by Simon Gonzales.<sup>6</sup> In its conclusion, the court repeated a quote from *DeShaney*:

"Judges and lawyers, like other humans, are moved by natural sympathy in a case like this to find a way for [the deceased children] and [their] mother to receive adequate compensation for the grievous harm inflicted upon them. But before yielding to that impulse, it is well to remember

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3. See *Gonzales v. City of Castle Rock*, No. Civ.A.00 D 1285, 2001 WL 35973820 (D. Colo. Jan. 23, 2001).

4. 489 U.S. 189 (1989).

5. See *id.* at 195.

6. See *Gonzales*, 2001 WL 35973820, at \*5.

once again that the harm was inflicted not by the [Defendants], but by [Simon Gonzales].”<sup>7</sup>

This human impulse and “natural sympathy,” which U.S. constitutional law rejects, is at the heart of the international human rights system, as this essay will discuss later.<sup>8</sup> The desired goal, however, is not for “adequate compensation” because no monetary damages can bring back Jessica Gonzales’s three daughters. Rather, the goal is to stop such atrocities from occurring again to some other mother who seeks police protection against an abusive father. The goal is to obtain a public statement that the police malfeasance in this case is actionable and that the Castle Rock Police Department should be held accountable for its failure to protect Jessica Gonzales and her three young daughters from the violence that occurred.

On appeal, the U.S. Court of Appeals for the Tenth Circuit affirmed the district court’s dismissal of Jessica Gonzales’s substantive due process claim but reversed with regard to her procedural due process claim.<sup>9</sup> The Tenth Circuit held that the mandatory arrest provisions of Colorado state law gave Jessica Gonzales an entitlement to police enforcement of her protective order, as a form of property right, and that the Constitution prohibited the State from depriving her of this right without some fair procedure.<sup>10</sup> The court held that the police were required, at a minimum, to listen to Jessica Gonzales’s request for enforcement of the protective order, make inquiries to determine whether probable cause existed to believe that the protective order had been violated, and inform Jessica Gonzales about their intended response and whether they would seek to arrest Simon Gonzales.<sup>11</sup> The court found that the Castle Rock Police Department did none of these things, and thus Jessica Gonzales had stated a claim for violation of her right to procedural due process.<sup>12</sup> The Town of Castle Rock sought review by the full Tenth Circuit, which affirmed the panel’s decision en banc.<sup>13</sup>

### C. *United States Supreme Court*

The Town of Castle Rock sought certiorari by the Supreme Court. When the Court granted certiorari, the ACLU Women’s Rights Project got involved. We coordinated the amicus effort, overseeing the production of nine amicus briefs on behalf of approximately 150 organizations and individuals, and wrote our own.<sup>14</sup> We also consulted with Jessica Gonzales

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7. *Id.* (quoting *DeShaney*, 489 U.S. at 202–03) (alterations in original).

8. *See infra* Part II.

9. *Gonzales v. City of Castle Rock*, 307 F.3d 1258, 1266 (10th Cir. 2002).

10. *See id.* at 1264–66.

11. *See id.* at 1265.

12. *See id.* at 1266.

13. *Gonzales v. City of Castle Rock*, 366 F.3d 1093, 1118 (10th Cir. 2004) (en banc).

14. Brief Amicus Curiae of the American Civil Liberties Union and ACLU of Colorado, et al. Supporting Respondent, *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005) (No. 04-278), 2005 WL 328202; *see also* Brief Amici Curiae of National Network to End

and her attorney in preparation for the Supreme Court briefing and argument.

In June 2005, the Supreme Court reversed the Tenth Circuit's en banc decision, holding that Jessica Gonzales's due process rights had not been violated because, despite Colorado's mandatory arrest law, Jessica Gonzales had no personal entitlement to enforcement of her protective order. In his majority opinion, Justice Scalia reasoned first, that although Colorado law says the police "shall" arrest or seek a warrant for arrest, "shall" does not mean shall, because it is used here, as in many statutes, without obligating the government to take action; the "mandatory arrest" law is not in fact mandatory; and police always retain discretion about how best to carry out their functions.<sup>15</sup> Second, Justice Scalia asserted, even if the law actually meant what it said, and required police to arrest or seek a warrant for arrest when an order of protection is violated, that does not mean the *victim* has a personal entitlement to police enforcement; rather the police obligation is imposed to benefit society as a whole.<sup>16</sup> Finally, even if the law were mandatory, and even if an individual had some personal entitlement to police enforcement, this entitlement would not be the type of interest that the Due Process Clause protects, because it provides no monetary value to the holder of the order and provides her only an indirect benefit.<sup>17</sup> Thus, the Court held, Jessica Gonzales had failed to state a claim and her case should be dismissed.<sup>18</sup>

The dissent, written by Justice John Paul Stevens and joined only by Justice Ruth Bader Ginsburg, argued that the majority opinion ignored the clear language of Colorado's mandatory arrest statute, as well as the legislative history of this statute and others like it across the country, which were enacted specifically to address the problem of police failure to treat domestic violence as seriously as other crimes and to remove police discretion with regard to enforcement.<sup>19</sup> Further, the dissent asserted, the

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Domestic Violence et al. Supporting Respondent, *Gonzales*, 545 U.S. 748 (No. 04-278), 2005 WL 353608; Brief of National Coalition Against Domestic Violence et al. as Amicus Curiae Supporting Respondent, *Gonzales*, 545 U.S. 748 (No. 04-278), 2005 WL 353985; Brief of National Black Police Association et al. as Amici Curiae Supporting Respondent, *Gonzales*, 545 U.S. 748 (No. 04-278), 2005 WL 328203; Brief of International Law Scholars et al. as Amici Curiae Supporting Respondent, *Gonzales*, 545 U.S. 748 (No. 04-278), 2005 WL 328200; Brief of Peggy Kerns, Former Member of the House of Representatives of Colorado et al. as Amici Curiae Supporting Respondent, *Gonzales*, 545 U.S. 748 (No. 04-278), 2005 WL 353694; Brief Amicus Curiae of the National Association of Women Lawyers et al. Supporting Respondent, *Gonzales*, 545 U.S. 748 (No. 04-278), 2005 WL 328201; Brief Amicus Curiae of the Family Violence Prevention Fund et al. Supporting Respondent, *Gonzales*, 545 U.S. 748 (No. 04-278), 2005 WL 353693; Brief Amicus Curiae of AARP in Support of Respondent, *Gonzales*, 545 U.S. 748 (No. 04-278), 2005 WL 353692. All amicus briefs are also available at <http://www.aclu.org/scotus/2004/20919res2005021504278/20919res20050215.html>.

15. See *Gonzales*, 545 U.S. at 760–63.

16. See *id.* at 764–66.

17. See *id.* at 766–68.

18. See *id.* at 768–69.

19. See *id.* at 779–81 (Stevens, J., dissenting).

purpose of an order of protection is clearly to benefit the specific holder of the order, whom a court has found faces a particular risk of harm from an identified potential assailant, and not just to benefit society at large.<sup>20</sup> Finally, the dissent pointed out that the Due Process Clause frequently has been interpreted to protect other nontraditional property rights such as welfare benefits,<sup>21</sup> disability benefits,<sup>22</sup> public education,<sup>23</sup> utility services,<sup>24</sup> government employment,<sup>25</sup> as well as other state conferred entitlements,<sup>26</sup> and that police enforcement of a protective order as required by Colorado's mandatory arrest law is no different. None of these other recognized forms of "property" has a precise monetary value and each only indirectly benefits the individual, just as an entitlement to police enforcement of Jessica Gonzales's protective order provides in this context.<sup>27</sup>

The Supreme Court in *Gonzales* thus denied any constitutional remedy for women who are harmed as a result of police failure to follow the law and adequately protect them from domestic violence.<sup>28</sup> In most

20. See *id.* at 786–89.

21. See generally *Goldberg v. Kelly*, 397 U.S. 254 (1970).

22. See generally *Mathews v. Eldridge*, 424 U.S. 319 (1976).

23. See generally *Goss v. Lopez*, 419 U.S. 565 (1975).

24. See generally *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978).

25. See generally *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

26. See, e.g., *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) (finding that due process prohibits the arbitrary denial of a person's interest in adjudicating a claim before a state commission); *Bell v. Burson*, 402 U.S. 535 (1971) (finding that due process requires fair procedures before a driver's license can be revoked pending judgment on an accident claim).

27. See *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 789–90 (2005) (Stevens, J., dissenting).

28. The Court had previously foreclosed any claims asserting a substantive due process violation in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 195–201 (1989). Further, although federal courts have on occasion provided remedies to victims of domestic violence under the Equal Protection Clause in cases where victims have shown that police failure to protect the victim was the result of discriminatory intent, see *Thurman v. Torrington*, 595 F. Supp. 1521 (D. Conn. 1984); *Fajardo v. Los Angeles*, 179 F.3d 698 (9th Cir. 1999), such a claim is unlikely to prevail before the Supreme Court today. To prevail on a claim of sex discrimination in violation of the Equal Protection Clause, a litigant would have to demonstrate that a particular police response to domestic violence was taken with the invidious *intent* to harm women—in other words, that a decision maker "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon [women]." *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979); see also *Eagleston v. Guido*, 41 F.3d 865, 878 (2d Cir. 1994) (finding that victim of domestic violence could not prove equal protection violation where she failed to demonstrate that discrimination against one sex was a motivating factor); *Ricketts v. City of Columbia, Mo.*, 36 F.3d 775, 781–82 (8th Cir. 1994) (concluding that a victim of domestic violence had no equal protection claim because there was no evidence that male victims of domestic abuse were treated differently than female victims of domestic abuse, and there was no other admissible evidence of discriminatory intent). Because neither evidence of a policy's adverse impact on women nor evidence of a decision maker's awareness of this impact alone is sufficient to establish intentional discrimination, sex discrimination claims challenging a police department's response to domestic violence have typically failed in the absence of "smoking gun" evidence in the form of discriminatory statements by law enforcement personnel. See *Eckert v. Town of Silverthorne*, 25 Fed. App'x 679 (10th Cir.



circumstances, this ruling by the Supreme Court would be viewed as the final step in challenging the police malfeasance. However, Jessica Gonzales was not willing to simply go home and accept defeat. And neither were her attorneys at the ACLU. Thus, we pursued international human rights strategies to raise the visibility of this problem and to force the United States to engage in a dialogue about violence against women and police accountability.

## II. INTERNATIONAL HUMAN RIGHTS MECHANISMS

Following the Supreme Court's decision in June 2005, Jessica Gonzales, in collaboration with the ACLU, raised claims of human rights violations before both universal and regional human rights bodies.

### A. *Universal System—United Nations*

First, we pursued justice for Jessica Gonzales through the universal system—the system that operates under the auspices of the United Nations (U.N.). The universal system for the protection of human rights has two dimensions: U.N. Charter-based bodies for the protection of human rights and international treaty-based bodies for the protection of human rights. The United Nations works “[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and [to] promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>29</sup>

#### 1. United Nations Charter-Based Mechanisms

The U.N. Charter was signed in 1945, based on a post–World War II desire to create an institution to promote security, fundamental human rights, and peace. The Charter provides the operational structure and purposes of the United Nations. In its preamble, the Charter highlights the U.N.'s commitment to human rights and fundamental freedoms, specifically to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women and of nations large and small.”<sup>30</sup>

The foundational document of the United Nations and, indeed, of international human rights around the globe, is the Universal Declaration of Human Rights (UDHR), which celebrates its sixtieth anniversary this year on December 10, 2008. In the wake of the horrors of World War II, the

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2001); *Watson v. City of Kan. City*, 857 F.2d 690, 694 (10th Cir. 1988); *cf. Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir. 1990) (finding police officer's statement to a domestic violence survivor that he did not blame her husband for hitting her because of the way she was carrying on was likely sufficient to support a claim of sex discrimination under the Equal Protection Clause).

29. U.N. Charter art. 1, para. 3.

30. U.N. Charter pmbli.

Universal Declaration was created by a newly constituted Commission on Human Rights to ensure that “never again” would the world see another Holocaust. As the Commission’s chairperson, Eleanor Roosevelt, making manifest her long-demonstrated commitment to social justice, was instrumental in guiding a group of eminent jurists in the creation of the Universal Declaration and imparting it with its foundational balance of civil and political rights with economic, social, and cultural rights.<sup>31</sup> The preamble of the Universal Declaration states, in part,

whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, [and] [w]hereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people . . . [therefore this Declaration establishes a universal] standard of achievement [to secure the] universal and effective recognition and observance [of the rights set out herein], both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.<sup>32</sup>

The U.N. Charter-based mechanisms include the U.N. General Assembly, which is made up of all 191 (originally fifty-one) state party members of the United Nations, including the United States, and the U.N. Security Council, which consists of five permanent members (with veto power) and ten rotating members based on regional diversity. The General Assembly includes the Human Rights Council, formerly the Human Rights Commission. The Human Rights Council was created by the U.N. General Assembly on March 15, 2006, to replace the Human Rights Commission that had been created by the Charter in 1946. The Council consists of forty-seven member countries, which were elected on May 9, 2006. The Council meets in Geneva, Switzerland, at least three times a year for a total period of at least ten weeks.

The Human Rights Council maintains the Human Rights Commission’s former system of independent human rights experts, including special rapporteurs, special representatives, independent experts, and other working groups and mechanisms. These special rapporteurs/experts are generally respected academics, activists, judges, or attorneys who examine, monitor, advise, and publicly report on human rights abuses around the world. They investigate and report on major human rights violations with regard to specific substantive issues, known as thematic mandates, conduct country

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31. See American Civil Liberties Union, *Dignity Begins at Home: 60th Anniversary of the Universal Declaration of Human Rights*, <http://www.udhr60.org> (last visited Oct. 13, 2008). See generally CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944–1955* (2003).

32. Universal Declaration of Human Rights, G.A. Res. 217A (III), pmb., U.N. Doc. A/810 (Dec. 10, 1948).

visits to investigate and report on human rights abuses within particular countries, and investigate and communicate with states parties about, and report on, individual complaints.

One of these special experts is the United Nations Special Rapporteur on Violence Against Women. The ACLU first met with the current Special Rapporteur, Yakin Erturk, in March 2005 when we attended the session of the United Nations Human Rights Commission in Geneva. At that time, we discussed with her a range of issues related to violence against women in the United States. In July 2006, while we were in Geneva for the United Nations Human Rights Committee's review of U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR),<sup>33</sup> Jessica Gonzales and I met with the Special Rapporteur's staff to present Jessica Gonzales's individual case. The Special Rapporteur agreed to take up Jessica Gonzales's case and to submit a confidential communication to the United States inquiring about its response to the human rights violations Jessica Gonzales had suffered.

In initiating this communication with the United States, the Special Rapporteur on Violence Against Women acted in accordance with the "Declaration on the Elimination of Violence Against Women," adopted by the Commission on Human Rights at its fourth session in 2005.<sup>34</sup> The resolution "[e]ncourages the Special Rapporteur to respond effectively to reliable information that comes before her" and requests all member states "to cooperate with and assist the Special Rapporteur in the performance of her mandated tasks and duties, to supply all information requested, including with regard to implementation of her recommendations, and to respond to the Special Rapporteur's visits and communications."<sup>35</sup>

Notwithstanding this resolution, the United States refused to cooperate with Erturk or to respond in any way to her confidential communication about the human rights violations suffered by Jessica Gonzales. In February 2007, during a session of the Commission on the Status of Women at the United Nations in New York, the ACLU again met with the Special Rapporteur. At that time she informed us that the United States had failed to respond to her communication regarding Jessica Gonzales.

Although the United States refused to respond, the Special Rapporteur on Violence Against Women reported on her communication regarding the human rights violations suffered by Jessica Gonzales in her report to the United Nations Human Rights Council on March 19, 2007.<sup>36</sup> This report

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33. See *infra* Part III.A.2.a.

34. U.N. Comm'n on Human Rights, *Elimination of Violence Against Women*, E/CN.4/2005 (Apr. 15, 2005), available at [http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2005-41.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-41.doc) (adopting the Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13).

35. *Id.*

36. Special Rapporteur, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, delivered to the Human Rights Council*, U.N. Doc. A/HRC/4/34/Add.1 (Mar. 19, 2007) (on file with author) [hereinafter Report of the Special Rapporteur].

discussed eighty-three communications the Special Rapporteur had transmitted to forty-four member states in 2006. In the section of her report on the United States, the Special Rapporteur reported that she had sent an allegation letter to the government on July 19, 2006.<sup>37</sup> She then recounted Jessica Gonzales's allegations regarding the abuse by Simon Gonzales, the Colorado court's issuance of a protective order, Simon Gonzales's kidnapping of Leslie, Katheryn, and Rebecca Gonzales, the children's deaths, the Castle Rock Police Department's refusal to enforce Jessica Gonzales's protective order or arrest Simon Gonzales, and the Supreme Court's denial of a remedy for this police malfeasance.<sup>38</sup> The Special Rapporteur stated that she "regrets that the Government did not reply to her communication sent on 19 July 2006 and would like to reiterate her interest in receiving a reply from the Government in regard to the allegation submitted."<sup>39</sup>

The international human rights system is built on a shared willingness of member states to cooperate with its mechanisms. If countries refuse to do so, the human rights mechanisms—including Charter- and Treaty-based bodies, and special rapporteurs—have no power to force a country to do anything. However, reports on a country's compliance—or lack thereof—with human rights norms shine a spotlight on human rights abuses and can shame a country into altering its practices. Although the United States did not respond to the Special Rapporteur's communication regarding the human rights violations suffered by Jessica Gonzales, the process of telling her story to this international human rights expert and having the expert agree to take up her case and communicate with the United States about its policies and practices with regard to police protection against domestic violence, and specifically the failure of the Castle Rock Police Department to respond adequately to her pleas for assistance on June 22 and 23, 1999, gave Jessica Gonzales some sense of justice. This communication provided her with an opportunity to push the United States to answer for its failures, rather than having the issue simply end with the Supreme Court's ruling dismissing her lawsuit.

## 2. Treaty-Based Bodies

In addition to presenting Jessica Gonzales's case to a United Nations Charter-based body—the Special Rapporteur on Violence Against Women—the ACLU has also raised the issue of violence against women, including the abuses suffered by Jessica Gonzales, before two treaty-based bodies: the United Nations Human Rights Committee, which oversees compliance with the ICCPR, and the Committee to End Racial Discrimination, which monitors compliance with the International Convention to End All Forms of Racial Discrimination (CERD).

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37. *Id.* ¶ 706.

38. *Id.* ¶¶ 707–09.

39. *Id.* ¶ 710.

The United Nations is responsible for drafting human rights treaties and for monitoring and ensuring states parties' compliance with those treaties. All states parties that sign and ratify international treaties are obligated to report periodically to the United Nations treaty-body committee that monitors compliance with that treaty. The committee examines each state party's report, reviews supplemental "shadow reports" submitted by nongovernmental organizations (NGOs), and questions states parties on their compliance with the treaty. Following this review, the committee praises the states parties' areas of improvement, recommends ways in which the states parties can further improve their compliance with the treaty and observes areas that need improvement for the next reporting period.

The U.S. Constitution provides, in part, that "Treaties . . . shall be the supreme Law of the Land."<sup>40</sup> Treaties must be signed by the President and ratified by the Senate.<sup>41</sup> Once a treaty is ratified, it becomes federal law and the Supremacy Clause attaches. This means that the government is obligated to abide by it. However, there is no automatic right to sue the government in court for violations of treaty provisions.<sup>42</sup> In other words, treaties are not self-executing. In order for a private right of action to exist, the government must enact laws mandating action to implement the treaty provisions and specify that failure to comply with these laws provides affected individuals an opportunity to sue the government.<sup>43</sup>

#### a. *International Covenant on Civil and Political Rights*

One of the most important human rights treaties that the United States has signed and ratified is the ICCPR.<sup>44</sup> The United States signed the ICCPR in 1977 and ratified it in 1992. This treaty mandates that

40. U.S. CONST. art. VI, cl. 2.

41. *Id.* art. II, § 2, cl. 2. Alternatively, a treaty may be enacted through congressional-executive power. See generally Oona A. Hathaway, *Treaties' End: The Past, Present, and Future of International Lawmaking in the United States*, 117 YALE L.J. 1236 (2008); Harold Hongju Koh, *Congressional Controls on Presidential Trade Policymaking After I.N.S. v. Chadha*, (1986); Myers S. McDougal & Asher Lans, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy: I*, 54 YALE L.J. 181 (1945).

42. See *Foster v. Neilson*, 27 U.S. 253, 314 (1829); *Igartua-De La Rosa v. United States*, 417 F.3d 145, 150 (1st Cir. 2005) (en banc).

43. See *Whitney v. Robertson*, 124 U.S. 190, 194 (1888); *Foster*, 27 U.S. at 314; *Igartua-de La Rosa*, 417 F.3d at 150. See generally LOUIS HENKIN, *FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION* 198–204 (2d ed. 1996); Jordan J. Paust, *Self-Executing Treaties*, 82 AM. J. INT'L L. 760 (1988); Carlos Manuel Vázquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT'L L. 695, 697–700 (1995); Carlos Manuel Vázquez, *Treaty-Based Rights and Remedies of Individuals*, 92 COLUM. L. REV. 1082, 1101–10 (1992). Alternatively, if a treaty is enacted through congressional-executive power, it takes the form of legislation, like any other law enacted by Congress, and thus is enforceable in court, if so specified. See generally HENKIN, *supra*, at 204–06; Hathaway, *supra* note 41; Paust, *supra*, at 775–81.

44. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (signed by the United States in 1977 and ratified in 1992).

[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>45</sup>

The treaty also requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>46</sup> In addition, it prohibits slavery, servitude, and forced or compulsory labor.<sup>47</sup>

Article 2 of the ICCPR provides for equal application of rights and effective remedies for violations of those rights.<sup>48</sup> Article 3 guarantees equal rights for men and women.<sup>49</sup> Under the ICCPR, governments have obligations of both a negative and positive nature: “the obligation under the Covenant is not confined to the *respect* of human rights, but states parties have also undertaken to *ensure* the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities . . . to enable individuals to enjoy their rights.”<sup>50</sup> Thus, in contrast to U.S. constitutional law, the ICCPR requires the government not only to refrain from interfering with individuals’ rights, but also obligates the government to take affirmative measures to ensure that individuals can exercise their rights.

In October 2005, the United States submitted its second and third combined periodic reports on compliance with the ICCPR to the United Nations Human Rights Committee.<sup>51</sup> In response, the ACLU and several other NGOs submitted shadow reports describing the various ways in which the United States has failed to comply with the treaty. In the ACLU’s report entitled, *Dimming the Beacon of Freedom: U.S. Violations of the*

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45. *Id.* art. 26.

46. *Id.* art. 10, § 1.

47. *Id.* art. 8, § 1.

48. *Id.* art. 2.

49. *Id.* art. 3.

50. U.N. Human Rights Comm., *General Comment No. 03: Implementation at the National Level (Art. 2)* (July 27, 1981), available at [http://193.194.138.190/tbs/doc.nsf/\(Symbol\)/c95ed1e8ef114cbe12563ed00467eb5?Opendocument](http://193.194.138.190/tbs/doc.nsf/(Symbol)/c95ed1e8ef114cbe12563ed00467eb5?Opendocument) (emphasis added).

51. See generally United States of America, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, delivered to the Human Rights Committee*, U.N. Doc. CCPR/C/USA/3 (Nov. 28, 2005) [hereinafter U.S. Report]. Under the ICCPR, states parties are obligated to submit a report on compliance within one year of entry into force and periodic reports on compliance every five years thereafter. ICCPR, *supra* note 44, art. 40(1)(a); Office of the High Commissioner for Human Rights, Introduction to the Human Rights Committee, <http://www.unhcr.ch/html/menu2/6/a/introhrc.htm> (last visited Oct. 13, 2008). The United States missed its first deadline and submitted a combined second and third periodic report almost seven years after it was due. Thus, the Human Rights Committee’s review was only the second time that the United States had been reviewed for compliance with the ICCPR since it ratified the treaty in 1992.

*International Covenant on Civil and Political Rights*,<sup>52</sup> we discussed, *inter alia*, the Supreme Court's decision in *Gonzales*, as an example of the way in which the United States has imperiled both the equal application of rights and the availability of effective (or in some cases, any) remedies, in violation of Article 2 of the ICCPR.<sup>53</sup> *Gonzales* is one of many cases decided by the Supreme Court in recent years that has sharply limited the ability of individuals to sue for civil rights violations.<sup>54</sup> Rights available to women who have been the victims of violence specifically have been curtailed in *Gonzales* as well as in *United States v. Morrison*,<sup>55</sup> in which the Court struck down the civil rights remedy of the Violence Against Women Act (VAWA).<sup>56</sup>

The United States, in its report to the Human Rights Committee on compliance with the ICCPR, failed to address this "roll back" of judicial remedies, saying simply that "U.S. law provides extensive remedies and avenues for seeking compensation and redress for alleged discrimination and denial of constitutional and related statutory rights," citing those "previously reported" and, additionally, the Violent Crime Control and Law Enforcement Act of 1994, for "violations committed by law enforcement officers."<sup>57</sup> Both *Morrison* and *Gonzales* erode federal civil rights remedies for victims of gender-based violence. In *Morrison*, the Supreme Court held that Congress did not have the power to create a private cause of action through which a survivor of violence could sue her abuser for violations of VAWA,<sup>58</sup> and in *Gonzales*, the Court held that a domestic violence victim has no constitutional right to police enforcement of her order of

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52. AM. CIVIL LIBERTIES UNION, DIMMING THE BEACON OF FREEDOM: U.S. VIOLATIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 25 (2006) [hereinafter DIMMING THE BEACON OF FREEDOM], available at <http://www.aclu.org/pdfs/iccpreport20060620.pdf>.

53. See e.g., *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

54. See generally *Ledbetter v. Goodyear Tire & Rubber, Inc.*, 127 S. Ct. 2162 (2007) (rejecting the claim that a discriminatory salary decision has continuing effect and can therefore be challenged within 180 days of any paycheck that perpetuates the initial act of discrimination); *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002) (holding that an undocumented immigrant could not sue for back pay); *Alexander v. Sandoval*, 532 U.S. 275 (2001) (holding that there is no private right of action for individuals to bring disparate impact claims pursuant to Title VI); *United States v. Morrison*, 529 U.S. 598 (2000) (holding that Congress did not have the power to create a private cause of action for a woman to sue for violations of the Violence Against Women Act (VAWA)); *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189 (1989) (holding that an individual cannot bring a claim alleging a violation of a substantive due process right to protection by the state from harm committed by a private individual); DENISE C. MORGAN ET AL., AWAKENING FROM THE DREAM: CIVIL RIGHTS UNDER SIEGE AND THE NEW STRUGGLE FOR EQUAL JUSTICE (2006).

55. 529 U.S. 598.

56. *Id.* at 627.

57. U.S. Report, *supra* note 51, ¶ 59. The Violent Crime Control and Law Enforcement Act of 1994, however, addresses violence and abuses committed directly by law enforcement and is silent with regard to police failure to take action to prevent harm to individuals committed by other private parties. 42 U.S.C.A. § 14141 (2004).

58. *Morrison*, 529 U.S. 598.

protection.<sup>59</sup> In striking down the civil rights remedy in *Morrison*, notwithstanding Congress's extensive findings supporting this remedy, and in holding that the government has no affirmative duty to protect its citizens from privately inflicted violence despite the existence of (1) a valid protective order, (2) a state law mandating arrest of anyone who violates a protective order, (3) knowledge of imminent harm, and (4) opportunity to act to prevent the harm in *Gonzales*, the Court eliminated any federal civil judicial remedy to compensate women for violence inflicted upon them by private actors.<sup>60</sup> As a result, the only civil legal recourse for individual victims of gender-based violence under U.S. law is through state courts, which often minimize the importance of violence against women and generally provide state officials with immunity from suit for failing to protect women from private violence.<sup>61</sup> Accordingly, for women in most states in America there is now no federal or state remedy available to take action directly against the perpetrator of gender-based violence or to redress police failure to respond to domestic violence.<sup>62</sup> *Morrison* and *Gonzales*, therefore, undermine the ability and intent of Congress and state legislatures to protect women from violence and to address this country's long history

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59. *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

60. *See supra* note 28.

61. Section 24-10-108 of the Colorado Governmental Immunity Act (CGIA), for example, states that "[e]xcept as provided in sections 24-10-104 to 24-10-106, sovereign immunity shall be a bar to any action against a public entity for injury which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant." COLO. REV. STAT. § 24-10-108 (2007). Moreover, any state law claims against individual police officers under Colorado state law are precluded because the CGIA also provides immunity for agents of the state. *Id.* § 24-10-118. In addition to the immunity bar, doctrinal hurdles in Colorado tort law, as in other states, render recovery extraordinarily difficult in domestic violence cases. To take one example, the causation requirement under Colorado tort law is such that even if a state actor has acted wrongly, no liability attaches unless the plaintiff shows that the injury suffered could have been reasonably foreseen by the state actor. *See, e.g.,* *Smith v. State Comp. Ins. Fund*, 749 P.2d 462, 464 (Colo. Ct. App. 1987). To the extent doctrinal hurdles such as the causation requirement under tort law prevent a remedy from being granted where state actors fail to take reasonable measures to protect and ensure rights, tort law, in most states, is not an effective remedy.

62. There are a few exceptions, however, where state courts have held law enforcement accountable when police fail to enforce a domestic violence order of protection. *See Moore v. Green*, 848 N.E.2d 1015 (Ill. 2006) (holding that partial immunity under a domestic violence statute, rather than full immunity under a tort immunity act, was applicable in a wrongful death suit where a woman was murdered by her abuser after police failed to enforce her order of protection); *Massee v. Thompson*, 90 P.3d 394 (Mont. 2004) (holding a county sheriff liable for his failure to protect a victim of domestic violence); *Campbell v. Campbell*, 682 A.2d 272 (N.J. Super. Ct. App. Div. 1996) (holding that police officers were subject to liability when they failed to make an arrest for violation of a restraining order in the face of a state law mandating such arrest); *Nearing v. Weaver*, 670 P.2d 137 (Or. 1983) (holding that in light of Oregon's mandatory arrest law, police officers who knowingly failed to arrest an individual violating a protective order were potentially liable for any injury to the beneficiaries of the protective order resulting from their failure); *Matthews v. Pickett County*, 996 S.W.2d 162 (Tenn. 1999) (holding that when an individual obtained an order of protection and contacted the police to enforce that order against her abuser, the police had a special duty to her under Tennessee law and could be held liable for breach of that duty).



of nonresponsiveness by police and government officials to violence against women. The decisions thus display a stubborn blindness to the realities of violence against women and the legal protections enacted to respond to it.

In the ACLU's shadow report on U.S. compliance with the ICCPR, *Dimming the Beacon of Freedom*, we discussed the Supreme Court's decisions in *Morrison* and *Gonzales* as examples of America's failure to make available effective federal judicial remedies for violations of the equal application of rights under Article 2 of the ICCPR.<sup>63</sup> In addition, we discussed the ways in which many states, including Colorado, where Jessica Gonzales lived, fail to provide remedies for victims of domestic violence who are harmed as a result of police malfeasance because sovereign immunity laws sharply limit the availability of any tort remedy, thereby shielding government officials from liability with certain limited exceptions.<sup>64</sup>

*Dimming the Beacon of Freedom* also discussed the *Gonzales* case as an example of the United States' violations of Article 3 of the ICCPR, which requires equal rights for men and women.<sup>65</sup> Under this Article, states parties have an affirmative obligation to "take all steps necessary" in the "public and private" sectors to eliminate practices that "impair the equal enjoyment of rights."<sup>66</sup> Domestic violence is a widespread problem in the United States, and throughout the world<sup>67</sup> that disproportionately impacts women and impairs their equal enjoyment of rights. Thus, under the ICCPR, governments have an affirmative obligation to take all steps necessary, in the public and private sectors, to eliminate domestic violence. The United States' failure to take such steps, and specifically the refusal of the Castle Rock Police Department to enforce Jessica Gonzales's order of protection and the U.S. courts' denial of a remedy for this police malfeasance, constitute violations of Article 3 of the ICCPR.

In July 2006, the United States appeared before the Human Rights Committee in Geneva, Switzerland, as part of the periodic review process for its compliance with the ICCPR. The ACLU, along with representatives from numerous other NGOs, sent a delegation to Geneva to observe and participate in the review process. The ACLU delegation included staff from the national office, staff from ACLU state affiliates, and ACLU clients. Jessica Gonzales was one of three clients who joined ACLU staff in Geneva as part of that delegation.

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63. DIMMING THE BEACON OF FREEDOM, *supra* note 52, at 25–26.

64. *Id.*

65. *Id.*; ICCPR, *supra* note 44, art. 3.

66. U.N. Human Rights Comm., *General Comment No. 28: Equality of Rights Between Men and Women (article 3)* (Mar. 29, 2000), available at [http://193.194.138.190.tbs.doc.nsf/\(Symbol\)/13b02776122d4838802568b900360e80?Opendocument](http://193.194.138.190.tbs.doc.nsf/(Symbol)/13b02776122d4838802568b900360e80?Opendocument).

67. See generally THE SECRETARY-GENERAL, ENDING VIOLENCE AGAINST WOMEN: FROM WORDS TO ACTION, U.N. Sales No. E.06.IV.8 (2006); The Secretary-General, *In-Depth Study on All Forms of Violence Against Women, delivered to the General Assembly*, U.N. Doc. A/61/122/Add.1 (July 6, 2006) (on file with author).

Although the United States acted insouciantly with regard to its obligations under the ICCPR by failing to submit a compliance report when due for its second review, and by submitting its 2005 report as a combined second and third periodic report almost seven years late, once it had submitted its report, the United States participated in the review process in an engaged and serious manner. The United States sent a high-level delegation to Geneva for the review, consisting of several government officials including Matthew Waxman, Principal Deputy Director of Policy Planning for the Department of State, and Wan Kim, Assistant Attorney General and head of the Civil Rights Division of the Department of Justice. The United States appeared before the Committee for questioning on two full days, July 17 and 18, 2006. In addition, the United States submitted a supplemental report responding to the Committee's list of issues.<sup>68</sup>

The ACLU and other NGOs spent a week in Geneva briefing Committee members, engaging in internal strategy sessions, and holding public education events for Committee members, the general public, and the press. One of those events was a Victims' Testimony Panel, hosted by the ACLU and the U.S. Human Rights Network. Jessica Gonzales testified on this panel about the human rights violations she had suffered as a result of the Castle Rock Police Department's failure to enforce her domestic violence order of protection and the Supreme Court's refusal to provide a remedy for this police malfeasance. The panel was well-received and provided Jessica Gonzales her first opportunity to testify publicly in an international forum about the events surrounding the kidnapping and murder of her three daughters. Because her federal lawsuit had been dismissed on a motion to dismiss, Jessica Gonzales never had an opportunity to testify or present evidence about her tragedy to any tribunal and thus had been denied her "day in court." It was only through this international human rights mechanism—the United Nations Human Rights Committee review of U.S. compliance with the ICCPR—that Jessica Gonzales finally obtained that which she had been denied by the United States court system and something that she desperately wanted: the opportunity to testify publicly

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68. The list of issues included ten specific items that the Committee asked the United States to be ready to respond to during the review process. These issues were drawn from items discussed in the United States' compliance report and were recommended for in-depth probing by nongovernmental organizations engaged in the process. The ten issues were: (1) right to self-determination and rights of persons belonging to minorities; (2) constitutional and legal framework within which the Covenant is implemented; (3) counterterrorism measures and respect of Covenant guarantees; (4) nondiscrimination and right of equality before the law and to the equal protection of the law; (5) right to life; (6) prohibition of torture and cruel, inhuman, or degrading treatment or punishment; (7) treatment of persons deprived of liberty; (8) freedom of association; (9) protection of children; and (10) right to take part in the conduct of public affairs, to vote and to be elected, and to have access to public service. U.N. Human Rights Comm., *List of Issues to Be Taken Up in Connection with the Consideration of the Second and Third Periodic Reports of the United States of America*, U.N. Doc. CCPR/C/USA/Q/3 (Apr. 26, 2006). See generally U.S. *Written Response to List of Issues to Be Taken Up in Connection with the Consideration of the Second and Third Periodic Reports of the United States of America*, available at <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/USA-writtenreplies.pdf>.

about the failings of the Castle Rock Police Department that led to the deaths of her three young daughters. This opportunity to tell her story before an international body was tremendously gratifying and rewarding. It also forced the United States to answer for its failures and thereby added pressure on the government to alter its policies with regard to ending violence against women.

b. *International Convention on the Elimination of All Forms of Racial Discrimination*

In addition to raising Jessica Gonzales's plight as a human rights violation under the ICCPR, the ACLU also raised these abuses as violations of CERD.<sup>69</sup> CERD prohibits discrimination on the basis of race and specifically requires states parties to report on their records with regard to the intersection of race and gender.<sup>70</sup> The United States signed CERD in 1966 and ratified it in 1994. In May 2007, the United States submitted its fourth, fifth and sixth periodic reports in a single document.<sup>71</sup> In response, the ACLU and several other NGOs submitted shadow reports. The ACLU's report entitled, *Race and Ethnicity in America, Turning a Blind Eye to Injustice: U.S. Violations of the Convention on the Elimination of All Forms of Racial Discrimination*,<sup>72</sup> discussed numerous ways in which discrimination against people of color in the United States persists, in violation of CERD.

Violence against minority women was one issue included in the ACLU's shadow report. As noted in *Race and Ethnicity*, the United States' report to the CERD committee was silent as to violence against women, notwithstanding the fact that racial minority women in the United States are especially vulnerable to violence. In our report we noted that "[p]olice response to reports of domestic violence is frequently inadequate, exposing racial minority women in particular to persistent and grave danger."<sup>73</sup> We noted that additional factors in the government's failure to protect women are the interpretation of the U.S. constitutional guarantee to protection from violence as a "negative" right rather than a "positive" right, and the

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69. International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. Doc. A/6014 (Dec. 21, 1965) [hereinafter CERD].

70. *Id.*; U.N. Human Rights Comm., *General Recommendation No. 25: Gender Related Dimensions of Racial Discrimination*, ¶ 4, U.N. Doc. No. A/55/18, annex V (Mar. 20, 2000), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/76a293e49a88bd23802568bd00538d83?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/76a293e49a88bd23802568bd00538d83?Opendocument).

71. United States of America, *Reports Submitted by States Parties Under Article 9 of the Convention: Sixth Periodic Reports of States Parties Due in 2005, delivered to the Committee on the Elimination of Racial Discrimination*, U.N. Doc. CERD/C/USA/6 (May 1, 2007) [hereinafter Periodic CERD Report], available at [http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd\\_c\\_usa6.doc](http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/cerd_c_usa6.doc).

72. AM. CIVIL LIBERTIES UNION, *RACE & ETHNICITY IN AMERICA: TURNING A BLIND EYE TO INJUSTICE* (2007) [hereinafter *RACE AND ETHNICITY*], available at <http://www.aclu.org/intlhumanrights/racialjustice/33061pub20071210.html>.

73. *Id.* at 115.

government's denial of its obligation to protect women from harm by private parties, citing the Supreme Court's decision in *Gonzales*.<sup>74</sup>

On February 21 and 22, 2008, the CERD committee reviewed U.S. compliance with CERD at meetings held in Geneva.<sup>75</sup> As it had during the review of compliance with the ICCPR, the United States again sent a high-level delegation to Geneva for this review process, including, among others, Grace Chung Becker, Acting Assistant Attorney General for Civil Rights. As we had done during the Human Rights Committee's review of U.S. compliance with the ICCPR, numerous U.S.-based NGOs went to Geneva to advocate before the Committee, observe the review process, engage in dialogue with the U.S. delegation, and conduct public education to highlight the government's failure to eradicate racial discrimination in the United States. Approximately 125 advocates from U.S.-based NGOs traveled to Geneva for a week in February 2008. Among the many issues we addressed were violence against women and police accountability.

In its concluding observations, the Committee on the Elimination of Racial Discrimination noted as a "Positive Aspect" the 2005 reauthorization of VAWA.<sup>76</sup> However, the Committee also listed concerns and recommendations with regard to violence against women:

While welcoming the various measures adopted by the State party to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, the Committee remains deeply concerned about the incidence of rape and sexual violence experienced by women belonging to such groups . . . . The Committee also notes with concern that the alleged insufficient will of federal and state authorities to take action with regard to such violence and abuse often deprives victims belonging to racial, ethnic and national minorities . . . of their right to access to justice and the right to obtain adequate reparation or satisfaction for damages suffered.<sup>77</sup>

The Committee recommended that the United States "increase its efforts to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities [by,] *inter alia*, . . . providing specific training for those working within the criminal justice system, including police officers . . . prosecutors and judges."<sup>78</sup> Furthermore, the Committee requested that the United States "include information on the results of these measures and on the number of victims, perpetrators, convictions, and the types of sanctions imposed, in its next periodic report."<sup>79</sup>

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74. *Id.*

75. Periodic CERD Report, *supra* note 71.

76. Committee on the Elimination of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination*, at 2, U.N. Doc. CERD/C/USA/Co/6 (Feb. 2008) [hereinafter CERD Concluding Observations], available at <http://www.umn.edu/humanrts/CERDConcludingComments2008.pdf>.

77. *Id.* at 8 (citing CERD, *supra* note 69, arts. 5(b), 6).

78. *Id.*

79. *Id.*

The tragedy suffered by Jessica Gonzales poignantly illustrates the ongoing problem of the failure of police to protect women in the United States, particularly women of color, from intimate partner violence, in violation of CERD. The fact that the Committee commented on this violation in its concluding observations marked another victory in gaining international recognition of the widespread problem of domestic violence in the United States and of the government's failure to address adequately this problem.

### B. *Inter-American Commission on Human Rights*

In addition to pursuing justice for Jessica Gonzales through the universal human rights system—the United Nations charter-based and treaty-based bodies and mechanisms—the ACLU also brought Jessica Gonzales's case to the regional system for human rights in the Americas. Regional human rights systems have been created in Europe,<sup>80</sup> Africa,<sup>81</sup> and the Americas.<sup>82</sup> The inter-American human rights system operates under the auspices of the Organization of American States (OAS), which was established in 1948. Like the universal system under the United Nations, the regional system promotes and protects human rights through the promulgation of substantive norms, the operation of supervisory mechanisms, and the use of individual petition procedures. The inter-American system consists of and has jurisdiction over all countries in the Western Hemisphere, including the United States, which is a member of the OAS.

The inter-American human rights system functions through two primary bodies: the Inter-American Commission on Human Rights (IACHR),

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80. The European Court of Human Rights has jurisdiction over states parties that, as signatories to the Convention for the Protection of Human Rights and Fundamental Freedoms, belong to the Council of Europe. See generally Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms as Amended by Protocol No. 11* pmb., Nov. 4, 1950, 213 U.N.T.S. 222, available at <http://conventions.coe.int/treaty/EN/Treaties/html/005.htm>.

81. The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights govern states parties that are signatories to the African Charter on Human and Peoples' Rights and are members of the African Union, formerly called the Organization of African Unity. See generally African Charter on Human and Peoples' Rights, adopted June 27, 1981, 21 I.L.M. 58, 60 (entered into force Oct. 21, 1986); Organization of African Unity (OAU), *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT(III) (June 9, 1998) (entered into force Jan. 25, 2004), available at [http://www.africa-union.org/rule\\_prot/africancourt-humanrights.pdf](http://www.africa-union.org/rule_prot/africancourt-humanrights.pdf).

82. The Inter-American Commission on Human Rights (IACHR) has jurisdiction over all countries in the Western Hemisphere. See generally Organization of American States [OAS], American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978); International Conference of American States, American Declaration of the Rights and Duties of Man, OEA/ser.L./V./II.23, doc. 21 rev. 6 (1948) [hereinafter American Declaration]; Charter of the Organization of American States, Apr. 30, 1948, 119 U.N.T.S. 3 (entered into force Dec. 13, 1951); Statute of the Inter-American Commission on Human Rights [IACHR], O.A.S. Res. 447 (IX-0/79) (1979). The IACHR governs countries in the Western Hemisphere that are signatories to the American Convention on Human Rights.

which sits in Washington, D.C., and the Inter-American Court of Human Rights, which sits in Costa Rica. These regional mechanisms are comparable to human rights systems elsewhere in the world including the European Court of Human Rights, the African Commission on Human and People's Rights, and the African Court on Human and People's Rights.

As a result of having signed the Charter of the Organization of American States, all members of the OAS, including the United States, are subject to the procedures and recommendations of the IACHR. In addition, all states parties that are signatories to the OAS Charter are governed by the American Declaration of the Rights and Duties of Man,<sup>83</sup> which is the regional equivalent of the Universal Declaration of Human Rights.<sup>84</sup> The Inter-American Court of Human Rights interprets and applies the American Convention on Human Rights,<sup>85</sup> which protects rights almost identical to those protected by the ICCPR. Because the United States has not ratified the American Convention, it is not subject to the Inter-American Court of Human Rights' jurisdiction.<sup>86</sup>

The IACHR was established under the OAS charter and is responsible for the protection and promotion of human rights in the Americas. The Commission monitors and enforces states parties' compliance with the OAS charter, the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights. The Commission is comprised of seven jurists from the OAS and is appointed by the OAS General Assembly. The Commission hears individual petitions, holds general hearings on thematic human rights violations, investigates abuses, and issues country and thematic reports on a range of human rights violations.<sup>87</sup>

Under the individual petition procedures, anyone in the Americas can file a petition alleging one or more human rights violations by an OAS member state. A petition must be filed within six months of exhausting domestic remedies, unless pursuit of such remedies would be futile.<sup>88</sup> The Commission also holds general hearings on thematic issues, which individuals or groups may request through general petitions alleging

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83. See American Declaration, *supra* note 82.

84. Universal Declaration of Human Rights, *supra* note 32, at 71.

85. American Convention on Human Rights, *supra* note 82. See generally Inter-American Court of Human Rights, <http://www.corteidh.or.cr/index.cfm?&CFID=427625&CFTOKEN=49297991> (last visited Oct. 17, 2008).

86. American Convention on Human Rights, *supra* note 82.

87. Inter-American Commission on Human Rights (IACHR), What is the IACHR?, <http://www.cidh.org/what.htm> (last visited Oct. 14, 2008). The IACHR also has special rapporteurs with functions similar to those of the U.N. special rapporteurs. One regional special rapporteur is the Special Rapporteur on the Rights of Women, who investigates issues of violence against women as well as other issues of concern to women. The Special Rapporteur and the OAS as a whole, have issued reports on various issues including violence against women in the Americas. See generally OAS, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II doc. 68 (Jan. 20, 2007), available at <http://www.cidh.org/women/Access07/Report%20Access%20to%20Justice%20Report%20E%20english%20020507.pdf>.

88. American Convention on Human Rights, *supra* note 82, art. 46.

widespread human rights violations not limited to a specific individual or event. Although the Commission cannot issue binding judgments, it can issue findings and observations setting out its conclusions with regard to particular issues or petitioners, suggestions for changes in practices, and recommendations to states parties with regard to future actions. Thus, the Commission can provide something akin to declaratory relief, attention to an issue, and international shaming.

In December 2005, just six months after the Supreme Court issued its decision finding that the police failure to enforce her domestic violence order of protection did not violate the Constitution and dismissing her case, the ACLU filed a petition on behalf of Jessica Gonzales before the IACHR.<sup>89</sup> The petition alleged that the police's failure to enforce her order of protection, Castle Rock's failure to conduct a full investigation into the deaths of her three children, and the U.S. courts' failure to provide a remedy for this police malfeasance constituted violations of the American Declaration of the Rights and Duties of Man.<sup>90</sup>

Two of the most significant differences between the American Declaration, like other international human rights law, and the U.S. Constitution are: first, that a state party has an affirmative obligation to provide protection from harm and is not merely precluded from causing harm or interfering with a woman's safety (a "negative right"); and second, that the state party must act with due diligence to protect individuals from harm caused by third parties, not simply ensure that no harm is committed by the government itself. These two basic premises of international human rights law provide far greater protection for victims of domestic or gender-based violence than does U.S. law, as it has been interpreted by the Supreme Court in *Gonzales*,<sup>91</sup> *Morrison*,<sup>92</sup> *DeShaney*,<sup>93</sup> and other cases.

89. Jessica Gonzales is currently represented before the IACHR by the ACLU and the Columbia Law School Human Rights Clinic. See Caroline Bettinger-López, *Jessica Gonzales v. United States: An Emerging Model for Domestic Violence & Human Rights Advocacy in the United States*, 21 HARV. HUM. RTS. J. 183 (2008).

90. See generally 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 on the Merits, Petition No. P-1490-05, *Gonzales v. United States*, Inter-Am. C.H.R. (2005) [hereinafter *Gonzales Petition*], available at <http://www.aclu.org/pdfs/petitionallegingviolationsofthehumanrightsofjessicagonzales.pdf>; Observations Concerning the Sept. 22, 2006 Response of the United States Government, Petition No. P-1490-05, *Gonzales v. United States*, Inter-Am. C.H.R. (Dec. 11, 2006), available at [http://www.aclu.org/pdfs/gonzales\\_finalbrief.pdf](http://www.aclu.org/pdfs/gonzales_finalbrief.pdf); American Civil Liberties Union, *Jessica Gonzales v. USA*, <http://www.aclu.org/womensrights/violence/gonzalesvusa.html> (last visited Oct. 17, 2008).

91. 545 U.S. 748 (2005) (finding that police failure to enforce a domestic violence order of protection notwithstanding state's mandatory arrest law did not violate the Due Process Clause).

92. 529 U.S. 598 (2000) (finding that Congress did not have authority to provide federal civil remedy to victims of gender-motivated violence).

93. 489 U.S. 189 (1989) (finding that child had no substantive due process right to protection by the state from harm committed by his father).

In the ACLU's petition to the IACHR, we argued that the police failure to investigate Jessica Gonzales's complaint, enforce her order of protection, and arrest or seek a warrant to arrest Simon Gonzales violated her rights and the rights of her daughters as guaranteed by the American Declaration of the Rights and Duties of Man to life and personal security, to equality, to protection against attacks on private and family life, to establish a family and receive protection therefore, to the inviolability of the home, to special protections for women and children, to investigation and dissemination of ideas, and to petition the government.<sup>94</sup> Further, we argued that the failure of U.S. courts to provide a legal remedy for these violations infringed Jessica Gonzales's and her children's rights to life and personal security, to equality, to special protection for women and children, to judicial recourse, and to petition the government. The relief sought in the petition includes legislative reform efforts at the state level to ensure that the terms of domestic violence orders of protection are properly and effectively enforced in accordance with the law; the provision of civil remedies for victims who fail to receive such protection; a thorough investigation into the events of June 22 and 23, 1999, that resulted in the deaths of Jessica Gonzales's three daughters; funding for and proper oversight of prevention and support services for victims of domestic violence; and the creation of programs for law enforcement officers aimed at sensitizing police officers to the complexities of domestic violence and its effects on victims and training them to respond in a gender-sensitive manner.<sup>95</sup>

After seeking several extensions, the United States responded to Jessica Gonzales's petition in December 2006, approximately one year after it was filed.<sup>96</sup> The United States argued that the Commission lacked jurisdiction to consider the petition.<sup>97</sup> The government asserted that the American Declaration of the Rights and Duties of Man is a nonbinding instrument, that its provisions are aspirational only, and that it imposes no affirmative obligations on states parties to prevent violence committed by private actors.<sup>98</sup> However, the United States then went on to engage the arguments and dispute the facts raised in the petition. Indeed, the United States submitted an extremely lengthy written response.<sup>99</sup> In its response, the United States attempted to prove that the government treats domestic violence as seriously as it treats other crimes.<sup>100</sup> In disputing the facts of the night the Gonzales children were kidnapped and murdered and by

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94. American Declaration, *supra* note 82, ch. 1, arts. I–II, V–VI, IX, VII, IV, XXIV.

95. Gonzales Petition, *supra* note 90, at 85–86.

96. 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, *Gonzales v. United States*, Inter-Am. C.H.R. (2006) [hereinafter U.S. Response to IACHR Petition], available at [http://www.aclu.org/pdfs/womensrights/gonzales\\_govtresponse20060925.pdf](http://www.aclu.org/pdfs/womensrights/gonzales_govtresponse20060925.pdf).

97. *See id.* at 25–39.

98. *Id.* at 26.

99. *See generally id.*

100. *Id.* at 13–25, 39.



arguing that the United States provides extensive funding for domestic violence services, the government demonstrated its acceptance, at least to some degree, of these proceedings and ultimately to the Commission's findings and recommendations.

On March 2, 2007, the IACHR held a hearing on Jessica Gonzales's petition. This hearing was historic because it was the first time that the Commission had held an individual hearing on a petition alleging human rights violations against the United States for policies and practices related to domestic violence. It was also significant because it was the first time in the seven years that Jessica Gonzales had been pursuing justice through legal channels that she was provided an opportunity to testify in a legal proceeding before a full tribunal and finally have her "day in court." The commissioners permitted Jessica Gonzales to testify for fifteen minutes and to tell her story in her own words.<sup>101</sup> This opportunity, in itself, was far more than she had been able to obtain through the U.S. court system; because her federal lawsuit had been dismissed in the district court on a motion to dismiss before any trial or court hearing, Jessica Gonzales had never had the opportunity to present evidence or testify in a U.S. court of law about the human rights violations she had suffered.

Although the United States disputed the jurisdiction of the Commission to hear the petition, it engaged fully in the process. The government sent high-level representatives—including Sarah Hankins, Alternate Representative to the OAS for the U.S. Department of State, Kevin Baumer and Bob Harris from the Office of the Legal Advisor for the U.S. Department of State, Jennifer Kaplan from the U.S. Department of Justice, and other representatives from the U.S. Department of State and the U.S. Department of Justice—to argue its case and presented lengthy arguments on numerous points. The United States disputed the facts of the night Jessica Gonzales's children were kidnapped and killed, and attempted to demonstrate various ways in which the government provides services to combat domestic violence.<sup>102</sup>

Following the hearing, both Jessica Gonzales and the United States submitted further observations in response to questions raised by the commissioners. In particular, we argued that Jessica Gonzales had exhausted all available, adequate, and effective domestic remedies available to her and that her petition should therefore be deemed admissible.<sup>103</sup> We also argued that the Castle Rock Police Department knew or should have known the risk that Simon Gonzales presented to Jessica Gonzales and her

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101. See generally American Civil Liberties Union, *Jessica Gonzales v. USA*, <http://www.aclu.org/womensrights/violence/gonzalesvusa.html> (last visited Oct. 15, 2008) (providing a link to the full video transcript of the hearing before the Commission, as well as other items related to this case).

102. See *id.* (video transcript of hearing, recorded Mar. 2, 2007). See generally U.S. Response to IACHR Petition, *supra* note 96.

103. See Observations Concerning the March 2, 2007 Hearing Before the Commission, Pet. No. 1490-05, *Gonzales v. United States*, Inter-Am. C.H.R., at 1–12 (May 14, 2007), available at <http://www.aclu.org/womensrights/violence/297601gl20070514.html>.

three daughters, and thus should have enforced her order of protection.<sup>104</sup> Further, we argued that, contrary to the assertion of the United States that Simon Gonzales's actions were aberrational; Jessica Gonzales's experience demonstrated the prevalence of domestic violence in Colorado and throughout the United States, as well as the lack of police responsiveness and accountability with regard to protecting women from such violence.<sup>105</sup> Finally, we argued that a Commission finding in favor of Jessica Gonzales would in no way open the "floodgates" to petitions alleging state failure to prevent criminal activity, contrary to the United States' contention.<sup>106</sup>

In July 2007, the Commission declared in a landmark "admissibility" decision that Jessica Gonzales's case could proceed, rejecting the United States' position that the American Declaration of the Rights and Duties of Man does not create positive governmental obligations.<sup>107</sup> Instead, the decision holds the United States to international standards of state responsibility to exercise "due diligence" to prevent, investigate, and punish human rights violations and protect and compensate victims of domestic violence.<sup>108</sup> In its admissibility decision, the IACHR also found that Jessica Gonzales had exhausted all domestic legal avenues available to her.<sup>109</sup> In light of the Commission's favorable admissibility decision allowing her case to proceed, on March 24, 2008, Jessica Gonzales submitted additional briefing on the legal merits of her allegations. On October 16, 2008, the United States submitted its response.

On October 22, 2008, Jessica Gonzales, her counsel, and an expert on police practices argued the merits of her case before the Commission. We focused on the facts of June 22 and 23, 1999, the failure of the police to respond adequately to Jessica Gonzales's pleas for help, and the lack of a thorough investigation into the deaths of her three children. We argued that the government failed to meet its affirmative obligation to exercise due diligence to protect Jessica Gonzales and her children from this vicious act of violence. Professor Jeffrey Fagan testified about best practices for police response to domestic violence. And Jessica Gonzales again had an opportunity to testify at length to the commissioners about the ways in which the government had violated her human rights by failing to arrest Simon Gonzales, failing to conduct a thorough investigation, and failing to provide her with a remedy. The U.S. government again sent a high level delegation including Andrew Stevenson, Representative to the OAS for the U.S. Department of State; Eric Zimmer, counsel for the Town of Castle Rock; Baumer, from the Office of the Legal Advisor for the Department of

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104. *Id.* at 13–20.

105. *Id.* at 20–22.

106. *Id.* at 22–25.

107. *See* *Gonzales v. United States*, Case 12.626, Inter-Am. C.H.R., Report No. 52/07, OEA/Ser/L/V/II.128, doc. 19 (2007), available at [http://www.aclu.org/images/asset\\_upload\\_file431\\_32105.pdf](http://www.aclu.org/images/asset_upload_file431_32105.pdf) (although the decision is dated July 24, 2007, it was not transmitted to the parties until October 3, 2007).

108. *Id.* ¶¶ 37–40.

109. *Id.* ¶¶ 46–50.

State, and Kaplan, from the Department of Justice, who were present at the March 2007 hearing; and several other representatives from the U.S. Department of State and the U.S. Department of Justice. The hearing lasted an hour and a half. The room was standing-room only, packed with overflow crowds of supporters for Jessica Gonzales, and the hearing was broadcasted live on the Internet for many more people to watch. Following the hearing, the parties were given an opportunity to submit posthearing observations. We expect the Commission to issue its findings and recommendations in early 2009.

### III. THE IMPACT OF INTERNATIONAL MECHANISMS ON U.S. DOMESTIC POLICY

The advocacy in which we have engaged on behalf of Jessica Gonzales illustrates the range of international human rights mechanisms that can be employed to influence U.S. policy to end violence against women. Mechanisms exist at the universal level, such as the United Nations special rapporteurs and treaty-monitoring committees, as well as at the regional level, including the IACHR. By engaging these various mechanisms, advocates are able to shine a spotlight on the widespread problems of violence against women and police lack of accountability for preventing such violence. Further, as international bodies issue observations, recommendations, and reports on U.S. abuses and violations of international law in the *Gonzales* case specifically and with regard to the problem of domestic violence and police lack of accountability more generally, as did the Special Rapporteur on Violence Against Women in her report to the Human Rights Council<sup>110</sup> and the CERD Committee in its concluding observations,<sup>111</sup> and as we anticipate the IACHR will do at the conclusion of the petition proceedings before it, it will become more and more difficult for the United States to continue to keep its head in the sand and disavow any governmental responsibility for protecting women from intimate violence.

However, these reports, observations, and recommendations, alone, will not force the United States to change its policies. Rather, advocates must use the international human rights mechanisms and the resulting observations and recommendations to push the United States to alter its policies. To do so, advocates must first publicize those proceedings, observations, and recommendations to make the public aware of the mechanisms and their operation as well as the substantive abuses that are at issue in the proceedings before these bodies. Furthermore, advocates must cite as persuasive (though not controlling) authority the concluding observations in other legal proceedings—both in domestic courts and before international bodies—and must use the recommendations as support for policy changes at the state and federal legislative and executive levels.

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110. See Report of the Special Rapporteur, *supra* note 36.

111. See CERD Concluding Observations, *supra* note 76.

Thus, for example, we hope to use a strong decision from the IACHR to press for changes in the policies and practices of the Castle Rock Police Department and in police departments throughout Colorado and the United States, for changes in state sovereign immunity laws, for changes in states' domestic violence and mandatory arrest laws, for enhanced funding and training to support greater services for survivors of domestic violence, and for changes in courts' understanding of human rights obligations on the part of federal, state, and local governments. These changes will not come easily or quickly, especially given the United States government's often-espoused disdain for international human rights mechanisms, including the United Nations, notwithstanding the fact that the United States was instrumental in helping to create this system.<sup>112</sup> Despite these obstacles, advocates must engage in this struggle as it is the most promising avenue available at this moment in history to bring about meaningful policy changes with regard to violence against women and many other human rights abuses.

As pressure mounts from all sides, and from several separate international human rights mechanisms, for the United States to reform its policies so as to protect women from domestic and gender-based violence and to ensure police accountability for such protections, it will be more difficult for the United States to continue to turn a blind eye to violence against women and to human rights violations more generally. Over time, I am confident that we will see a change in U.S. policy to end violence against women. Although advocates will face many bumps in the road and will have to overcome steep hurdles, in the end, advocates' use of international human rights mechanisms has the potential to play a significant role in influencing U.S. policy to end violence against women. Only then will justice prevail for Jessica Gonzales and for all victims of gender-based, intimate-partner violence.

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112. See *supra* Part II.A.1.