

JESSICA GONZALES V. UNITED STATES: AN EMERGING MODEL FOR DOMESTIC VIOLENCE & HUMAN RIGHTS ADVOCACY IN THE UNITED STATES

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In 2007, the Inter-American Commission on Human Rights (“the Commission”) declared in a landmark “admissibility” decision that it had competence to examine the human rights claims of Jessica Gonzales, a domestic violence survivor from Colorado whose three children were killed when local police failed to enforce a restraining order against her estranged husband.¹ *Jessica Gonzales v. United States* marks the first time the Commission has been asked to consider the nature and extent of the U.S.’s affirmative obligations to protect individuals from private acts of violence under the American Declaration on the Rights and Duties of Man (“American Declaration” or “Declaration”). The Commission’s admissibility decision rejects the U.S. State Department’s position that the Declaration, which does not explicitly articulate state obligations *vis-à-vis* the rights contained therein, does not create positive governmental obligations. Instead, the decision holds the U.S. to well-established international standards on state responsibility to exercise “due diligence” to prevent, investigate, and punish human rights violations and protect and compensate victims.²

The Commission will next decide, in the “merits” phase of the case, whether the U.S. violated the human rights of Jessica Gonzales and her children. The merits decision, anticipated in 2008, will have profound consequences for Ms. Gonzales on a personal level. It also has the potential to expand international human rights norms and spur systemic reforms in law and policy in the U.S.

The details of the case are gruesome and tragic, and occur against the backdrop of a national problem of enormous proportions. In June 1999, Jessica Gonzales’ estranged husband, Simon Gonzales, abducted her three

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1. *Jessica Gonzales v. United States*, Petition No. 1490-05, Inter-Am. C.H.R., Report No. 52/07, OEA/Ser.L./V/II.128, doc. 19 (2007) [hereinafter Admissibility Decision]. Although Ms. Gonzales has since remarried and now goes by “Jessica Lenahan,” I refer to her here as “Jessica Gonzales,” the name used in her legal filings.

2. See United Nations Convention on the Elimination of All Forms of Discrimination against Women art. 2, Dec. 18, 1979, 1249 U.N.T.S. 14; The Secretary-General, *Report of the Secretary General on the In-depth Study on All Forms of Violence Against Women*, ¶¶ 255-57, delivered to the General Assembly, U.N. Doc. A/16/122/Add.1 (July 6, 2006); Dinah L. Shelton, *Private Violence, Public Wrongs, and the Responsibilities of States*, 13 FORDHAM INT’L L.J. 1, 21-23 (1989-1990).

young daughters—Leslie, 7, Katheryn, 8, and Rebecca, 10—in violation of a domestic violence restraining order. Ms. Gonzales contacted the Castle Rock, Colorado Police Department (“CRPD”) repeatedly to report the incident. Her calls went unheeded, despite Colorado’s “mandatory arrest” law³ and the fact that Mr. Gonzales had seven run-ins with the CRPD—many domestic violence-related—in the preceding three months. Nearly 10 hours after Jessica Gonzales’ first call to the police, Simon Gonzales arrived at the police station and opened fire. The police shot and killed him, and then discovered the bodies of the three Gonzales children in his truck.⁴ No subsequent investigation into the girls’ deaths took place, despite Ms. Gonzales’ repeated requests.

Jessica Gonzales filed a § 1983 lawsuit⁵ against the police in federal court, alleging due process violations of the Fourteenth Amendment of the U.S. Constitution. Before reaching discovery, her case was dismissed. The case wound its way up to the Supreme Court, where Justice Scalia, writing for the majority, held that Ms. Gonzales had no personal entitlement under the Due Process Clause to police enforcement of her restraining order.⁶ Despite the Colorado legislature’s repeated use of the word “shall” in the mandatory arrest law, the Court explained, “[w]e do not believe that these protections of Colorado law truly made enforcement of restraining orders *mandatory*.”⁷ The Court also refused to assume that the statute was intended to give victims “a personal entitlement to something as vague and novel as enforcement of restraining orders,” rather than simply protect public interest in punishing criminal behavior.⁸

Castle Rock v. Gonzales prompted a swift, intense, and united reaction across a range of constituencies. Domestic violence advocates and women’s and civil rights lawyers decried the decision as misinterpreting the Constitution and lamented its potential to remove needed legal protections for victims. The decision sent the wrong message to batterers and law enforce-

3. Colorado law directs that, upon probable cause of a violation, “[a] peace officer shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of a restrained person . . .” COLO. REV. STAT. § 18–6–803.5(3)(b) (1999).

4. See Petition Alleging Violations of the Human Rights of Jessica Gonzales by the United States of America and the State of Colorado, with Request for an Investigation and Hearing of the Merits at 7-20, *Gonzales v. United States*, Petition No. 1490-05, Inter Am. C.H.R., Report No. 52/07, OEA/Ser.L/IV/II.128, doc. 19 (2007), available at https://www.law.columbia.edu/focusareas/clinics/humanrights?exclusive=filemgr.download&file_id=93473&rtcontentdisposition=filename%3DGonzales%20Petition%20Dec%2005.pdf [hereinafter *Gonzales Petition*]. For a full factual description, see Observations Concerning the September 22, 2006 Response of the United States Government at 5-34, *Gonzales v. United States*, Petition No. 1490-05, Inter Am. C.H.R., Report No. 52/07, OEA/Ser.L/IV/II.128, doc. 19 (2007), available at https://www.law.columbia.edu/focusareas/clinics/humanrights?exclusive=filemgr.download&file_id=93472&rtcontentdisposition=filename%3DGonzales%20Brief%20Dec%2006.pdf [hereinafter *Observations Concerning U.S. Response*].

5. 42 U.S.C. § 1983 creates a federal remedy against a state official for the violation of federal rights. See 42 U.S.C. § 1983 (2000).

6. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 768 (2005).

7. *Id.* at 760 (emphasis in original).

8. *Id.* at 766.

ment, and risked creating a culture of impunity for rogue officers. They expressed outrage that the Supreme Court would characterize an individual's entitlement to enforcement of her restraining order as "vague and novel," considering the prevalence of legal protections for victims in the U.S.⁹ Meetings were scheduled to discuss legislative, litigation, and public policy strategies and plans for engagement with state and local officials about *Castle Rock's* implications.

Yet everyone agreed that, legally speaking, *Castle Rock* marked the end of the line for Jessica Gonzales. After a Supreme Court decision rejecting her claims, what other remedy could she have?

AN ADDITIONAL LEGAL AVENUE: THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

As it turns out, an obscure but promising legal avenue was available to Jessica Gonzales. She could file a petition with the Inter-American Commission on Human Rights, claiming that the U.S. was responsible for human rights violations resulting from the CRPD's inaction and the Supreme Court's decision. The Washington D.C.-based Commission, an autonomous organ of the Organization of American States ("OAS") created "to promote the observance and defense of human rights" in OAS Member States,¹⁰ considers claims of human rights violations and issues written decisions on state responsibility. Although it is not a "fourth instance" court and has no enforcement authority, the Commission's decisions carry significant moral and political weight and contribute to international standard setting.¹¹

Because the U.S. has not ratified any Inter-American human rights treaties, human rights complaints against the U.S. are brought before the Commission under the American Declaration and the OAS Charter.¹² Unlike contemporary human rights treaties, the Declaration does not contain a

9. These protections are discussed *infra* in "Domestic Violence, Civil Rights, and Human Rights Advocacy in the United States."

10. Statute of the Inter-American Commission on Human Rights art. 1(1), O.A.S. Res. 447 (IX-0/79), 9th Sess., O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80, Vol. 1 at 88 (1979).

11. Although the Inter-American human rights system is unfamiliar to many advocates in the U.S., it is regularly used in other countries to hold governments accountable for rights violations. For an overview of the system, see Dinah L. Shelton, *The Inter-American Human Rights System*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 127, 127-142 (Hurst Hannum ed., 4th ed. 2004). For a general overview of the Inter-American Commission on Human Rights, including the Commission's organization, procedures, and jurisprudence, see generally Tara J. Melish, *The Inter-American Commission on Human Rights: Defending Social Rights Through Case-Based Petitions*, in SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN COMPARATIVE AND INTERNATIONAL LAW (Malcom Langford ed., forthcoming 2008).

12. See generally American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, Int'l Conference of Am. States, 9th Conference, OEA/Ser.L/V/I.4 Rev. XX (May 2, 1948); Charter of the Organization of American States, Apr. 30, 1948, 119 U.N.T.S. 3 (entered into force December 13, 1951); Statute of the Inter-American Commission on Human Rights, *supra* note 10, art. 1(2)(b).

“general obligations” clause that requires states to respect, ensure, and promote guaranteed rights and freedoms through the adoption of appropriate or necessary measures.¹³ However, signatories to the Charter (including the U.S.) are legally bound by the Declaration’s provisions,¹⁴ and the Commission has consistently applied “general obligations” principles when interpreting the wide spectrum of civil, political, economic, social, and cultural rights set forth in the Declaration.¹⁵

When Jessica Gonzales learned of the Inter-American human rights system, she was hopeful that framing her case as a human rights violation could give closure to her personal tragedy and spur important legislative and policy changes in the U.S. Yet she and her lawyers, including this author, were also wary of a system that has no enforcement authority and far less credibility in the U.S. than a domestic court.

Ms. Gonzales filed a petition before the Commission in 2005, alleging violations of fundamental rights protected by the American Declaration: the rights to life and freedom from inhumane treatment (Article I); equal protection/non-discrimination (Article II); special protections for women and children (Article VII); privacy, family unity, and safety in the home (Articles V, VI, and IX); and an adequate and effective remedy (Articles XVIII and XXIV).¹⁶ The petition contextualized her story within a larger pattern of non-response to domestic violence by police and courts in the U.S., both to support her “disparate effect” discrimination claim and to shine a light on desperately-needed policy reforms in the domestic violence arena.¹⁷

Ms. Gonzales’ petition also directly challenged U.S. Supreme Court jurisprudence—most notably, *DeShaney v. Winnebago County*,¹⁸ an influential case holding that government, in most situations, has no duty to protect

13. *C.f.*, e.g., American Convention on Human Rights, arts. 1(1), 2, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; International Covenant on Civil and Political Rights art. 2, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976); United Nations Convention on the Rights of Persons with Disabilities art. 4, *opened for signature* Mar. 30, 2007, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (*entered into force* Apr. 3, 2008).

14. *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, 1989 Inter-Am. Ct. H.R. (Ser. A) No. 10, ¶¶ 43, 45, 47 (July 14, 1989) [hereinafter *Advisory Opinion OC-10/89*]; Admissibility Decision, *supra* note 1, at ¶ 56 (finding that the Declaration “constitute[s] a source of legal obligations on OAS member States, including in particular those states that are not parties to the American Convention”); *Roach & Pinkerton v. United States*, Case 9647 (Res. 3/87), Inter-Am. C.H.R., Report No. 147, OEA/Serv.L/V/II.71, doc. 9 rev. 1 ¶ 46 (1987).

15. See *Mary and Carrie Dann v. United States*, Case 11.140, Inter-Am. C.H.R., Report No. 75/02, OEA/Serv.L./V/II.117, doc. 1 rev. 1. ¶ 124 (2002); *Advisory Opinion OC-10/89*, *supra* note 14, at ¶ 37 (“[T]o determine the legal status of the American Declaration it is appropriate to look to the inter-American system of today in light of the evolution it has undergone since the adoption of the Declaration.”).

16. Gonzales Petition, *supra* note 4.

17. *Id.* at 21-39.

18. 489 U.S. 189 (1989).

individuals from private violence.¹⁹ Following the famous *Velásquez Rodríguez* case,²⁰ Ms. Gonzales asserted that the U.S. has an affirmative obligation to act with “due diligence” to protect the rights guaranteed in the American Declaration from violations not only by the state or its agents, but also by private actors.²¹ Where a State fails to effectively prevent domestic violence, protect women and children whom it knows are at risk, and provide a remedy when the government fails to fulfill these guarantees, she argued, the State incurs international liability for the acts of private individuals who committed the violent acts.²²

On October 5, 2007, the Commission released a positive admissibility decision. The facts alleged by Ms. Gonzales, the Commission found, “could tend to establish violations” by the U.S. of Articles I, II, V, VI, VII, XVIII, and XXIV of the American Declaration.²³ The case would move on to the merits phase.

DOMESTIC VIOLENCE, CIVIL RIGHTS, AND HUMAN RIGHTS ADVOCACY IN THE UNITED STATES

Jessica Gonzales’ tragedy is by no means unique. Domestic violence is among the most dangerous and common forms of gender-based violence in the U.S.²⁴ In recognition of its destructive effects, all fifty states have passed legislation making civil orders of protection (also known as “restraining orders”) available to victims who demonstrate fear of physical harm from their abusers.²⁵ Twenty-one states and the District of Columbia

19. Gonzales Petition, *supra* note 4, at 40; Observations Concerning U.S. Response, *supra* note 4, at 96, 100.

20. Velásquez Rodríguez Case, 1989 Inter-Am. Ct. H.R. (Ser. C) No. 4, at 30 (July 29, 1988) (finding that a private act “can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it” in a manner appropriate under the circumstances).

21. Gonzales Petition, *supra* note 4, at 73-75; Observations Concerning U.S. Response, *supra* note 4, at 75-88.

22. Gonzales Petition, *supra* note 4, at 73-75; Observations Concerning U.S. Response, *supra* note 4, at 75-88.

23. Admissibility Decision, *supra* note 1, at ¶¶ 57-58. The Commission rejected, without comment, Ms. Gonzales’ Article IX (inviolability of the home) claim. *Id.* at ¶ 59.

24. See, e.g., NAT’L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 1-4 (2003), available at http://www.cdc.gov/ncipc/pub-res/ipv_cost/IPVBook-Final-Feb18.pdf; PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN STUDY 9-11 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>; JOSEPH R. BIDEN, JR., TEN YEARS OF EXTRAORDINARY PROGRESS: THE VIOLENCE AGAINST WOMEN ACT 9 (2004), available at http://biden.senate.gov/documents/VAWA_Report.pdf.

25. See ABA Comm’n on Domestic Violence, Statutory Summary Chart: Domestic Violence Civil Protection Orders (CPOs) By State (2007), <http://www.abanet.org/domviol/docs/DVCPOChartJune07.pdf> (last visited Apr. 22, 2008); Leigh Goodmark, *Law Is the Answer? Do We Know That For Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 10 (2004).

have statutes mandating arrests (commonly referred to as “mandatory arrest laws”) in domestic violence situations.²⁶ Yet while domestic violence is clearly on the American public’s radar, many continue to view it as a private, family matter—not a law enforcement issue.²⁷ Our legal system contributes to this problem by focusing on individual batterers’ culpability and punishment²⁸ while routinely applying governmental immunity laws and legal precedent to dismiss cases against rogue state officers.²⁹

The human rights framework, which concentrates on governmental accountability for state acts and omissions that violate basic notions of dignity, civility, and citizenship, offers a different approach. Because the government has an affirmative obligation under international law to exercise due diligence and protect individuals known to be at risk, human rights can be a powerful mechanism for highlighting the state’s role in perpetuating violence against women when it fails to respond appropriately to victims.

Despite its great promise, however, human rights is a relative newcomer to U.S. legal and political discourse. The U.S. has declined to ratify most international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), and has removed the “teeth” of the few treaties it has ratified by attaching broad reservations, understandings, and declarations (“RUDs”).³⁰ International and domestic non-governmental organizations (“NGOs”) have only recently begun to classify as “human rights” violations what were traditionally (and still are) deemed infringements on “civil rights” by U.S.-based advocates.³¹

As a result, many Americans—including governmental officials, academics, and public interest lawyers—have tended to associate “human rights” with grave and widespread abuses “out there” in other parts of the world. Indeed, as recently as the 1990s, “the term ‘U.S. human rights’ would have probably elicited vague confusion and puzzled looks. Contemporary notions of human rights advocacy involved the criticism of rights abuses in *other* countries, and claims of human rights violations were leveled *by*, not *at*, the

26. See ANDREW R. KLEIN, *THE CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE* 95 (2004).

27. See generally Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 *YALE L.J.* 2117 (1996).

28. See Goodmark, *supra* note 25, at 18.

29. See *Ford v. Town of Grafton*, 693 N.E.2d 1047 (Mass. App. Ct. 1998); *Terror Mining Co. v. Roter*, 866 P.2d 929, 934 (Colo. 1994); *Finch v. County of Saratoga*, 758 N.Y.S.2d 220, 223 (N.Y. App. Div. 2003).

30. RUDs are qualifying statements attached to treaties on signing and ratification. The U.S.’s attachment of significant RUD “packages” makes these treaties severely compromised, if not completely unenforceable at the domestic level.

31. See Cynthia Soohoo, *Human Rights and the Transformation of the ‘Civil Rights’ and ‘Civil Liberties’ Lawyer*, in 2 *BRINGING HUMAN RIGHTS HOME* 71, 72, 78-93 (Cynthia Soohoo, Catherine Albisa & Martha F. Davis eds., 2008).

U.S. government.”³² While there is an increasing focus on human rights at home, particularly in the wake of 9/11 and Hurricane Katrina,³³ many U.S. advocates continue to frame injustice in the U.S. not as an international human rights concern, but as a domestic civil rights issue.

Domestic violence advocacy occupies a different arena altogether: primarily, that of local legal service providers and national public policy organizations that promote funding and public education programs to address domestic violence. The gap between the work of these domestic violence organizations and that of the major civil and human rights organizations is pronounced.

Yet even in the international arena, where human rights discourse is more familiar, gender-based violence is often excluded from the core of advocacy. The human rights approach has traditionally construed civil and political rights as belonging to public life, and thus worthy of state protection, but neglected to protect violations of individual rights in the private, domestic sphere.³⁴ Rarely are governments held accountable “for those violations that are the result of a systematic failure on the part of the state to institute the political and legal protections necessary to ensure the basic rights of life, integrity, and dignity of women.”³⁵ As Rhonda Copelon has eloquently noted, “[t]he egregiousness of gender-based violence has been matched only by its absence from human rights discourse.”³⁶

‘SO WHY BOTHER?’ THE UTILITY OF FRAMING DOMESTIC VIOLENCE AS A HUMAN RIGHTS VIOLATION

Jessica Gonzales’ tragic story had all the makings of a good test case: a horrific set of facts, a widely-criticized U.S. Supreme Court decision, an international standard that directly conflicted with domestic precedent, a community of advocates and supporters asking “what can we do?” and a petitioner who would not rest until justice was done. Never before had a domestic violence survivor filed an international legal claim against the

32. 2 BRINGING HUMAN RIGHTS HOME, at ix-xii (Cynthia Soohoo, Catherine Albisa, and Martha F. Davis eds., 2008).

33. See THE OPPORTUNITY AGENDA, HUMAN RIGHTS IN THE U.S.: OPINION RESEARCH WITH ADVOCATES, JOURNALISTS, AND THE GENERAL PUBLIC 21 (2007), available at <http://www.opportunityagenda.org/atf/cf/%7B2ACB2581-1559-47D6-8973-70CD23C286CB%7D/HUMAN%20RIGHTS%20REPORT.PDF> (indicating that eight in ten Americans believe that there are people being denied their human rights in the United States and that “the U.S. could improve its human rights record”); 2 BRINGING HUMAN RIGHTS HOME, *supra* note 32 at xi; Soohoo, *supra* note 31, at 94–95 (describing the heightened interest in human rights law strategies among U.S. lawyers post-9/11).

34. See Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 85, 85 (Rebecca J. Cook ed., 1994); Shelton, *Private Violence, Public Wrongs, and the Responsibility of States*, *supra* note 2, at 22.

35. Romany, *supra* note 34 at 85–86.

36. Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 291 (1994).

U.S. Nor had anyone ever legally challenged *DeShaney* before an international tribunal.

Yet if Americans tend to view domestic violence as a private, family affair and human rights as a problem beyond our borders; if the U.S. does not take seriously its own international human rights obligations; if no enforcement mechanism exists to create real accountability for U.S. compliance with human rights norms; and if the international community tends to overlook gender-based violence as a human rights violation, why would a domestic violence survivor and her advocates turn to an international human rights tribunal to seek justice from the U.S. government?

In fact, there are good reasons for pursuing Ms. Gonzales' case at the international level. *Gonzales v. U.S.* has already made important inroads on two fronts—for Jessica Gonzales personally and for coalition/movement-building—and has the potential to spur important normative developments, generate international and domestic political pressure, and change public opinion. The case has presented new approaches to human rights, civil rights, and domestic violence advocacy in the United States. It has also crossed borders and contributed to an emerging transnational dialogue on domestic violence as a human rights violation. Yet lurking in the background of this exciting process are legitimate concerns over how (and whether) the U.S. government will respond to the Commission's ultimate merits decision. Thus, while the case holds great promise for inducing systemic legal and policy shifts at the federal, state, local, and even international levels, advocates recognize that the nature and timing of such change remains uncertain.

IMPORTANCE OF THE CASE FOR JESSICA GONZALES

Jessica Gonzales counts the Inter-American experience as the most meaningful chapter, to date, of her struggle for justice.³⁷ In March 2007, she testified before the Commission in the first Commission hearing session made available via webcast. This marked the first time that a domestic violence victim from the U.S. ever testified before the Commission. This was also Ms. Gonzales' first opportunity—nearly eight years after her daughters' deaths—to tell her story to a decision-making body and in a public forum. She later described it as a moment of “true catharsis.”³⁸

The Commission's admissibility decision marked another milestone for Ms. Gonzales. Finally, she told the press, a tribunal was taking her tragedy seriously.³⁹ “I was not heard in my own country and I had to go to an outer

37. Interview with Jessica Lenahan (Gonzales) (Oct. 20, 2007).

38. Interview with Jessica Lenahan (Gonzales) (Mar. 3, 2007).

39. See, e.g., *Human Rights Panel Investigates Deaths in Shootout* (CBS-4 Evening News Oct. 8, 2007), available at <http://cbs4denver.com/seenon/lenahan.castle.rock.2.562557.html>.

body to be heard," she told a Colorado radio station, "to help the United States understand where they failed me and my children."⁴⁰

Jessica Gonzales also pursued parallel international strategies to complement her Inter-American appeal. In May 2006, she told her story in Geneva to some members of the United Nations Human Rights Committee as part of a panel called "Victims of Human Rights Abuses."⁴¹ She also met with the United Nations Special Rapporteur on Violence Against Women, who agreed to investigate her case and make an official inquiry to the U.S. concerning the tragedy. Thus far, the U.S. has not responded to the inquiry.

When reporters have asked Ms. Gonzales why she has pursued an international process that offers no enforceable remedy, she has reminded them that the Inter-American petition is her most viable option for holding her government accountable and ensuring that her tragedy is not repeated. "It's no longer about me," she told the Denver press after the Commission's admissibility decision. "The only thing about me that it involves is that our human rights were violated and that they continue to be violated."⁴²

These days, Jessica Gonzales regularly speaks at domestic violence conferences and police trainings about the importance of legislative and policy protections for battered women. As discussed below, the Inter-American system has clearly emerged as a new forum for U.S. victims such as Ms. Gonzales to mobilize change, feel empowered, and attain some closure in the wake of tragedy.

IMPORTANCE OF THE CASE FOR COALITION AND MOVEMENT-BUILDING

Jessica Gonzales' case has spurred domestic violence advocates at home and abroad to expand the scope of their traditional advocacy and re-frame their work in human rights terms. In 2007 and 2008, two groups of U.S.-based advocates—most of whom were new to the human rights field—contributed to shadow reports to the U.N. Committee on the Elimination of Racial Discrimination ("CERD Committee").⁴³ The reports discuss "intersectional" race and gender discrimination experienced by minority and

40. *In-Depth News: International Commission Will Hear Castle Rock Murder Case* (KCFR Colorado Public Radio broadcast, Oct. 22, 2007), http://www.kcfr.org/index.php?option=com_content&task=view&id=94&Itemid=234&target_pg=com_day&date=10/22/2007 (last visited Apr. 26, 2008).

41. See Press Release, American Civil Liberties Union, *Victims of U.S. Human Rights Violations Tell Their Stories at U.N. Meeting in Geneva* (July 14, 2006), available at <http://www.aclu.org/intl/humanrights/gen/26157prs20060714.html>.

42. Ivan Moreno, *International Tribunal to Hear Castle Rock Case*, ROCKY MOUNTAIN NEWS, Oct. 8, 2007, available at http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_57172_72,00.html; *Human Rights Panel Investigates Deaths in Shootout*, *supra* note 39.

43. Shadow Reports supplement reports by governments to human rights bodies by calling attention to the government's progress and setbacks on particular human rights issues.

immigrant domestic violence victims in New York City and nationwide,⁴⁴ and highlight the case of Jessica Gonzales (a woman of Latina and Native American origin) as an example of this problem. Several advocates, many of whom were part of the CERD coalition and all of whom were newcomers to the human rights scene, also drafted two amicus briefs to the Inter-American Commission in support of Ms. Gonzales.

Energized by Jessica Gonzales' case, a group of U.S. mothers who lost custody of their children submitted a petition to the Inter-American Commission alleging bias against women, especially domestic violence victims, in child custody determinations.⁴⁵ Domestic violence advocacy groups are increasingly integrating a human rights element into conferences and trainings. The New York State Coalition Against Domestic Violence, for example, hosted a 30th Anniversary conference called "Mosaic of Movements: An Assembly on Human Rights" in Albany, New York in April 2008 that was premised on the notion that domestic violence is a human rights violation and included two workshops on domestic violence and human rights.

These human rights initiatives mark a new, international foray for grassroots domestic violence organizations whose mandate is typically local. Spurred by an increasingly conservative judiciary and a nationwide rollback in civil rights, advocates have sought new alternatives for mobilization and accountability in the domestic violence arena.⁴⁶

IMPORTANCE OF THE CASE FOR NORMATIVE DEVELOPMENT

The *Gonzales* case also offers opportunities for important normative developments. For years, scholars and advocates have criticized the U.S. Supreme Court decision in *DeShaney v. Winnebago County* as contravening our constitutional tradition and international human rights law, and have pointed to Europe and Latin America as locations where affirmative governmental obligations are familiar and well-accepted.⁴⁷ *Gonzales v. United States* presents the Commission with an opportunity to articulate standards for an appropriate and reasonable governmental response to victims of

44. See URBAN JUSTICE CENTER HUMAN RIGHTS PROJECT, RACE REALITIES IN NEW YORK CITY 75-89 (2007), available at <http://www.hrpujc.org/documents/NYCCERDSRWeb.pdf>; U.S. HUMAN RIGHTS NETWORK, 2008 NATIONAL CERD SHADOW REPORT (2007), available at <http://www.ushtnet.org/projects/cerd>.

45. Petition to Inter-American Commission on Human Rights on Behalf of Battered Mothers (May 11, 2007), available at <http://stopfamilyviolence.org/ocean/host.php?folder=124&page=468&T>.

46. See BRINGING HUMAN RIGHTS HOME, *supra* note 31, at x-xi (describing the general civil rights rollback of the 1990s).

47. See Shelton, *Private Violence, Public Wrongs, and the Responsibility of States*, *supra* note 2, at 3, 26-33; Steven J. Heyman, *The First Duty of Government: Protection, Liberty and the Fourteenth Amendment*, 41 DUKE L.J. 507, 570-71 (1991); Rhonda Copelon, *International Human Rights Dimensions of Intimate Violence: Another Strand in the Dialectic of Feminist Lawmaking*, 11 AM. U. J. GENDER SOC. POL'Y & L. 865, 872-73 (2003); Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 418-19 (2003); Winfried Brugger, *May Government Ever Use Torture? Two Responses from German Law*, 48 AM. J. COMP. L. 661, 674-75 (2000).

third-party violence and to provide guidance for how international legal norms, standards, and policies can be implemented at the domestic level.⁴⁸

While the decisions of foreign and international tribunals are not legally binding, they have powerful persuasive authority. In 2004, the U.S. Supreme Court invoked world opinion to support its holding in *Roper v. Simmons*⁴⁹ that the death penalty for juvenile offenders constituted disproportionate punishment and was therefore unconstitutional. The Court considered the overwhelming number of countries that have passed laws and ratified treaties prohibiting the juvenile death penalty, and concluded: "The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions."⁵⁰

The turn to comparative and international law seems, at this point, irreversible. As ACLU Legal Director Steven Shapiro has predicted, "in another 20 years, civil rights law in the U.S. is going to be deeply engaged in international human rights issues, and it will not be possible to be a civil rights lawyer without knowing about international human rights."⁵¹ Jessica Gonzales' case will hopefully contribute to this normative trend.

IMPORTANCE OF THE CASE AS A TOOL FOR POLITICAL PRESSURE

The *Gonzales* case places the U.S. in an uncomfortable political position. Normally we shine the spotlight on other countries' human rights violations. As one Congressman told Jessica Gonzales, "do you know how embarrassing it would be for an international body to call the United States a violator of the rights of women and children?"⁵² Indeed, the State Department appears particularly attuned to the case, filing what many scholars and advocates have characterized as the most comprehensive response to an Inter-American petition to date.⁵³

"To the extent an authoritative body finds violations by the United States and it does not comply, it resonates," former Inter-American Commissioner Robert Goldman recently told the *National Law Journal*, com-

48. See *Report of the Secretary General on the In-depth Study on All Forms of Violence Against Women*, *supra* note 2, at ¶ 4 (calling for progress in domestic implementation of established international norms on violence against women).

49. 543 U.S. 551 (2005).

50. *Id.* at 578.

51. Interview by Cynthia Soohoo with Steven Shapiro, Legal Director, American Civil Liberties Union (Apr. 18, 2007), *reprinted in* Soohoo, *supra* note 31, at 98.

52. Anonymous to Jessica Lenahan, Capitol Hill, Washington, D.C. (Mar. 2007) (name withheld for confidentiality).

53. Opinions of scholars and advocates, expressed to the author in private discussion, based on Response of the Government of the United States of America to the Inter-American Commission on Human Rights Regarding Jessica Gonzales, Petition # P-1490-05, Sept. 25, 2006 (on file with author).

menting specifically on Ms. Gonzales' case.⁵⁴ Indeed, advocates can use the case and the normative standards it may generate to place political pressure on the U.S. to ratify CEDAW and to pass legislation that improves protections for victims of gender-based violence.

IMPORTANCE OF THE CASE FOR INFLUENCING PUBLIC OPINION

Jessica Gonzales' bold, trailblazing efforts to name her tragedy a human rights violation and seek international recourse have set off a storm of enthusiasm from advocates and supporters at home and abroad, while provoking an irritated response from some Coloradans, the CRPD, and conservative pundits. Domestic violence and women's rights advocates have lauded *Gonzales* as a "colossal" development.⁵⁵ Twenty-nine amici from across the Americas submitted an amicus brief to the Commission arguing that the case would "bear significantly upon the wider protection of human rights and the rights of women and children within the Americas and beyond."⁵⁶ The Colombian National Human Rights Moot Court Competition modeled its 2007 fact pattern on the case.⁵⁷ The amicus initiative is particularly interesting in light of the fact that the traditional direction of human rights advocacy has been "north" to "south." Through the brief, Latin American activists have turned that paradigm on its head and examined the U.S.'s responsibility for committing human rights violations on its home turf.

Critics, on the other hand, have publicly attacked Ms. Gonzales' international appeals. CRPD Chief Tony Lane condemned her allegations as "absolutely absurd" and charged that her Inter-American petition is "about money, politics, people using other people."⁵⁸ The *Rocky Mountain News* published two editorials criticizing the case. One rejected the notion that "international agencies that have adopted expansive theories of what count as violations of basic human rights" should judge the U.S.⁵⁹ The other argued that human rights cases involving arbitrary detention, repression of

54. See Marcia Coyle, *U.S. Domestic Violence Case Goes to Rights Panel*, NAT'L L. J., Mar. 19, 2007 (quoting Robert Goldman).

55. See, e.g., Alison Bowen, *U.S. Violence Case to Get Human Rights Review*, WOMEN'S E-NEWS, Oct. 26, 2007, <http://www.womensenews.org/article.cfm/dyn/aid/3364> (last visited Feb. 17, 2008) (citing Christina Falck, director of development at the Boston-based R.O.S.E. Fund).

56. Amici Curiae Brief in the case of Jessica Ruth Gonzales (July 6, 2007) at 1 ¶ 1, *Gonzales v. United States*, Petition No. 1490-05, Inter Am. C.H.R., Report No. 52/07, OEA/Ser.L./V/II.128, doc. 19 (2007), available at https://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=13524&rtcontentdisposition=filename%3DNY-#2446950-v1-Amici_Curiae_Brief.PDF.

57. Interview with Arturo Carrillo, Assoc. Professor of Clinical Law, George Washington Univ. Law School (July 31, 2007).

58. Rhonda Moore, *Mother Haunted by Daughters' Deaths*, COLORADO COMMUNITY NEWSPAPERS ONLINE, Oct. 18, 2007, available at http://www.dcnnewspress.com/site/index.cfm?newsid=18932855&BRD=2713&PAG=461&dept_id=559878&rfl=8.

59. Vincent Carroll, Op-Ed., *Usurping Justice*, ROCKY MOUNTAIN NEWS, Mar. 2, 2007, available at <http://www.rockymountainnews.com/news/2007/mar/02/bcarroll-usurping-justice/>.

speech, and state-sanctioned murder in other countries “are a far cry from inspecting how a local police department responded to a domestic situation in which a restraining order had been issued.”⁶⁰

Despite the skeptics, Jessica Gonzales has already changed hearts and minds in the U.S. and abroad. Her case places in sharp relief, and then chips away at, the notion that domestic violence is not a “human rights” matter because it involves intimate relationships. That idea, the case makes clear, misses the point that an alarming number of women in the U.S. experience grievous harm and loss of life due to domestic violence, and that our government is not responding effectively to this crisis.

CONCLUSION

Ms. Gonzales’ Inter-American petition and her related advocacy have triggered a reframing of domestic violence as a human rights problem in the U.S. This new configuration may have reverberating effects on how our legal and political framework addresses and how the public perceives violence against women. A positive Commission decision or pressure from the United Nations could spur a further shift in domestic violence advocacy and the domestic articulation of human rights. This could ultimately have an important political dimension, becoming the flashpoint for legislative and policy changes at the local, state, national, and international levels.

60. *A Phony Human Rights Case*, ROCKY MOUNTAIN NEWS, Oct. 14, 2007, available at http://www.rockymountainnews.com/drmn/editorials/article/0,2777,DRMN_23964_5722730,00.html.