

SUMMARY

Jessica Lenahan (Gonzales) v. United States
Inter-American Commission on Human Rights
Final decision published August 2011

In June 1999, Jessica Lenahan's (formerly Gonzales) three young daughters, Leslie, Katheryn, and Rebecca Gonzales (ages 7, 8, and 10), were abducted by her abusive husband, Simon Gonzales, in Castle Rock, Colorado, in violation of the terms of a restraining order Jessica had obtained against him. Although Jessica repeatedly called the police, telling them of her fears for her daughters' safety and at one point even identifying their location, they failed to meaningfully respond. Hours later, Simon Gonzales drove his pick-up truck to the police department and opened fire. He was shot dead by the police. The slain bodies of the three girls were subsequently discovered in the back of his truck. Local authorities failed to conduct a proper investigation into the children's deaths, resulting in questions about the cause, time, and place of their deaths that remain to this day.

Jessica filed a federal lawsuit against the police, but in June 2005 the U.S. Supreme Court ruled that she had no Constitutional due process right to police enforcement of her restraining order, despite Colorado state law mandating arrest for violations of restraining orders. She then filed a petition with the Inter-American Commission on Human Rights, charging that the government violated her rights when the police failed to protect her and her daughters and when the Supreme Court refused to provide her a remedy. The University of Miami School of Law Human Rights Clinic, the ACLU Women's Rights Project and Human Rights Program, and the Columbia Law School Human Rights Clinic represent her in this petition.

More information and documents from the case are available at:

<http://www.aclu.org/human-rights-womens-rights/jessica-gonzales-v-usa>

http://www.law.miami.edu/hrc/hrc_gonzalez_usa.php

<http://www.law.columbia.edu/human-rights-institute/initiatives/interamerican/gonzales>

The Decision

The Commission published its decision on August 17, 2011. This is the first time an international human rights body has ruled on the United States' legal obligations towards an identified domestic violence survivor.

The Commission's decision finds in Jessica's favor and declares that the United States violated her human rights by failing to adopt reasonable measures to protect her and her daughters from her abusive husband's acts of violence, when the police should have known that they were at risk of being harmed. The Commission recommends that the United States provide redress to Jessica, and in addition implement reforms to federal and state laws and policies that proactively address and prevent gender-based violence, including domestic violence.

The Domestic Violence Epidemic in the United States: A Severe Violation of the Human Rights of Women and Girls

Jessica's tragedy is not an isolated incident. Social stigma, patriarchal values, and institutional neglect and resistance have in many ways perpetuated the treatment of domestic violence as a private matter undeserving of a robust law enforcement response. The result: nothing short of an epidemic:

- An estimated 1.3 million women are victims of physical assault by an intimate partner each year.¹

¹ Centers for Disease Control and Prevention, *Costs of Intimate Partner Violence Against Women in the United States* 1 (2003), <http://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.

- Every day more than three women in the U.S. are killed by their intimate partners.²
- One in four women in the U.S. will be abused by a partner at some point in their lives.³

Fewer statistics are available on the impact of intimate partner violence on children, but it is well-documented that children who witness one parent abuse the other suffer greatly, and are also at much greater risk of being abused themselves, abducted, or killed.

Police inaction directly contributes to the continuing prevalence of violence, and the inadequate responsiveness of police departments around the country is well documented. One study found that protective orders are violated in 67 percent of rape cases, 50 percent of physical assault cases and 69 percent of stalking cases.⁴ Because restraining orders are often violated, women who obtain them rely on and expect the police to protect their safety—one study found that even though 86 percent of battered women seeking protective orders believed their assailant would violate the order, 95 percent were confident the police would respond rapidly to the situation.⁵ Yet, one study found that only 20 percent of domestic violence cases resulted in the police arresting the assailant.⁶ Even in states with laws that require an arrest when there is reasonable cause to believe a restraining order has been violated, the likelihood of arrest increased only by five percent.⁷

When police fail to enforce restraining orders, it means that the women who hold these orders may be endangered by a false sense of security. Women who believe that their protective order promises police protection are less likely to take steps – such as going into hiding or taking other self-defense measures – that they might otherwise take if they knew that the police would not respond to a violation of the order. As Jessica testified before the Commission,

Had I known that the police would do nothing to locate Rebecca, Katheryn, and Leslie or enforce my restraining order, I would have taken the situation into my own hands by looking for my children with my family and friends. I might have even bought a gun to protect us from Simon's terror. Perhaps if I had taken these measures, I would have averted this tragedy. But then I might be imprisoned right now. That is the dilemma for abused women in the United States.

In some instances, the establishment of a restraining order will lead an abuser to retaliate against a victim of domestic violence. When police do not adequately enforce such orders, they can actually increase the danger to victims of domestic violence.

While state and federal laws exist to provide some protections and remedies for victims of domestic violence, human rights law requires that responsible government entities, including in particular law enforcement agencies, take a more proactive role in preventing and responding to the epidemic of such violence. As the Commission found in Jessica's case, the U.S. has not even sufficiently implemented existing laws aimed at protecting victims of domestic violence. The Commission also identified gaps in U.S. laws aimed at addressing domestic violence and urged the United States to adopt further laws and policies aimed at preventing and eradicating violence, to comply with its human rights obligations.

² *Id.*

³ Patricia Tjaden & Nancy Thoennes, U.S. Dep't of Justice, NCJ 181867, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey* (July 2000), <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

⁴ Tjaden & Thoennes, *supra* note 3, at 52.

⁵ Karla Fischer & Mary Rose, *When "Enough is Enough": Battered Women's Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQUENCY 414, 417 (1995).

⁶ Lawrence A. Greenfeld et al., U.S. Dep't of Justice, NCJ-167237, *Violence by Intimates* 20 (1998), <http://www.ojp.usdoj.gov/bjs/pub/pdf/vi.pdf>.

⁷ David Eitle, *The Influence of Mandatory Arrest Policies, Police Organizational Characteristics, and Situational Variables on the Probability of Arrest in Domestic Violence Cases*, 51 CRIME & DELINQUENCY 573, 591 (2005).

TIMELINE
Jessica Lenahan (Gonzales) v. United States
Inter-American Commission on Human Rights

- May 21, 1999 The Douglas County Court (CO) grants a temporary restraining order to Jessica Gonzales, ordering that her estranged husband, Simon Gonzales, “shall not enter the family home... and shall remain at least 100 yards away from this location at all times.” The judge specifically found that “physical or emotional harm would result” if Simon were not excluded from the home.
- June 4, 1999 Colorado State Court makes the temporary restraining order permanent, together with modifications that grant Jessica sole physical custody of the three girls. The order permits Simon to have a pre-arranged mid-week dinner visit and alternate weekend visits with the girls.
- June 22, 1999 Simon kidnaps Rebecca, Katheryn, and Leslie in violation of the restraining order. Jessica calls and meets with the police nine times over the course of ten hours, but the police make only superficial efforts to locate the girls and ensure their safety, although that same night they look for a lost dog, respond to a fire lane violation, and have a two-hour dinner. Simon drives up to the police station, opens fire, and is killed in the shootout. The bodies of the three girls are found in his pickup. Jessica is detained and interrogated for 12 hours and her demands to see her children are ignored.
- July 2000 Jessica files a complaint in Federal District Court of Colorado alleging Constitutional violations by the town of Castle Rock and three individual police officers.
- January 23, 2001 The Federal District Court of Colorado dismisses her complaint, and Jessica appeals the decision.
- October 15, 2002 A three-judge panel of the Tenth Circuit Court of Appeals partially reverses the district court and holds that Colorado’s mandatory arrest law entitled Jessica, under the Constitution, to enforcement of the protective order by the police, using every reasonable means. Castle Rock asks that the full court reconsider.
- April 29, 2004 The Tenth Circuit Court of Appeals en banc upholds its previous decision, recognizing a Constitutional due process right. Castle Rock appeals to the U.S. Supreme Court.
- June 27, 2005 The U.S. Supreme Court reverses the Tenth Circuit, holding that Jessica has no Constitutional right to police enforcement of her restraining order.
- December 2005 The ACLU files a petition on behalf of Jessica with the Inter-American Commission on Human Rights (IACHR) asserting that the Castle Rock Police Department’s inaction and the U.S. Supreme Court decision violated Jessica’s and her children’s human rights protected under the American Declaration on the Rights and Duties of Man.
- October 2007 The IACHR issues an admissibility decision for Jessica’s petition.
- October 2008 The IACHR holds a hearing on the merits of Jessica’s petition: *Jessica Gonzales v. United States of America*.
- August 17, 2011 The IACHR publishes its final findings and recommendations.