



Jessica Lenahan, the petitioner in *Jessica Lenahan (Gonzales) v. United States* (2011), a landmark case before the Inter-American Commission on Human Rights concerning the human rights of domestic violence survivors.

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United States' Compliance with the International Covenant on Civil and Political Rights (ICCPR)

Written Statement on Domestic Violence, Gun Violence, and "Stand Your Ground" Laws

Response to Questions 9(a) and 20 in the Human Rights Committee's List of Issues

Submitted by The Advocates for Human Rights, a non-governmental organization in special consultative status, along with University of Miami School of Law Human Rights Clinic, Legal Momentum, and Women Enabled

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Reporting Organizations

The Advocates for Human Rights

Founded in 1983, The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates' Women's Human Rights Program has published 22 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to implement new and existing laws on domestic violence effectively. The Advocates was part of a coalition of NGOs and academic institutions who hosted the official visit to the United States of United Nations Special Rapporteur on Violence Against Women in 2011.

Human Rights Clinic, University of Miami School of Law

The Human Rights Clinic at the University of Miami School of Law (www.law.miami.edu/hrc) exposes students to the practice of law in the international and cross-cultural context of human rights litigation and advocacy at the local, national, and international levels. In the classroom, students critically engage with human rights law and contemporary social problems while honing their lawyering and advocacy skills. Outside the classroom, students gain hands-on experience working on cutting-edge human rights projects and cases before the United Nations, the Organization of American States, and other human rights bodies. The Clinic's main regional focus is the United States and Latin America, and its principal thematic areas are violence against women, gender and race discrimination, and immigrants' rights. The Clinic was part of a coalition of NGOs and academic institutions that hosted the official visit to the United States of United Nations Special Rapporteur on Violence Against Women in 2011, and is counsel on the case of *Jessica Lenahan (Gonzales) vs. United States* before the Inter-American Commission on Human Rights.

Legal Momentum

Legal Momentum (www.legalmomentum.org) is dedicated to advancing the rights of all women and girls. Founded in 1970 as NOW Legal Defense and Education Fund, Legal Momentum has a longstanding commitment to addressing violence against women and inequality and gender bias in state and federal judicial systems. Legal Momentum was instrumental in drafting and passing the Violence Against Women Act in 1994 and its subsequent reauthorizations in 2000, 2005, and 2013. The organization has served as counsel and joined amicus curiae in numerous cases to support the rights of victims of intimate partner violence, sexual assault and other forms of gender-motivated violence. Legal Momentum, through its National Judicial Education Program (NJEP), and in cooperation with the National Association of Women Judges, has developed several award-winning judicial education curricula and training DVDs about sexual assault, including [*Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault and Judges Tell: What I Wish I Had Known Before I*](#)

[Presided in an Adult Victim Sexual Assault Case](#), in use across the country since 1994. In 2009, Legal Momentum created and launched a Web course on the intersection of sexual abuse and domestic violence, [Intimate Partner Sexual Abuse: Adjudicating this Hidden Dimension of Domestic Violence Cases](#).

Women Enabled, Inc.

Women Enabled, Inc. advocates and educates for the human rights of all women and girls, with an emphasis on women and girls with disabilities, and works tirelessly to include women and girls with disabilities in international and domestic resolutions, policies and programs addressing women's human rights and development, through collaborations with organizations of women with disabilities and women generally. Women Enabled, Inc. co-authored a groundbreaking report on violence against women with disabilities: [Forgotten Sisters – A Report on Violence Against Women with Disabilities: An Overview of its Nature, Scope, Causes and Consequences](#) (Aug. 21, 2012).

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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	1
II. INTRODUCTION.....	4
III. THE U.S. GOVERNMENT’S VIOLATIONS OF OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)	5
IV. OTHER UN BODY RECOMMENDATIONS	7
V. MANIFESTATION OF VIOLENCE AGAINST WOMEN AND GIRLS	9
A. INTRODUCTION	9
B. THE VIOLENCE AGAINST WOMEN ACT (VAWA)	9
C. GUN VIOLENCE AND DOMESTIC VIOLENCE.....	12
D. AFRICAN-AMERICAN, LATINA, AND MINORITY WOMEN VICTIMS OF GUN AND DOMESTIC VIOLENCE.....	13
E. OTHER GROUPS OF MARGINALIZED WOMEN: NATIVE AMERICAN/ALASKA NATIVE WOMEN, LESBIAN/BISEXUAL/TRANSGENDER WOMEN, AND DISABLED WOMEN	16
F. THE FAILURE OF LAW ENFORCEMENT TO PROTECT VICTIMS OF DOMESTIC VIOLENCE AND STALKING: CASE STUDIES	17
<i>Town of Castle Rock, Colorado v. Jessica Gonzales: A Case of Domestic Violence.....</i>	<i>17</i>
<i>Ms. Jen Fair Lee: A Case of Stalking</i>	<i>20</i>
G. U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS INVESTIGATIONS AND LOCAL DOMESTIC VIOLENCE RESOLUTIONS	21
H. THE MARISSA ALEXANDER CASE: A CASE STUDY OF THE PROBLEMS POSED BY “STAND YOUR GROUND” LAWS IN THE CONTEXT OF DOMESTIC VIOLENCE AND RACE	22
VI. RECOMMENDATIONS.....	24
VII. SUGGESTED QUESTIONS FOR THE GOVERNMENT OF THE UNITED STATES	25

I. Executive Summary

1. **Violence Against Women.** Violence against women involves “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”¹ All nations have a duty to exercise due diligence to protect women from gender-based violence, whether committed by private actors or state actors. In the United States, nearly 1 in 5 women will be raped in her lifetime; 1 in 6 women will be stalked; more than 1 in 3 women will experience intimate partner harm, including rape, physical violence, and/or stalking.² State actors also perpetrate and condone violence against women in custodial settings, schools, the military, and private spaces. Violence perpetrated against women because they are women violates not only equal protection and non-discrimination guarantees, but also jeopardizes women’s enjoyment of all other rights as well.
2. **U.S. Government’s Violations Under the International Covenant on Civil and Political Rights (ICCPR).** During the Human Rights Committee’s last review of the United States’ compliance with its obligations under the ICCPR in 2006, the Committee recommended that the “State party should take all steps necessary, including at state level, to ensure the equality of women before the law and equal protection of the law, as well as effective protection against discrimination on the ground of sex...”³
3. Some of the specific articles of the ICCPR relevant to violence against women where the U.S. continues to violate its responsibilities include the following: Art. 2 (equal protection of rights), Art. 3 (equal rights of men and women), Art. 6 (life and security of person), Art. 7 (prohibition of torture), Art. 14 (administration of justice), Art. 23 (protection of the family, the right to marriage and the equality of the spouses), and Art. 26 (equality before the law).
4. **UN Body Recommendations.** Other UN bodies and experts have also reviewed, with great concern, the United States’ compliance with international obligations related to violence against women. For a more detailed review of these UN bodies’ and experts’ recommendations, please see Section IV below.
5. **Violence Against Women Act.** The Violence Against Women Act (VAWA) is a comprehensive legislative package first enacted in 1994.⁴ In September 2011, VAWA was left to expire for the first time in 18 years.⁵ It was eventually reauthorized on March 7, 2013.⁶ VAWA funds a wide variety of important programs and victims’ services aiming to address domestic violence in the United States.⁷ VAWA does not, however, address three critical issues: (1) VAWA does not provide a direct remedy for violations of victims’ rights by offenders or law enforcement officials; (2) it does not impose an obligation on

all states to participate nor does it have a mechanism to evaluate states' progress; and (3) it fails to provide victim services with the full and adequate funding they require.⁸

6. **Gun Violence and Domestic Violence.** The United States has failed to adequately prevent women in abusive relationships, and their children, from being shot or otherwise harmed from gun violence. Despite federal law prohibiting the sale of guns to individuals with domestic violence protective orders, the transfer of guns is insufficiently regulated and the laws are inadequately enforced.⁹ First, many abusers who are the subject of temporary protective orders are able to legally obtain guns. Moreover, even after being ordered to surrender their guns in protective order proceedings, many abusers do not.¹⁰ Easy access to guns, coupled with insufficient enforcement of the law, results in women being injured or murdered by intimate partners and children being injured or murdered by their fathers or their mothers' intimate partners.
7. **African-American, Latina and Minority Women Victims of Gun and Domestic Violence.** African-Americans are subjected to gun violence at a significantly higher rate than any other racial group in the United States, especially in the category of fatal homicides.¹¹ In addition, African-Americans and Latinos/as are the two racial groups that are at highest risk of nonfatal firearm violence. African-Americans also face particular discriminatory limitations when using guns in self-defense.¹² More broadly, African-American, Latina, and other minority women experience a heightened risk of domestic abuse. The victimization of minority women is exacerbated by the institutionalized under-protection and discrimination by the police. Law enforcement's failure to adequately investigate and respond to reports of violence – particularly domestic violence – involving minority and immigrant women is often influenced by racial and ethnic stereotypes. In addition, such stereotyping often results in underreporting of violence and in disproportionate arrests of female victims rather than, or in addition to, their perpetrators. African-American, Native American, Latina, and immigrant women experience under-enforcement of the law and under-protection by the law due to their socio-economic conditions and institutionalized discrimination.
8. ***Town of Castle Rock, Colorado vs. Jessica Gonzales.*** This case from the U.S. Supreme Court (2005) serves as a touchstone for assessing the failures of the United States government to respond properly in the context of guns and domestic violence, as well as the heightened risks of domestic abuse faced by minority women. After repeated incidents of abuse, Colorado resident Jessica Gonzales, the mother of three children, obtained a restraining order against her husband, Simon Gonzales. The order required him to remain 100 yards away from her and their three children except for times in which he was allotted visitation rights with the children. When Mr. Gonzales violated his restraining order by taking the three children from the home outside of his scheduled visitation time, Jessica Gonzales' requests for the Castle Rock Police Department ("CRPD") to enforce her restraining order and arrest Mr. Gonzales were repeatedly denied. The events culminated in a fatal shoot-out between Mr. Gonzales and the CRPD, as well as the still-unexplained deaths of the children, Rebecca, Katheryn, and

Leslie Gonzales, whose bodies were found in the back of Mr. Gonzales' truck after the shoot-out. After the Supreme Court ruled that Jessica Gonzales had no right to have her restraining order enforced, Ms. Gonzales (who subsequently remarried and changed her name to Jessica Lenahan) brought her case to the Inter-American Commission on Human Rights (IACHR). In 2011, the IACHR decided in her favor, finding that the U.S. "failed to act with due diligence to protect Jessica Lenahan" and her daughters.¹³ The United States has not developed adequate policies or practices that will successfully prevent tragedies like Jessica Lenahan's from occurring in the future.

9. **Implementation of *Gonzales*: U.S. Department of Justice Civil Rights Investigations:** In the wake of the *Jessica Lenahan (Gonzales)* decision from the IACHR, efforts have been made at the national, state, and local government levels to recognize the importance of an adequate and effective government response.¹⁴ In 2011, the Department of Justice (DOJ) Civil Rights Division conducted comprehensive investigations of the New Orleans Police Department (NOPD) and the Puerto Rico Police Department (PRPD). The DOJ found the NOPD had engaged in a pattern or practice of unconstitutional gender-biased policing in failing to respond adequately to allegations of sexual assault and domestic violence. Similarly, the DOJ found that the PRPD has a "longstanding failure to effectively address domestic violence and rape," which, along with its institutional deficiencies, "may rise to the level of a pattern and practice of violations of the Fourteenth Amendment and the Safe Streets Act." This is the first time the DOJ has initiated an inquiry or investigation into discriminatory responses by law enforcement to sexual assault and domestic violence. The DOJ ultimately entered into historic "consent decrees" (formal agreements) with both police departments that require them to make broad changes in policies and practices to prevent discriminatory policing based on race, ethnicity, gender and sexual orientation. The DOJ and NGOs are closely monitoring the police departments' compliance with these consent decrees.
10. **Implementation of *Gonzales*: Local Domestic Violence Resolutions.** Also in the wake of the *Gonzales* case, jurisdictions throughout the United States have passed resolutions recognizing freedom from domestic violence as a fundamental human right.¹⁵ This principle has generally been codified in two distinct ways. First, certain resolutions recognize the responsibility of local governments to guarantee freedom from domestic violence for their residents.¹⁶ Second, local initiatives have also been used to advocate for change on the national level; for example, the Seattle Human Rights Commission called upon the U.S. House of Representatives to pass the Senate version of VAWA.¹⁷
11. **Stand Your Ground Laws and Domestic Violence.** The rights to self-defense and protection from the State are fundamentally linked with race and gender in the United States.¹⁸ "Stand Your Ground" laws – which exist in dozens of U.S. states in some form – authorize the use of deadly force without necessarily imposing a duty to retreat (the historic common law formulation). The application of "Stand Your Ground" laws in domestic violence cases highlights racial and gender discrimination embedded within the criminal justice system. In the state of Florida, for example, the "Stand Your Ground"

defense is allowed in those circumstances where “a person...is not engaged in an unlawful activity and...is attacked in any place where he or she has a right to be.”¹⁹ Two high-profile cases recently decided in Florida have involved the “Stand Your Ground” defense, with significantly different results. In the first case, Marissa Alexander, an African-American woman, was sentenced to 20 years in prison for shooting upwards into the wall during an altercation with her abusive husband. He was unharmed. In contrast, George Zimmerman, a white Hispanic man, was found not guilty of any criminal offense after using a gun to kill an unarmed African-American teenage boy, Trayvon Martin. These contrasting outcomes highlight how black women and other marginalized groups may be disproportionately criminalized, prosecuted, and incarcerated for acting in self-defense. “Stand Your Ground” laws must be reevaluated to ensure that their application does not perpetuate discrimination or re-victimize survivors of domestic violence.

II. Introduction

12. In 2008, in the United States, intimate partners committed approximately 552,000 violent crimes against women, including 35,690 rapes or sexual assaults, 38,820 robberies, 70,550 aggravated assaults, and 406,530 simple assaults.²⁰ Notwithstanding the prevalence of domestic violence across demographic categories, it is overwhelmingly a crime perpetrated against women. Women are far more likely than men to be victims of domestic violence; the rate of intimate partner victimization per 1,000 persons is 4.3 for women compared with 0.8 for men.²¹
13. Not only are women more likely than men to experience domestic violence generally, but they also represent an even greater percentage of victims in the most severe assaults caused by intimate partners.²² Women are killed by intimate partners at a rate twice that of men.²³ In 2007, 64% of female homicides were perpetrated by a family member or an intimate partner.²⁴ The percentage of female homicide victims who were killed by an intimate partner increased from 40% in 1993 to 45% in 2007.²⁵ The total estimated number of intimate partner homicide victims in 2007 was 2,340, of which 1,640 were females.²⁶ A U.S. Bureau of Justice Statistics report notes, “Females made up 70% of victims killed by an intimate partner in 2007, a proportion that has changed very little since 1993.”²⁷
14. Not all women in the United States experience domestic violence with the same frequency. The data suggests that although the domestic violence epidemic cuts across the lines of gender, race, and immigration status—affecting women and men, African-Americans, Latinas, Native Americans, Alaska Natives, and whites, as well as both immigrants and U.S. citizens—it has a particularly pernicious effect on groups that lie at the intersection of these categories: African-Americans, Latinas, and poor, ethnic and racial minorities; immigrants; and Native American and Alaska Native women.

15. The Violence Against Women Act (VAWA) is a comprehensive legislative package first enacted in 1994.²⁸ In September 2011, VAWA was left to expire for the first time in 18 years.²⁹ It was reauthorized on March 7, 2013.³⁰ VAWA funds a wide variety of important programs and victim services aiming to address domestic violence in the United States.³¹ VAWA fails, however, to address several critical issues, discussed in detail below.
16. In spite of the passage of legislation such as VAWA, the domestic violence epidemic has continued to rage in the United States. A study by the Centers for Disease Control and Prevention (CDC) found that more than 1 in 3 women (35.6%) have been a victim of rape, physical violence, and/or stalking by an intimate partner at some point in their lives.³²
17. The detrimental impact of domestic violence extends to both adult victims and children alike. The negative impact on children of the incidental effects of domestic abuse is well documented.³³ And domestic abuse perpetrators are more likely to physically abuse their children.³⁴ In acknowledgement of these types of understandings of domestic violence, legislative bodies and professional organizations in the United States have taken action to discourage custody awards to violent parents.³⁵ Currently, nearly all states in the United States require courts to consider domestic violence when making custody awards,³⁶ and 22 states, plus the District of Columbia, have legislative presumptions against joint custody where domestic violence has occurred.³⁷ Nevertheless, despite these legal requirements and extensive research on the detrimental effects of domestic violence on children, courts often award joint legal custody in cases where domestic violence has been present or even award sole physical custody to violent abusers.³⁸ This same phenomenon has been observed in the context of child custody mediations, child custody evaluations, and visitation determinations.³⁹ And a recent trend by state legislatures to adopt a presumption for joint physical custody elevates the rights of parents over the safety and well-being of children, and it creates additional obstacles to protecting victims and children from domestic violence.⁴⁰

III. The U.S. Government's Violations of Obligations Under the International Covenant on Civil and Political Rights (ICCPR)

18. During the last review of The United States' compliance with the ICCPR, the Human Rights Committee recommended that "The State party should take all steps necessary, including at state level, to ensure the equality of women before the law and equal protection of the law, as well as effective protection against discrimination on the ground of sex, in particular in the area of employment."⁴¹
19. In its Fourth Periodic Report to the Human Rights Committee, the United States describes in detail the federal Violence Against Women Act (VAWA) and programs to provide improved response to crimes of domestic violence, as well as services for and

advocacy on behalf of survivors.⁴² The report also describes expanded legal tools for addressing violence against women,⁴³ as well as new guidelines and trainings for, as well as federal investigations of, police departments handling domestic violence claims.⁴⁴ While these are positive developments, the United States fails to address the lack of any federal civil remedies to victims and survivors; a lack of oversight, monitoring, and accountability mechanisms for ensuring that state actors are exercising due diligence to prevent violence against women; the general state of insufficient funding for vital programs and services for survivors of gender-based, domestic, and sexual violence; and how a primarily criminal justice-based response to domestic violence has a disparate impact on those victims who are more likely to be arrested because of racial or other bias endemic in the criminal justice system. It also fails to support victims whose survival strategies are criminalized, making them vulnerable to arrest, prosecution, incarceration, and, if they are undocumented immigrants, possible deportation.⁴⁵

20. Domestic violence is an affront to human dignity that violates a woman's rights to life, freedom from torture, equality before the courts, equal protection before the law, equality with men before the law and protection of the family, among others.⁴⁶ The following articles of the International Covenant on Civil and Political Rights articulate a state's duty to protect these fundamental human rights that are commonly violated in domestic violence.
21. *Guarantees of rights under the ICCPR (Article 2)*: The ICCPR imposes both positive and negative obligations on States to respect the rights therein. This obligation applies not only to all government agencies, but also to private actors. The Human Rights Committee noted in its General Comment No. 31 that "the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights...."⁴⁷ This positive obligation requires States Parties to, in part, provide victims of violations with an effective remedy and reparations, as well as hold offenders accountable through their justice systems.⁴⁸ Furthermore, a negative obligation requires States Parties to refrain from committing any such violation, and General Comment No. 31 further expounds that offenders may not be absolved from responsibility irrespective of their official position.⁴⁹ To fully comply with the provisions of the ICCPR, States Parties must also take measures to transpose the ICCPR standards into domestic law and policy.
22. *Equality of rights between men and women (Article 3)*: In its General Comment No. 28, the Human Rights Committee explained that States Parties must undertake measures to guarantee equality of rights between women and men, including the elimination of barriers that impede women's access to these rights, public education, and legal reform.⁵⁰

23. *Right to life and security of person (Article 6)*: The right to life is shared by both men and women. However, violence directed against women by their intimate partners (current or former spouses, boyfriends, or dating partners) has devastating physical, emotional, financial and social effects on women and children.
24. *Prohibition of torture or cruel, inhumane or degrading treatment or punishment (Article 7)*: In its General Comment 2, the Committee against Torture acknowledged that domestic violence may constitute torture or ill treatment under the Convention Against Torture (CAT). Gender-based and domestic violence may constitute torture or ill-treatment under Article 7 of the ICCPR.⁵¹
25. *Administration of Justice (Article 14)*: When a state fails to ensure that its criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents—such as police and prosecutors—implement the laws that protect victims of domestic violence, that state has not acted with due diligence to prevent, investigate and punish violations of women's rights.⁵²
26. *Protection of the family, the right to marriage and equality of the spouses (Article 23)*: In its General Comment No. 19, the Human Rights Committee notes that the ICCPR protects the family and equality of the spouses. General Comments 18 and 19 both ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.⁵³
27. *Equality before the law (Article 26)*: States are required under international law to provide all citizens with equal protection of the law. If a state fails to provide individuals who are harmed by an intimate partner with the same protections it provides to those harmed by strangers, it has failed to live up to this obligation. For example, when judges impose higher sentences on those who assault strangers than those who assault their intimate partners, battered women have been denied equal protection.

IV. Other UN Body Recommendations

28. In her report to the UN Human Rights Council following her country mission to the United States, Special Rapporteur on Violence Against Women, its causes and consequences, Rashida Manjoo, noted the lack of substantive protective legislation at federal and state levels. When government actors apply the laws that do exist, Manjoo found, they may do so in a way that discriminates against women victims of violence and allows the violence to persist.⁵⁴ Manjoo recommended that the U.S. government broaden federal remedies under VAWA with a view to decreasing discrimination against women and promoting greater consistency across all levels of government.⁵⁵ In addition, Manjoo recommended that judicial determinations regarding mediation and parenting take into account “any history of domestic violence, prior orders of protection and domestic violence criminal convictions.”⁵⁶

29. The Committee on the Elimination of Racial Discrimination reviewed U.S. compliance with the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2008. In its Concluding Observations, the Committee noted its “deep” concern about rape and sexual violence experienced by women belonging to racial, ethnic, and national minorities, and discussed the “alleged insufficient will of federal and state authorities to take action with regard to such violence and abuse” which results in a deprivation of “their right to access to justice and the right to obtain adequate reparation or satisfaction for damages suffered”⁵⁷ 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*, setting up and adequately funding prevention centers and temporary shelters; providing specific training to those working within the criminal justice system; undertaking information campaigns to raise awareness among women about the legislative mechanisms in place to protect them; and ensuring that reports of rape and sexual violence against women belonging to racial, ethnic, and national minorities are independently, promptly, and thoroughly investigated.⁵⁸
30. The Committee on the Elimination of Discrimination Against Women has stated that gender-based violence constitutes discrimination under article 1 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).⁵⁹ The United States is one of just seven countries in the world that has failed to ratify CEDAW.⁶⁰ During the Universal Periodic Review of the United States in 2010, numerous States recommended to the United States that it ratify CEDAW.⁶¹ The United States indicated that it is “strongly committed” to ratifying CEDAW.⁶² Yet CEDAW “remains in the Senate Committee on Foreign Relations” and has not been brought to a vote on the floor.⁶³
31. During the last review of the United States’ compliance with the Convention Against Torture, the Committee against Torture requested that the United States provide information on legal reform measures it has undertaken to prevent domestic violence and criminalize acts of domestic violence.⁶⁴ The United States reported that its Office for Victims of Crime awards more than 6,000 grants to various offices and service providers, including domestic violence shelters, prosecutor agencies, and social services. The United States noted that service providers for “victims of domestic violence, sexual assault, and child abuse” receive funding priority.⁶⁵ However, as illustrated elsewhere in this report, the response has been insufficient.

V. MANIFESTATION OF VIOLENCE AGAINST WOMEN AND GIRLS

A. Introduction

32. The United States lacks “legally binding federal provisions providing substantive protection against or prevention of acts of violence against women. This lack of substantive protective legislation, combined with inadequate implementation of some laws, policies and programs has resulted in the continued prevalence of violence against women and the discriminatory treatment of victims, with a particularly detrimental impact on poor, minority and immigrant women.”⁶⁶ Indeed, the problem of violence against women in the United States is of such continuing concern that the U.N. Special Rapporteur on Violence against Women, its causes and consequences made the United States the focus of a country visit in 2011.⁶⁷
33. In this section, we offer perspectives on certain human rights violations against women that the United States has failed to adequately address in its laws, policies and practices. However, this is not a comprehensive review of the panoply of women’s human rights violations in the United States, and this report does not intend to comprehensively cover the field of domestic violence and other instances of violence against women that occur in the United States.

B. The Violence Against Women Act (VAWA)

34. The Violence Against Women Act (VAWA) is a comprehensive legislative package first enacted in 1994.⁶⁸ VAWA funds a wide variety of important programs and victim services aiming to address domestic violence in the United States.⁶⁹ VAWA does not, however, address three critical issues: (1) VAWA does not provide a direct remedy for violations of victims’ rights by offenders or law enforcement, (2) it does not impose an obligation on all states to participate nor does it have a mechanism to evaluate their progress; (3) it fails to provide victim services with the full and adequate funding they require.⁷⁰ In spite of the passage of legislation such as VAWA, domestic violence is still an epidemic in the United States. Women are most often the victims of domestic violence, and the U.S. Bureau of Justice Statistics found that females were the victims in four out of every five domestic violence cases.⁷¹ From 2009 to 2010, 775,650 out of a total 906,540 victims of domestic violence were female.⁷² At least three women per day on average are killed by their intimate partners in the United States.⁷³
35. The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was signed into law on March 7, 2013.⁷⁴ Of note are several positive developments:
- VAWA 2013 “requires the Attorney General to submit to Congress an annual report on . . . grants awarded to states and local governments.” (Sec. 1003)

- Title XI of VAWA 2013 “amends the Civil Rights of Institutionalized Persons Act to allow a prisoner in federal custody to bring a suit against the United States for a mental or emotional injury if such injury resulted from the commission of a sexual act (currently, requires a prior showing of a physical injury).” (Sec. 1101)
- Although VAWA 2013 does not provide federal civil remedies to victims, it “extends the statute of limitations to 10 years for a person to bring a civil action for an injury received while a minor that was caused by specified sexual- or forced labor-related violations of federal criminal law.” (Sec. 1212)
- VAWA 2013 defines “underserved populations” as “populations that face barriers in accessing and using victim services because of geographic location, religion, sexual orientation or gender identity” and provides grants to support outreach to such underserved populations. (Sec. 3)
- VAWA 2013 amends the previous VAWA “to expand the availability of competent pro bono legal assistance to victims,” which may also help serve underserved populations. (Sec. 103)
- VAWA 2013 expands sentence length for violators of sexual abuse crimes to be the same as that of criminal assault (20 years). Furthermore, people who are guilty of domestic assault that involves strangulation or suffocation, or that substantially injures a victim under age 16, face enhanced criminal penalties. (Sec. 906)⁷⁵

While these are indeed positive developments, many of these expansions only apply to states that choose to participate in VAWA, as described below.

36. While states are not required to participate in VAWA, those that do participate receive funds are held accountable through the states’ submission of implementation plans for how to best use those funds and are audited to ensure grants are not used fraudulently or wasted.⁷⁶
37. Through the Violence against Women Act and subsequent legislation, the United States Office on Violence against Women administers 21 different types of grants that fund many kinds of domestic violence services. These include, among other things, grants to states, tribal governments, and localities to encourage arrest policies and enforcement of protection orders, to organize supervised visitation between children and batterers, and to train police, prosecutors, and judges. VAWA also funds grants to localities and nonprofit organizations to serve victims on college campuses, victims in rural areas, elderly victims, and disabled victims; to organize state sexual assault and domestic violence coalitions; to provide conferences and technical assistance; and to provide legal services to victims. These are necessary services.
38. However, there are limitations on the extent to which VAWA funding helps the U.S. to fulfill its duty to protect its citizens from gender-based violence. As noted above, VAWA funding comes from competitive grants, applications for which are entirely voluntary.

The result is that different states can receive significantly different amounts of funding based almost entirely on interest from within the state, rather than need.

39. Moreover, like its predecessors, VAWA 2013 “focuses a significant amount of funding on criminal justice responses and much less on economic and racial justice initiatives that would support efforts to stop domestic violence.”⁷⁷ It does not sufficiently “address economic and racial inequalities that make poor women—particularly poor women of color, undocumented women, and Native American women—more vulnerable to intimate violence.”⁷⁸ It does not “recognize that economic policies that result in widespread unemployment and downward mobility increase domestic violence.”⁷⁹ Nor does it “recognize that as important as criminal remedies may be for some victims, a focus on criminal justice remedies will never be sufficient to empower women. Many women who experience domestic violence do not want the current limited menu of criminal justice responses.”⁸⁰ Congress should “consider and support programs that explore alternatives to the current criminal adjudication models, and that address the underlying causes of abuse.”⁸¹
40. The amount of VAWA funding that each state receives in any given year varies significantly. When total 2012 VAWA funding levels per state⁸² are compared with the population of each state,⁸³ per capita funding levels range from \$13.25 per resident in the District of Columbia to \$0.51 per state resident in Texas.⁸⁴ Moreover, VAWA funding levels do not necessarily correspond to the lifetime prevalence of domestic violence, sexual assault, and/or stalking by intimate partners against women in those states. Women in North Carolina and Washington experience comparatively high lifetime prevalence of intimate partner rape, violence, and stalking of the United States, possibly in the top five or ten states.⁸⁵ Yet those states ranked 43rd and 27th respectively in overall VAWA funding in 2012.
41. Additionally, there is no attempt to ensure that the most helpful services are provided on a comprehensive basis across the United States. For instance, one academic study in 2003 found that women were significantly less likely to be abused when they lived in a county that hosted a legal assistance program for battered women.⁸⁶ In fact, the same study found that a decline in domestic violence over the previous decade could be attributed in part to funding for civil legal services through VAWA.⁸⁷ As of 2006, only one state, New York, funded attorneys for all low-income litigants in all civil domestic violence proceedings,⁸⁸ so funding for these services in other states necessarily came either from the private sector or the federal government. Yet in three out of five years between 2008 and 2012, VAWA’s Legal Assistance for Victims Project grants (which typically last three years) failed to fund a single legal services organization in seven different states⁸⁹—Connecticut, Delaware, Hawai’i, Idaho, Nebraska, Nevada, and South Dakota. It is particularly notable that in 2012, women in Nevada experienced an extremely high lifetime prevalence of intimate partner violence, sexual assault, and stalking, possibly as high as second place,⁹⁰ yet the state ranked 13th in per capita VAWA funding and received no new grants for legal services for victims at all. As a

result, despite the effectiveness of legal services for victims of family violence, those services are sporadically funded, if at all, in almost all states.

42. There is no question that the services funded under VAWA have had an impact on the understanding of and response to domestic violence in the U.S. However, the lack of national coordination of legislation and services to victims prevents the U.S. from fulfilling its due diligence duties to its family violence victims.
43. The detrimental impact of domestic violence extends to adult victims and children alike. Domestic abuse perpetrators are more likely to physically abuse their children.⁹¹ The negative effect on children of domestic abuse is also well documented.⁹² Currently, nearly all states in the United States require a court to consider domestic violence when making custody awards,⁹³ and 24 states plus the District of Columbia have legislative presumptions against joint custody where domestic violence has occurred.⁹⁴ But despite extensive research on the detrimental effects of domestic violence on children and the risks that attend unrestricted parental access where domestic violence has occurred, many courts are still reticent about assessing the impact of domestic violence on children when crafting custody arrangements.⁹⁵ A number of empirical studies confirm that courts frequently fail to identify and consider domestic violence and fail to provide adequate safety protections in court orders, even where a history of substantiated violence is known to exist.⁹⁶ This same phenomenon has been observed in the context of child custody mediations, child custody evaluations, and visitation determinations.⁹⁷ In addition, a recent trend by state legislatures of adopting a presumption *for* joint physical custody elevates the rights of parents over the safety and well-being of children, and creates additional obstacles to protecting victims and children from domestic violence.⁹⁸

C. Gun Violence and Domestic Violence

44. A disproportionate share of the world's firearms deaths occur in the United States, and a disproportionate share of women in the United States are murdered in the context of domestic violence. In one study of 23 populous, high-income, Organisation for Economic Co-Operation and Development ("OECD") countries, 86% of female firearms deaths in 2003 occurred in the United States.⁹⁹ In the years 1980 to 2008 in the U.S., "[f]emale murder victims (41.5%) were almost 6 times more likely than male murder victims (7.1%) to have been killed by an intimate."¹⁰⁰ "In 2008, 53% of all female intimate homicide victims were killed with guns"¹⁰¹ Access to guns increased the likelihood that a woman would be murdered by an intimate partner by a factor of 5.38 over similar situations with no access to guns.¹⁰² Moreover, one analysis found that intimate partner and family homicides were at the core 57% of all identifiable mass shootings (defined as incidents with four or more deaths) occurring in the U.S. between January 2009 and January 2013.¹⁰³

45. U.S. federal law is facially insufficient to prevent guns from getting into the hands of those who want to kill their intimate partners. It does prohibit the possession of firearms by anyone who is subject to a qualifying domestic violence protective order or a misdemeanor conviction for domestic violence,¹⁰⁴ and this law is primarily enforced via criminal background checks at the point of sale. However, these provisions do not protect victims in dating relationships or those with temporary protective orders made without court notice.¹⁰⁵ Moreover, federal law requires no background check when a gun is transferred by anyone (such as a friend, family member or acquaintance) other than a federally licensed commercial seller.¹⁰⁶ An estimated 40% of all firearms transfers and sales in the United States are not subject to background checks.¹⁰⁷
46. Even where federal firearms laws do prohibit domestic abusers from buying or possessing firearms, these laws are not adequately enforced. Accordingly, many men kill or threaten their intimate partners or children with guns each year even after judges have ordered them to surrender their guns in protective order proceedings.¹⁰⁸ From 2003 to 2013, five women in Washington State were murdered by their intimate partners with guns within a month after they obtained protective orders.¹⁰⁹ In October 2012, a Wisconsin man killed his wife and two others with a gun he obtained two days after being told by a court to surrender his weapons.¹¹⁰ In June 2013, a New York City police officer killed his wife with a shotgun after surrendering his service gun and a personal gun to police pursuant to a protective order.¹¹¹ The *Jessica Gonzales (Lenahan)* case, highlighted below, is another tragic example of this reality: Simon Gonzales was able to purchase a gun after kidnapping his daughters, even though he was legally prohibited from doing so, because his prohibition never came up in the gun dealer's computer background check.
47. The United States is not doing enough to protect its people from the risks associated with the proliferation of firearms. In 2012, the United States filed fewer than 50 prosecutions of those accused of possessing a firearm while subject to a qualifying protective order.¹¹² In 2013, the Obama Administration strongly supported legislation to expand background checks for firearms purchases, but the measure failed to win enough support in either house of Congress to become law despite polling numbers that ran about 90% in support.¹¹³

D. African-American, Latina, and Minority Women Victims of Gun and Domestic Violence¹¹⁴

48. African-Americans account for the highest rate of firearm homicides in the United States.¹¹⁵ According to a recent study by the Bureau of Justice Statistics, the firearm homicide rate for African-Americans in 2010 was approximately five times higher than for any other racial group.¹¹⁶ Although the rate of fatal gun violence has been decreasing for Hispanics over the past decade, "the rate of nonfatal firearm violence for Hispanics was not statistically different from the rate for blacks."¹¹⁷ The Bureau of

Justice Statistics notes that “[i]ntimate homicides of black women decreased from 43% of all black female homicides in 1980 to a low of 33% in 1995. After 1995, that percentage increased to 43% of all homicides of black females in 2008.”¹¹⁸ Black teens are at a higher risk gun homicide than any other racial group in the United States.¹¹⁹ A 2012 report states, “The leading cause of death among Black youth ages 15 to 19 in 2009 was gun violence.”¹²⁰ In 2009, teens of Hispanic origin were the second most vulnerable group to gun homicide after African American teens.¹²¹

49. African-Americans account for a disproportionate number of intimate partner homicides. In 2005 African-Americans accounted for almost 1/3 of the intimate partner homicides in the U.S.¹²² “Approximately 4 out of every 10 non-Hispanic black women, 4 out of every 10 American Indian or Alaska Native women (43.7% and 46.0%, respectively), and 1 in 2 multiracial non-Hispanic women (53.8%) have been the victim of rape, physical violence, and/or stalking by an intimate partner in their lifetime.”¹²³ Nationwide, black women report victimization in general at a higher rate (67%) than white women (50%), black men (48%), and white men (45%).¹²⁴ Generally, African-American women along with Native American women experience higher rate of nonfatal domestic violence than any other racial group in the United States.¹²⁵ Another study determined that 48% of foreign-born Latinas reported that their partner’s violence against them had increased since they immigrated to the United States.¹²⁶
50. The greater level of reported domestic violence among African-Americans, Latinas, and immigrants is attributable, in large part, to the extreme levels of poverty in minority and immigrant communities.¹²⁷ Women suffering from economic hardship are more prone than women in comfortable financial positions to becoming victims of domestic violence.¹²⁸ For instance, studies show that abused women report arguments over child support, experience stress, and abuse drugs or alcohol.¹²⁹ African-Americans, Latinas, and Latinas make up 22.8% of the population, but account for 47.8% of those living in poverty.¹³⁰ Poor women experience victimization by intimate partners at much higher rates than women with higher household incomes; in the United States between 2001 and 2005, women with annual household incomes of less than \$7,500 were nearly seven times as likely as women with annual household incomes over \$50,000 to experience domestic violence.¹³¹ In particular, data indicate that women are at much greater risk of domestic violence when their partners experience job instability or when the couple reports financial strain.¹³² Abuse has also been found to be more common among young, unemployed urban residents – a large percentage of whom are racial minorities and immigrants.¹³³ The majority of homeless women were once victims of domestic violence,¹³⁴ and more than half of all women receiving public assistance have also experienced domestic violence.¹³⁵ Moreover, the majority of the homeless women¹³⁶ and public assistance recipients are women of color and immigrant women.¹³⁷ Thus, poverty, age, employment status, residence, and social position – not race or culture, *per se* – may combine to explain the higher rates of abuse within certain ethnic communities.¹³⁸ Yet race remains salient because of the inextricable connection between race and these other factors.

51. Additionally, many minority and immigrant battered women refrain from making such information public because they are ashamed of the abuse to which they are subjected and fear blame or reproach from family or friends for airing the family's "dirty laundry." Many women of color, including African-Americans, Hispanics, and other racial minorities, are also reluctant to turn to the police and courts as a source of protection from violence because these institutions have persistently been viewed as oppressive rather than protective of minorities and immigrants.¹³⁹ Law enforcement's historic relationship with poor communities of color has been characterized by excessive use of force and brutality against men, women, and children, mass incarceration of young men of color, and growing numbers of incarcerated women of color.¹⁴⁰ Minority women are also arrested more often than white women when the police arrive at the scene of a domestic violence incident.¹⁴¹ In particular, police are more likely to arrest African-American women due to stereotypes of them as overly aggressive in violent situations.¹⁴² Unfortunately, "many of the women most in need of government aid are made more vulnerable by these very interventions."¹⁴³

*Law Enforcement's Inadequate Response to Domestic Violence*¹⁴⁴

52. "If the government is to protect the safety and human rights of minority and immigrant domestic violence victims and their families, effective law enforcement responses to victims seeking police assistance are needed. Yet law enforcement often refuses to arrest batterers or to recognize domestic violence as a criminal matter, and often assigns domestic violence calls lower priority than non-domestic disputes. The problem is particularly acute in minority and immigrant communities."¹⁴⁵

53. Moreover, black and Latina battered women often confront a difficult choice when trying to escape their abusers. "To be protected from their abusers, they are encouraged to call the cops, but for women of color this means relying on the same police department they believe holds their communities in contempt."¹⁴⁶ Given the history of police brutality and discrimination against people of color, and the general fear and mistrust of the police by immigrants and minorities, many victims are hesitant to invite police intervention into their own lives. In a study of African-American sexual assault survivors, only 17% reported the assault to the police.¹⁴⁷ They may fear that police intervention could result in the police blaming them instead of helping them; calling child services to remove their children; or citing them for other crimes. They may also be hesitant to invite law enforcement to enter their intimate partners' lives, for fear that their partners might be mistreated by the authorities.¹⁴⁸

*Negative Stereotypes and Misconceptions of Domestic Violence*¹⁴⁹

54. When police officers do respond to domestic violence, they often do so inadequately, "because they rely on gender and racial stereotypes about domestic violence victims that lead them to disbelieve and blame minority and immigrant battered women."¹⁵⁰ Female victims may often be perceived as hysterical, unreasonable, and simply taking out a grudge against their intimate partners.¹⁵¹ Law enforcement is often influenced by

cultural stereotypes when making decisions about how to respond to domestic violence in communities of color. Commentators have noted, for instance, that police and judges may perceive black women as aggressive – especially when they fight back or yell – and therefore not victims.¹⁵² This can lead police to arrest the victim rather than abuser, or to arrest both (known as a “dual arrest”). The impact of a dual arrest will deter women from calling the police for help again. Stereotypes can also result in judges’ refusal to issue orders of protection, or to their issuance of limited rather than comprehensive orders.¹⁵³ Inadequate training for governmental officers on domestic violence and cultural sensitivity exacerbates this problem.

55. Law enforcement’s underestimation of the seriousness of domestic violence is also illustrated when officers deny “to illiterate and Limited English Proficient (LEP) battered women the opportunity to fill out Domestic Incident Reports (“DIRs”) – the official police reports pertaining to domestic violence. The police do not always give victims the opportunity to file a DIR, and often downplay victims’ descriptions when such forms are filed. In addition, officers sometimes do not allow the victim to describe the incident in their own words, which thereby limits the DIR to the officers’ rendition of what happened. LEP victims, in particular, are at risk for this sort of neglect. Illiterate women are effectively silenced by this practice.¹⁵⁴

56. Inadequate recordkeeping and reporting of domestic violence-related crimes are also commonplace within police departments.¹⁵⁵ Accurate statistics on police response to domestic violence have proven difficult to obtain, if they exist at all. An open records request involving a representative sample of police departments across the United States revealed that very few police departments keep specific or disaggregated data on domestic violence arrests or complaints.¹⁵⁶ Domestic violence crimes are also consistently miscategorized or undercategorized by officers responding to calls for service.¹⁵⁷

E. Other Groups of Marginalized Women: Native American/Alaska Native Women, Lesbian/Bisexual/Transgender Women, and Disabled Women

57. The experience of Native American and Alaska Native domestic violence and sexual assault survivors is equally, if not more, shocking as that African-American, Latina, and immigrant women, described above. Native American women are subjected to rape and domestic violence on a level significantly higher than any other racial group in the United States.¹⁵⁸ The prevalence of violence against Native American women continues to spread due to socio-economic conditions of the women and the history of racial discrimination in the U.S. In addition, victimized Native American women have historically encountered significant obstacles in accessing the judicial system of the United States.¹⁵⁹

58. Violence against lesbian, bisexual, and transgender women is a problem that is both underreported and misunderstood. In addition to the barriers all women face in order to achieve justice in cases of domestic violence, physical/sexual assault, and police brutality, this group of women also faces discrimination based on sexual identity. This is largely due to the fact that in many states, there is a “lack of legal recognition of same-sex relationships,” and often law enforcement fails to “identify and properly handle” situations involving violence between same-sex partners.¹⁶⁰ Due to the lack of legal support and cultural understanding of relationships between sexual minorities, sexual minority women victims of domestic violence are less likely to report abuse to the proper authorities, given the victims’ fear that reporting this abuse will “jeopardize child custody, immigration, or legal status.”¹⁶¹ Transgender women face even more obstacles as minorities within the LGBTQIA (lesbian, gay, bisexual, transgender, queer, intersex, and allies) community-at-large, as “trans” populations are among the least understood groups in our society and trans-specific resources are scarce.
59. Additionally, it is critical for the United States to address how to end violence against women with disabilities because they are an increasing population and constitute a significant portion of the United States’ populace. Women with disabilities are at a higher risk of being victims of violence.¹⁶² According to DOJ statistics for 2011, the rate of violence against women with disabilities was three times the rate of violence against women without disabilities: 53 in 1,000 for women with disabilities, compared to 17 in 1,000 for females without disabilities.¹⁶³ Despite these shocking statistics, funding for disability-specific programs authorized under VAWA was reduced from \$10 million to \$9 million.¹⁶⁴

F. The Failure of Law Enforcement to Protect Victims of Domestic Violence and Stalking: Case Studies

Town of Castle Rock, Colorado v. Jessica Gonzales: A Case of Domestic Violence

60. One case that highlights the failure of our criminal justice and judicial systems to protect victims of domestic violence is the case of *Town of Castle Rock v. Jessica Gonzales* before the U.S. Supreme Court, subsequently considered by the Inter-American Commission on Human Rights in the case of *Jessica Lenahan (Gonzales) v. United States*.
61. On June 4, 1999, Jessica Gonzales, a Latina and Native American woman from Castle Rock, Colorado, obtained a restraining order from a judge against her estranged husband, Simon Gonzales, requiring him to remain at least 100 yards away from her and the children in all instances other than scheduled visits.¹⁶⁵ On the evening of June 22, 1999, Mr. Gonzales took the children in violation of the restraining order.¹⁶⁶ He purchased a gun that evening, despite federal law prohibiting him from doing so, after his prohibition never came up in the gun dealer’s computer background check.¹⁶⁷ Jessica Gonzales repeatedly contacted the local police to report that her children were missing

and that Mr. Gonzales had violated a restraining order.¹⁶⁸ The police did little to locate the children or Mr. Gonzales, although they did respond to a lost dog report and a fire lane violation that evening.¹⁶⁹ Nearly ten hours after Jessica Gonzales first contacted the police, Mr. Gonzales unexpectedly arrived at the police station, opened fire, and was ultimately killed in a shoot-out.¹⁷⁰ The three children were subsequently found dead in his truck.¹⁷¹ To this date, the cause, time and place of their deaths remain unknown.¹⁷²

62. In addition to demonstrating an utter failure of policing, this case sheds light on the failure of the background check system related to the purchase of firearms used by the United States government. After he kidnapped the children, Simon Gonzales purchased a Taurus PT-99AF 9mm semi-automatic handgun from a federally-licensed firearm dealer.¹⁷³ The Federal Bureau of Investigation (FBI) approved the purchase upon verification of Mr. Gonzales's legal right to own a gun from the dealer, via the background check by the automated National Instant Criminal Background Check system (NICS).¹⁷⁴ Yet according to U.S. law, Simon Gonzales should never have been allowed to purchase this gun, as the Brady Handgun Violence Prevention Act of 1994 "prohibits the sale of firearms to and the possession of firearms by" people who have a qualifying domestic violence restraining order against them.¹⁷⁵ The FBI system has been criticized for failing to identify many individuals who attempt to purchase guns even though they are prohibited from doing so by law.¹⁷⁶ A faulty FBI background check system allowed Simon Gonzales to purchase a gun despite being federally prohibited from doing so due to his restraining order.¹⁷⁷
63. In July 2000, Jessica Gonzales filed a lawsuit alleging constitutional violations by both the Town of Castle Rock and three individual police officers.¹⁷⁸ The case made its way to the U.S. Supreme Court, which, in 2005, decided against her.¹⁷⁹ In a 7-2 ruling, the Supreme Court found that that Ms. Gonzales had no entitlement under the Due Process Clause to police enforcement of her restraining order.¹⁸⁰ Despite the Colorado legislature's repeated use of the word "shall" in Colorado's mandatory arrest law, the Court explained, "[w]e do not believe that these protections of Colorado law truly made enforcement of restraining orders *mandatory*."¹⁸¹ The Court went on to say that since a restraining order has no monetary value, it does not count as property for the purposes of the Due Process Clause, and as such it is not a protected individual entitlement.¹⁸²
64. The Supreme Court's ruling incited outrage among women's and civil rights organizations in the U.S., who argued that the ruling effectively denies a constitutional remedy to women who need protections from domestic violence.¹⁸³ In December 2005, the ACLU filed a petition on behalf of Jessica Gonzales (who subsequently remarried and adopted the last name Lenahan) with the Inter-American Commission on Human Rights (IACHR), *Jessica Lenahan (Gonzales) v. United States*.¹⁸⁴ The petition asserted that the inaction by the Town of Castle Rock, and the subsequent response from the U.S. Supreme Court, violated the human rights of Jessica Lenahan and her children – rights protected under the American Declaration on the Rights and Duties of Man.¹⁸⁵

65. In 2011, the Commission decided in Ms. Lenahan's favor, finding the U.S. "failed to act with due diligence to protect Jessica Lenahan" and her daughters.¹⁸⁶ This violated the U.S.'s obligation to provide for equal protection under the law. The Commission criticized the failure of the U.S. to "adequately organize its state structure" to protect Lenahan and her daughters, which, it found, constituted a violation of the girls' right to life.¹⁸⁷ In addition, the Commission characterized the Castle Rock Police Department's efforts as a "fragmented, uncoordinated and unprepared" response to Lenahan's children's disappearance, and found a lack of training on responding to domestic violence, among other failures.¹⁸⁸ The Commission instructed the U.S. to rectify the "systemic failures" of the Castle Rock Police Department and the Federal Bureau of Investigations that "disproportionately affect women – especially those pertaining to ethnic and racial minorities and to low-income groups."¹⁸⁹ The Commission recommended a "serious, impartial and exhaustive investigation" into the failures that took place related to the enforcement of Lenahan's protection order (including an inquiry into public officials' violations of state and/or federal law) and into the deaths of the children. The Commission's recommendations also included a number of policy-focused remedies, such as adopting and reforming legislation, resources, regulations, training and model protocols regarding: (1) the enforcement of protection orders and other precautionary measures to protect women from violence; (2) protection measures for children in the domestic violence context; (3) stereotypes of domestic violence victims and discrimination (especially minority and immigrant victims and survivors), including trainings for public officials; and (4) law enforcement investigation into missing children in the domestic violence context.¹⁹⁰ Additionally, it suggested the implementation of policies and programs to "address stereotypes of domestic violence victims/discrimination," which includes trainings for public officials, and the design of federal and state protocols involved with "law enforcement investigation into missing children in the domestic violence context."¹⁹¹
66. *Lenahan v. U.S.* was the first case brought by a survivor of domestic violence against the U.S. before an international human rights tribunal. It underscored all the ways in which the U.S. has failed and continues to fail to protect women and children from domestic violence, and demonstrated the need for policy reform in this area. Ms. Lenahan's attorneys (the University of Miami Human Rights Clinic, the ACLU, and Columbia Law School's Human Rights Institute) are now in discussions with the U.S. Government concerning implementation.
67. On July 19, 2006, the U.N. Special Rapporteur on Violence against Women, its causes and consequences, then Yakin Erturk, sent an allegation letter to the United States government inquiring about the *Castle Rock* case.¹⁹² The U.S. did not reply to her communication, and she reiterated her interest in receiving one.¹⁹³ On March 26, 2007, the U.S. responded to Erturk's letter of inquiry, arguing that "there was no failure to exercise due diligence; nor was there a failure to provide access to the mechanisms of justice and to just and effective remedies."¹⁹⁴ The next Special Rapporteur on violence against Women, its causes and consequences, Rashida Manjoo, examined the case as

part of her country mission to the U.S., and in her report characterized the Supreme Court's ruling in *Castle Rock* as illustrative of the United States' "failure to enforce a domestic violence restraining order, and thus protect victims of gender-based violence."¹⁹⁵ Manjoo's report raises concerns about the effect of cases like *Castle Rock*, which she argues result in "no federal level constitutional or statutory remedy" for the negligence of state and local forces in their duty to protect a woman's "right to physical security."¹⁹⁶

Ms. Jen Fair Lee: A Case of Stalking

68. A case that illustrates the failure of our criminal justice and judicial systems to protect victims of stalking is that of Ms. Jen Fair Lee from New York. Ms. Lee fled with her child from Singapore to an uncle's home in Tivoli, New York to escape her physically and sexually violent husband. The husband found her through a private investigator and initiated litigation in a federal court in New York under the Hague Convention on the Civil Aspects of International Child Abduction to have the child returned. The Hague Convention provides that a child taken from his or her country of habitual residence should be returned immediately, apart from certain narrow exceptions.¹⁹⁷ One of those exceptions provides that if return would expose the child to grave risk of physical or psychological harm, return should be denied.
69. While this case was pending, the court placed the child in the father's custody and ordered him to bring the child to the mother's home for visitation on a weekly basis. What started as ordinary family visits eventually deteriorated into continuing surveillance and stalking. In May 2013, Ms. Lee went to a local police station asking for help. She reported that her former husband's behavior when he brought the child for visitation was extremely suspicious and disturbing, and asked the police to intervene. Throughout the entire duration of the visits the husband spied on Ms. Lee along with a specially-hired private investigator. The two men took numerous photographs of Ms. Lee's activities during the visits, stared into the windows of her house, provoked uninvited conversations with Ms. Lee and her neighbor, and trespassed on neighbors' property. Ms. Lee communicated her fear to the police that she was under her husband's surveillance even when the child was not visiting her.¹⁹⁸
70. The police ignored Ms. Lee's concerns and refused to help her, claiming that stalking was not a crime in New York—when in fact, it is illegal.¹⁹⁹ In addition, both the trial and appellate courts in this case held that despite the father's violence, the child should be returned to him.
71. Unfortunately, Ms. Lee's case represents the experiences of many stalking victims in the United States whose concerns are discredited by the police. This case is among the many in which U.S. state and federal judges either do not grasp or do not wish to acknowledge the vast research documenting that exposing a child to domestic violence does create a grave risk for the health and safety of the child, and that when the health

and safety of the child's primary caretaker are at risk, the child's health and safety are also at risk.

G. U.S. Department of Justice Civil Rights Investigations and Local Domestic Violence Resolutions

72. In light of the above, it is important to recognize positive steps taken by the United States Government (both at the national and local levels) that respond to the recommendations in the *Gonzales* case before the IACHR. Progress has been made through both consent decrees that the Department of Justice (DOJ) has entered into with the New Orleans and Puerto Rico police departments, as well as through local domestic violence resolutions throughout the country. However, in order to realize the right to be free from domestic violence, the United States government, along with local and state governments, must ensure that these decrees and resolutions are properly implemented and enforced.
73. In 2011, the DOJ Civil Rights Division announced findings of a comprehensive investigation into the practices of the New Orleans Police Department (NOPD). The DOJ found that the NOPD engaged in a “pattern and practice of general discrimination in the Department’s under-enforcement and under-investigation of violence against women.”²⁰⁰ In response to the decree, which is a binding agreement, the NOPD will implement new policies and procedures to prevent discriminatory policing.²⁰¹ This includes improved responses to violence against women.²⁰²
74. Similarly, the DOJ Civil Rights Division conducted an investigation of the Puerto Rico Police Department (PRPD), and discovered a failure “to adequately address sexual assault in Puerto Rico.”²⁰³ Numerous cases of domestic violence by the police officers themselves were also revealed.²⁰⁴ The consent decree between DOJ and the PRPD requires the PRPD to “respond to and investigate reports of sexual assault and domestic violence professionally, effectively, and in a manner free of gender-based bias.”²⁰⁵ DOJ is responsible for monitoring compliance with these consent decrees.
75. Additionally, seven jurisdictions across the United States have passed resolutions recognizing freedom from domestic violence as a human right. These jurisdictions include Albany,²⁰⁶ Baltimore,²⁰⁷ Cincinnati,²⁰⁸ Miami Dade County,²⁰⁹ the City of Miami Springs,²¹⁰ Florida, Montgomery County, Alabama City and County²¹¹ and the Seattle Human Rights Commission.²¹² Two different approaches have been taken to codify this principle into local law.
76. The Albany, Baltimore, Cincinnati, Miami-Dade, and Miami Springs resolutions reframe domestic violence as a human rights issue. These resolutions serve as a declaration to assure citizens “that state and local governments bear a moral responsibility to secure this human right on behalf of their residents.”²¹³ Furthermore, the resolutions in

Miami-Dade County and Miami Springs call for government agencies to incorporate human rights principles into their policies and practices.

77. The Seattle Human Rights Commission's resolution recognized that the federal government has obligations to respect, protect, and ensure human rights. Advocating for change on a national level, the Commission called upon the U.S. House of Representatives to pass the Senate version of VAWA.
78. These resolutions are promising first steps in the pursuit of freedom from violence against women. However, the next challenge to fully realize these resolutions will be their effective implementation.²¹⁴

H. The Marissa Alexander Case: A Case Study of the Problems Posed by “Stand Your Ground” Laws in the Context of Domestic Violence and Race²¹⁵

79. The “Stand Your Ground” defense, discussed in detail in a shadow report submitted by the Dream Defenders and Florida Legal Services,²¹⁶ came to the forefront of American consciousness during the George Zimmerman trial in Florida in July 2013, in which Zimmerman, a white Hispanic man, was accused of unlawfully killing a teenager, Trayvon Martin.²¹⁷ What has received less public attention is the application of “Stand Your Ground” laws to domestic violence cases – particularly, in cases involving women belonging to vulnerable groups, such as racial/ethnic minority and immigrant women. While “Stand Your Ground” laws authorize the use of deadly force (without imposing a duty to retreat) in those circumstances where “a person ... is not engaged in an unlawful activity and ... is attacked in any other place where he or she has a right to be,”²¹⁸ their application reflects a deep social problem: Race and gender are often determinants of who is granted the right to defend their lives and who is constructed as an object of fear in the U.S. criminal justice system.²¹⁹
80. In May 2011, an African-American woman, Marissa Alexander (“Alexander”), unsuccessfully tried to defend herself at trial, using Florida’s “Stand Your Ground” law. Alexander was arrested on August 1, 2010, after shooting upward into a wall during an altercation with her abusive husband, Rico Gray (“Gray”), against whom she had a court-issued Injunction for Protection. One shot was fired, and no one was injured. However, Alexander was charged with three counts of aggravated assault with a deadly weapon without intent to kill. While the Florida statute allows an individual to defend him/herself if he or she believes it is necessary to prevent death or great bodily injury, the trial court, in a ruling that advocates have criticized as a misreading of the law, required that an individual must first suffer serious bodily injury in order to defend him/herself. Because Alexander could not demonstrate that she suffered serious bodily injury at the time that she fired the shot, she was unable to claim self-defense. After 12 minutes of deliberation, a jury of six people convicted Alexander of three counts of aggravated assault with a deadly weapon with no intent to harm. Her sentence was set

at 20 years, in part due to Florida's mandatory minimum sentencing law.²²⁰ Subsequent to her sentencing, Alexander filed for appeal. On September 26, 2013, the First District Court of Appeal in Florida reversed and remanded Ms. Alexander's case to the trial court.²²¹ The appellate court held that "the jury instructions on self-defense were erroneous."²²² The new trial date has not yet been scheduled.

81. Advocates and commentators have juxtaposed the Alexander case and the Zimmerman case, both of which invoke the "Stand Your Ground" principle but with very different outcomes. The Free Marissa Now Mobilization Campaign, which advocates for freeing Alexander from prison and reuniting her with her family, has put the question this way: "who is permitted to stand their ground without fear of punishment and who isn't? President Obama addressed this very issue when he asked, 'if Trayvon Martin was of age and armed, could he have stood his ground on that sidewalk? Would Trayvon Martin have been considered justified in shooting George Zimmerman because he felt threatened?'"²²³
82. Mandatory minimum sentences have a significant impact on victims of domestic violence whose survival strategies are criminalized, as demonstrated by the cases of Marissa Alexander and many others such as Kemba Smith, another African-American domestic violence victim who received a nearly 25 year sentence after being coerced to participate in her abuser's drug activities, and who was pardoned by President Bill Clinton in 2000.²²⁴ U.S. Attorney General Eric Holder has called mandatory minimum sentencing "draconian" and the cause of "shameful" racial disparities in US prisons. Recently, Holder announced that the Justice Department plans to no longer pursue federal mandatory minimums for non-violent drug crimes.²²⁵
83. Social justice and women's rights advocates have argued that the Alexander and Smith cases are grave injustices and emblematic of the obstacles that African-American domestic violence survivors face in receiving protection from the State. "Black women and other marginalized people are especially likely to be criminalized, prosecuted, and incarcerated while trying to navigate and survive the violence in their lives."²²⁶ Violence perpetrated against women and girls can put them at risk for incarceration because their survival strategies, e.g., prostitution, are routinely criminalized.²²⁷ Eighty-five to ninety percent of women in prison have a history of violent victimization prior to their incarceration, including domestic violence, sexual violence, and child abuse.²²⁸ The judicial system should support victims of domestic violence, not exacerbate the abuse they experience. Transformative community-based responses to violence are particularly important, especially when engaging the criminal legal system may further endanger survivors of domestic violence, as it has in the Alexander case.²²⁹
84. Whereas some criminal defendants, like Zimmerman, benefit from the protections of "Stand Your Ground" laws, others, in particular minority women, do not. Discrimination on the bases of gender and race is embedded in the U.S. criminal justice system and Marissa Alexander's case serves as an example of such discrimination.²³⁰ As the Free

Marissa Now Coalition has stated, “[s]ociety tends to see women who experience domestic violence through certain racial and gendered lenses that stereotype and punish them for making choices that others judge as wrong. Survivors should be supported to protect themselves and seek justice without have to also defend themselves to police, prosecutors, and judges because they don’t fit into some preconceived notion of what genuine victims do and don’t do.”²³¹ “Stand Your Ground” laws must be reevaluated to ensure that their application does not perpetuate racial and gender stereotypes, discrimination, and injustice.

VI. Recommendations

Gun Violence and Domestic Violence

1. At the legislative level, the United States should require universal background checks for all gun transfers; expand prohibitions on gun possession to include those who have committed sexual assault, stalking, or violence against dating partners; and condition grants to states on improving their reporting to the gun purchase background check system, particularly regarding domestic violence relationships between misdemeanor convicts and their victims.
2. At the administrative level, the United States should require the Bureau of Alcohol, Tobacco, and Firearms (ATF), which administers the gun purchase background check system, to broaden the range of permissible reporters to the system regarding qualifying protective orders for victims of domestic violence to include law enforcement and domestic violence attorneys, and to prioritize the processing of such reports.

Violence Against Women Belonging to Racial and Ethnic Minorities and Women with Disabilities

3. Implement the Inter-American Commission on Human Rights’ decision in *Jessica Lenahan (Gonzales) v. United States*.
4. Improve training for law enforcement on prioritizing, listening to and recognizing the needs of all women victims of domestic violence, as well as developing “cultural competency” to respond appropriately to African-American women, Latinas, Native American and Alaskan Native women, and immigrant women.
5. Compel police departments on the state/local level to respond to open records requests and generate disaggregated data on domestic violence that accounts for the sex, race, ethnicity, and disability (if applicable) of domestic violence victims and perpetrators, including whether the complainant or victim is Limited English Proficient (LEP), the physical injuries complained of by victims, the types of crime committed, and whether or not weapons were involved.
6. Ensure that both victims and perpetrators of domestic violence are treated fairly by the criminal justice system, regardless of race or immigrant status.
7. Collect data on the demographics of individuals appearing in Family Court that should be used to develop strategies for ensuring that victims of domestic violence of all races and abilities are able to access the resources and protection they need.

8. Collect and analyze sex and disability desegregated data to properly understand the causes, consequences and forms of violence against women with disabilities, especially as it relates to violence in prisons and institutions.

Consent Decrees and Local Domestic Violence Resolutions

9. Ensure that the Consent Decrees in New Orleans and Puerto Rico are being effectively implemented and enforced in order to ensure that these police departments do not continue to engage in gender discrimination.
10. What is the status of compliance with the consent decrees?
11. Ensure that existing local domestic violence resolutions are effectively implemented and enforced.
12. Advocate for more local and state governments to pass domestic violence resolutions recognizing the right to be free from domestic violence as a human right.

Application of “Stand Your Ground” Laws to Domestic Violence Cases

13. Judicial discretion for sentencing is particularly needed when judging complex cases such as those involving domestic violence or self-defense.
14. Evaluate the disproportionate impact of mandatory minimums on communities of color. Consider instituting the option of judicial discretion when defendants face mandatory minimum sentencing in complex cases that involve self-defense or domestic violence.
15. Support mandatory domestic violence training for police, prosecutors, and judges.
16. Ensure that victims of domestic violence do not face the risk of prosecution as a result of defending themselves from violence.
17. Congress should “consider and support programs that explore alternatives to the current criminal adjudication models, and that address the underlying causes of abuse.”

VII. Suggested Questions for the Government of the United States

1. What effort is the United States making to ratify CEDAW?

Gun Violence and Domestic Violence

2. What is being done to expand background checks for firearm purchases?
3. What steps are being taken to enforce the existing laws preventing abusers subject to domestic violence restraining orders from obtaining firearms? What is being done to ensure that abusers subject to restraining orders surrender their firearms upon court order?

Violence against African-American, Latinas and other Minority Women and Women with Disabilities:

4. What steps is the United States Government taking to implement the Inter-American Commission on Human Rights’ decision in the case of *Jessica Lenahan (Gonzales) v. United States*? Specifically, what steps are being taken to adopt or reform legislation, resources, regulations, training and model protocols regarding: (1) the enforcement of

protection orders and other precautionary measures to protect women from violence; (2) protection measures for children in the domestic violence context; (3) stereotypes of domestic violence victims and discrimination (especially minority and immigrant victims and survivors), including trainings for public officials; and (4) law enforcement investigation into missing children in the domestic violence context.

5. What steps will the United States take to prevent gun violence in the African-American and Latino communities?
6. What steps will the United States take to ensure adequate police assistance and investigation of incidents of domestic violence, sexual assault, rape, and stalking involving African-American, Latina, and other minority women?
7. What steps will the United States take to address the issue of underreporting of domestic and gender-based violence by minority women and women with disabilities?
8. What steps will the United States take to prevent racial stereotyping and discrimination of African-American women by law enforcement?
9. What steps will the United States take to prevent disability stereotyping and discrimination against women with disabilities as it relates to reporting and service provision?
10. What steps will the United States take to collect and analyze sex, race, and disability disaggregated data on violence against women with disabilities, including in institutional settings?
11. What additional steps will the United States take to address the serious shortage of shelters and other violence-related services which are accessible to women, and especially women with disabilities?
12. What steps will the United States take to address the issue of underreporting of domestic and gender-based violence by women with disabilities?

Consent Decrees with Police Departments and Local Domestic Violence Resolutions

13. What steps have been taken to ensure that the new procedures adopted by the New Orleans and Puerto Rico police departments, pursuant to these departments' consent decrees with the U.S. Department of Justice, will be effectively implemented?
14. Has the Department of Justice executed decrees, or similar investigations, to counter patterns of failure to adequately investigate violence against women and domestic violence in other cities or states where problems have been reported?
15. Does the U.S. Government plan to promote or feature the local domestic violence resolutions as a nationwide model?

Questions for "Stand Your Ground" Laws Application to Domestic Violence Cases

16. Given the fact that mandatory minimum sentencing increases racial disparity in prisons and mandates sentences that are widely affirmed as exorbitant and unjust, such as in the case of Marissa Alexander who is serving a 20 year sentence in Florida for defending herself from her abusive husband, what is the plan to end mandatory minimum laws across the U.S. and begin to correct the damage they have caused? U.S. Attorney General Eric Holder's announcement that the Justice Department plans to no longer

pursue federal mandatory minimums for non-violent drug crimes is a good start, but what is the plan to:

- a. Strongly encourage US states to follow suit with ending state mandatory minimum sentencing?
 - b. Convene judicial review over sentences of those currently incarcerated under mandatory minimums and support the possibility of decreased sentencing for these defendants that allows for judicial discretion?
17. What efforts, if any, has the United States made to investigate the role of “Stand Your Ground” laws in cases of domestic violence?
18. What measures will the United States take to guarantee equal application of Stand Your Ground laws to cases involving female African-American victims of domestic violence?

¹ UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104.

² U.S. National Center for Injury Prevention and Control Centers for Disease Control and Prevention, National Intimate Partner and Sexual Violence Survey, 2010 Summary Report, Executive Summary at 1-2 (2011), available at http://www.cdc.gov/violenceprevention/pdf/nisvs_executive_summary-a.pdf.

³ U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee: United States of America*, ¶ 28, U.N. Doc. No. CCPR/C/USA/CO/3 (Sept. 15, 2006), available at [http://www.unhchr.ch/tbs/doc.nsf/0/0d83f7fe89d83ed6c12571fb00411eb5/\\$FILE/G0644318.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/0d83f7fe89d83ed6c12571fb00411eb5/$FILE/G0644318.pdf)

⁴ Violence Against Women Act of 1994, Pub. L. 103-322, Tit. IV, 108 Stat. 1796 (1994).

⁵ See, e.g., THE HUFFINGTON POST, *Violence Against Women Act: Eric Cantor, Joe Biden In Talks Amid Stalled Tribal Provision* (Dec. 6, 2012), available at http://www.huffingtonpost.com/2012/12/06/violence-against-women-act-eric-cantor-native-americans_n_2251924.html.

⁶ United States Congress, Overview: S.47 – Violence Against Women Reauthorization Act of 2013 (Mar. 7, 2013) available at <http://beta.congress.gov/bill/113th-congress/senate-bill/47?q=vawa> (contains the ‘summary’ of VAWA).

⁷ *Id.*

⁸ Domestic Violence in the United States: A Preliminary Report prepared for Rashida Manjoo, U.N. Special Rapporteur on Violence Against Women, Bettinger-Lopez et al., Apr. 18, 2011, ¶ 16.

⁹ Winnie Stachelberg, et. al., Center for Am. Progress, *Preventing Domestic Abusers and Stalkers from Accessing Guns* (May 9, 2013), available at <http://www.americanprogress.org/wp-content/uploads/2013/05/GunsStalkersBrief-3.pdf>.

¹⁰ *Id.*

¹¹ U.S. Department of Justice, Bureau of Justice Statistics, Firearm Violence 1993-2011, Special Report 5, available at <http://www.bjs.gov/content/pub/pdf/fv9311.pdf>.

¹² See *infra*. ¶¶ 84-88.

¹³ Jessica Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11 (2011) ¶ 199 [hereinafter *Lenahan*].

¹⁴ Caroline Bettinger-Lopez, *Introduction: Jessica Lenahan (Gonzales) v. United States: Implementation, Litigation, and Mobilization Strategies*, 21 *Am. U. J. of Gender Soc. Pol’y & L* 207 (2012).

¹⁵ See, e.g., City of Albany, Resolution No. 3.11.13r, City of Albany, Resolution No. 3.11.13r, available at <http://www.albanyny.gov/files/January%207%202013.pdf>; City of Baltimore, Council Bill No. 12-0034R (Mar. 19, 2012), available at <http://legistar.baltimorecitycouncil.com/attachments/8843.pdf>; City of Cincinnati, Resolution No. 47-2011 (Oct. 5, 2011), available at http://city-egov.cincinnati-oh.gov/Webtop/ws/council/public/child/Blob/33497.pdf?rpp=-10&m=2&w=doc_no%3D%27201101139%27; Miami-Dade County, Resolution No. R-644-12 (July 17, 2012), available at

<http://www.miamidade.gov/govaction/legistarfiles/Matters/Y2012/121380.pdf>; City of Miami Springs, Resolution No. 2012-3555 (Sept. 10, 2012), available at <http://www.miamisprings-fl.gov/sites/default/files/fileattachments/doc091812.pdf>.

¹⁶ *Id.* (Albany, Baltimore, Cincinnati, Miami-Dade, Miami Springs).

¹⁷ Seattle Human Rights Commission, Resolution No. 12-03 (Sept. 6, 2012), available at http://www.seattle.gov/HumanRights/Documents/SHRC_Resolution12-3VAWAauthorization.pdf (The U.S. House of Representatives passed the Senate version in Feb. 2013).

¹⁸ Dream Defenders, *Shadow Report - Prepared for the UN Human Rights Committee in connection to its review of United States' Compliance with the International Covenant on Civil and Political Rights*, Oct. 2013, (on file with authors) (As discussed in the Dream Defenders' Shadow Report, research has shown that white people who kill black people in Stand Your Ground states are far more likely to be found justified in their killings than if they killed another white person. In non-Stand Your Ground states, white people are 250% more likely to be found justified in killing a black person than a white person who kills another white person; in Stand Your Ground states that number jumps to 354%. The U.S. Commission on Civil Rights is investigating racial bias in the application of "Stand Your Ground" Laws).

¹⁹ Fla. Stat. § 776.013(3) (2012).

²⁰ Catalano, S., et al, U.S. Dept. of Just., *Female Victims of Violence* (Sept. 2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf> (Table 1. Violence by intimate partners, by type of crime and gender of the victims, 2008).

²¹ *Id.*

²² Lawrence A. Greenfeld, et al., U.S. Dep't of Justice, *Violence by Intimates* 38 (1998).

²³ Violence Policy Center, *When Men Murder Women: An Analysis of 2008 Homicide Data*. Washington, DC, 2010, p.7, available at <http://www.vpc.org/studies/wmmw2010.pdf>.

²⁴ Catalano, S., et al, U.S. Dept. of Just., *Female Victims of Violence* 3 (Sept. 2009), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf>

²⁵ *Id.* at 4.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3.

²⁸ Violence Against Women Act, Pub. L. 103-322, Tit. IV, 108 Stat. 1796 (1994).

²⁹ See, e.g., THE HUFFINGTON POST, *Violence Against Women Act: Eric Cantor, Joe Biden In Talks Amid Stalled Tribal Provision* (Dec. 6, 2012), available at http://www.huffingtonpost.com/2012/12/06/violence-against-women-act-eric-cantor-native-americans_n_2251924.html.

³⁰ United States Congress, Overview: S.47 – Violence Against Women Reauthorization Act of 2013 (Mar. 7, 2013) available at <http://beta.congress.gov/bill/113th-congress/senate-bill/47?q=vawa> (contains the 'summary' of VAWA).

³¹ Special Rapporteur on violence against Women, its causes and consequences, *Addendum - Mission to the U.S.*, ¶¶ 107-10, U.N. Doc. A/HRC/17/26/Add.5 (Jun. 2011) (by Ms. Rashida Manjoo), available at <http://www.unhcr.org/refworld/docid/4ef1ad5d2.html> [hereinafter Manjoo].

³² Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, at 2.

³³ *Toolkit to End Violence Against Women*, National Advisory Council on Violence Against Women (Nov. 2001), available at <https://www.ncjrs.gov/app/publications/abstract.aspx?ID=206041>, at 2.

³⁴ *Id.*

³⁵ In 1990, for instance, the United States House of Representatives passed House Concurrent Resolution 172 which "express[ed] the sense of Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent." In 1989, and then again in 1994, the American Bar Association (ABA) passed resolutions calling for statutory presumptions against allowing custody to batterers. In 1994, the National Council of Juvenile and Family Court Judges added a rebuttable presumption against allowing custody to batterers to its Model Code on Domestic

and Family Violence. The American Psychological Association added its recommendation in 1996 that states adopt statutes giving custody preference to the non-violent parent whenever possible.

³⁶ Am. Bar Ass'n, Comm'n on Domestic Violence, *Child Custody and Domestic Violence by State* (Feb. 2008), available at <http://www.abanet.org/domviol/docs/Custody.pdf>.

³⁷ *Id.*

³⁸ J.S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining Solutions*, 11 J. GENDER SOC. POL'Y & L., 657, 667 (2003) (internal citations omitted).

³⁹ N.E. Johnson et al., *Child Custody Mediation in Cases of Domestic Violence: Empirical Evidence of a Failure to Protect*, 11 VIOLENCE AGAINST WOMEN 1022 (2005) (mediators are just as likely to recommend joint legal and physical custody in domestic violence cases as in cases where there are no allegations of domestic violence); J. Bow, *Review of Empirical Research on Child Custody Practice*, 3 J. CHILD CUSTODY 23, 39 (2006) (even where child abuse and domestic violence are documented in the court record, they are often not addressed in the final custody report); L.S. Horvath, *Child Custody Cases: A Content Analysis of Evaluations in Practice*, 33 PROF. PSYCHOL.: RES. & PRAC. 557 (2002) (domestic violence is largely overlooked by custody evaluators and often plays no role in custody determinations even when it is noted in evaluators' reports); C.S. O'Sullivan et al., *Supervised and Unsupervised Parental Access in Domestic Violence Cases: Court Orders and Consequences*, Final Technical Report Submitted to the National Institute of Justice (Mar. 2006) (history of domestic violence has little impact on court ordered visitation arrangements).

⁴⁰ Davis, G., K. Lizdas, S. Tibbets Murphy, and J. Yauch, "The Dangers of Presumptive Joint Physical Custody," Battered Women's Justice Project, Minneapolis, MN, 3 (2010), available at http://www.bwjp.org/files/bwjp/articles/Dangers_of_Presumptive_Joint_Physical_Custody.pdf.

⁴¹ Concluding Observations of the Human Rights Committee, *supra* note 3, ¶ 28.

⁴² Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, Dec. 30, 2011, Art. 3 (¶¶ 114-143). The U.S. government in 1994 signed into law VAWA, which takes a comprehensive approach to "end[ing] violence against women" (¶ 134); the implementation of VAWA is an important federal priority (¶ 135) legislation and grant programs, making the Office on Violence Against Women (OVW) a permanent part of the Department of Justice and the expansion of tools to improve the nation's response to crimes of domestic violence (¶ 136-36); the 2009 American Recovery and Reinvestment Act grant of \$225 million to OVW to enhance services and advocacy to victims (¶ 137); victims of domestic violence may be protected under the Fair Housing Act's prohibitions against sex discrimination where housing issues are implicated (¶ 141); racial and ethnic disparities in victims of domestic violence (¶ 142); regarding Article 6 on the right to life, the Office for Victims of Crime grant support to domestic violence shelters and other community-based organizations (¶ 163).

⁴³ Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, Dec. 30, 2011, Art. 2 (¶¶ 32-114). The Violence against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) expands legal tools for addressing domestic violence, dating violence, sexual assault and stalking (¶ 53); Title IX of VAWA 2009 includes for the first time provisions aimed at ending violence against racial and ethnic minorities, including American Indian and Alaska Native women, and supports "community efforts" to help children exposed to violence (¶ 54)

⁴⁴ Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, Dec. 30, 2011, Art. 1 (Article 1 (self-determination): Signed into law by President Obama in 2010, the Tribal Law and Order Act includes new guidelines and trainings for police departments on domestic violence and sex crimes (¶ 29); Article 7 (Freedom from torture or cruel, inhuman or degrading treatment or punishment): the DOJ launched an investigation of the New Orleans Police Department, which included the DOJ/CRD's first ever finding that a police department engaged in gender-biased policing, including systemic failure to investigate sexual assaults and domestic violence (¶ 183)

⁴⁵ Beth Richie, *Compelled to Crime: The Gender Entrapment of Battered Black Women* (1995).

⁴⁶ *See, e.g.*, General Comment No. 28: The equality of rights between men and women (article 3) (2000).

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- ⁴⁷ General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Human Rights Committee, adopted on Mar. 29, 2004, U.N. Doc. CCPRC/21/Rev.1/Add.1326 May 2004, ¶¶ 4, 8.
- ⁴⁸ General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Human Rights Committee, adopted on Mar. 29, 2004, U.N. Doc. CCPRC/21/Rev.1/Add.1326 May 2004, ¶¶ 13, 16, 18.
- ⁴⁹ Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Human Rights Committee, adopted on Mar. 29, 2004, U.N. Doc. CCPRC/21/Rev.1/Add.1326 May 2004, ¶ 18.
- ⁵⁰ General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), Human Rights Committee, adopted Mar. 29, 2000, U.N. Doc. HRI/GEN/1/Rev.9 (vol. I), ¶ 3.
- ⁵¹ General Comment No. 2: Implementation of article 2 by States parties, Committee Against Torture, U.N. Doc. CAT/C/GC/2 Jan. 24, 2008, ¶ 18; *see also* Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 Colum. Hum. Rts. L. Rev. 291, 292 (1994) (noting the exclusion of domestic violence from the human rights framework and arguing for its inclusion in the framework as a form of torture).
- ⁵² General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, Human Rights Committee, U.N. Doc. CCPR/C/GC/32 (2007).
- ⁵³ General Comment No. 18: Non-discrimination, Human Rights Committee, U.N. Doc. HRI/GEN/1/Rev.1 at 26, 1994, ¶ 5; General Comment No. 19: Article 23, Human Rights Committee, U.N. Doc. HRI/GEN/1/Rev.1 at 28, 1994, ¶ 6.
- ⁵⁴ *See* Manjoo, *supra* note 31, ¶ 113.
- ⁵⁵ *Id.* ¶ 115 A(a) [Remedies for victims of domestic violence, sexual assault and stalking].
- ⁵⁶ *Id.* ¶ 115 A(j). “Furthermore, ‘failure to protect’ statutes should not be used to unjustly remove children from non-offending caregivers.”
- ⁵⁷ Comm. On the Elimination of Racial Discrimination, 72nd Sess., Concluding Observations (May 8, 2008).
- ⁵⁸ *Id.*
- ⁵⁹ Comm. On the Elimination of discrimination against women, 11th Sess., General Recommendation No. 19 (1992) ¶ 7, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.
- ⁶⁰ Of the 194 members in the United Nations, 187 states have ratified CEDAW. The seven states that have not ratified CEDAW include Palau, the United States of America, Tonga, Iran, Somalia, South Sudan, and Sudan. For the list of signatories and members states that have ratified CEDAW, *see* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (last visited September 6, 2013); for a list of member states, *see* <http://www.un.org/en/members/index.shtml> (last visited September 6, 2013); and Lisa Baldez, *U.S. drops the ball on women’s rights, March 8, 2013*, available at <http://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty> (last visited September 6, 2013).
- ⁶¹ Report of the Working Group on the Universal Periodic Review* United States of America, Human Rights Council, Sixteenth Sess., Agenda item 6, Jan. 4, 2011, U.N. Doc. A/HRC/16/11. *Id.* ¶ 92. (Australia, Austria, Canada, China, Costa Rica, DPR Korea, Finland, France, Ghana, India, Indonesia, Japan, Malaysia, Netherlands, New Zealand, Republic of Korea, Thailand, Trinidad & Tobago, Turkey, Viet Nam).
- ⁶² Report of the Working Group on the Universal Periodic Review* United States of America, Human Rights Council, Sixteenth Sess., Agenda item 6, Jan. 4, 2011, U.N. Doc. A/HRC/16/11, *Id.* ¶ 28.
- ⁶³ Lisa Baldez, *U.S. Drops the Ball on Women’s Rights*, CNN (Mar. 8, 2013), <http://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty/index.html>.
- ⁶⁴ *See* List of issues to be considered during the examination of the second periodic report of the United States of America (Committee against Torture) List of issues to be considered during the examination of the second periodic report of the United States of America (CAT/C/48/Add.3), COMMITTEE AGAINST TORTURE, Thirty-fifth sess., Nov. 7-25, 2005, U.N. Doc. CAT/C/USA/Q/2, Feb. 8, 2006, ¶ 59. (2005)
- ⁶⁵ Consideration of Reports Submitted by States Under Article 19 of the Convention, Second periodic reports of States parties due in 1999, Addendum, United States of America, U.N. Doc. CAT/C/48/Add.3/Rev.1, (Jan. 13, 2006), ¶ 68.
- ⁶⁶ *See* Manjoo, *supra* note 31 at Summary.

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- ⁶⁷ *Id.*
- ⁶⁸ Violence Against Women Act of 1994, Pub. L. 103-322, Tit. IV, 108 Stat. 1796 (1994).
- ⁶⁹ Gonzales Petition, *supra* note 21, at 24.
- ⁷⁰ See Caroline Bettinger-Lopez et al., *supra* note 8, ¶ 16.
- ⁷¹ Catalano, S., *Intimate Partner Violence, 1993–2010*, Bureau of Justice Statistics (Nov. 2012), at 3 (citing a period from 1994 to 2010).
- ⁷² *Id.* at 10.
- ⁷³ Futures without Violence, *The Facts on Domestic, Dating and Sexual Violence*, 1 (2009), available at http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/DomesticViolence.pdf.
- ⁷⁴ United States Congress, Overview: S.47 – Violence Against Women Reauthorization Act of 2013 (Mar. 7, 2013) available at <http://beta.congress.gov/bill/113th-congress/senate-bill/47?q=vawa> (contains the ‘summary’ of VAWA).
- ⁷⁵ Violence Against Women Reauthorization Act 2013, Public Law 113-4, Sect. 906 (Mar. 2013), available at <http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>.
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¹⁶⁷ See Lenahan, *supra* note 13, ¶ 34.

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¹⁸⁷ *Id.* ¶ 164.

¹⁸⁸ *Id.* ¶ 150.

¹⁸⁹ *Id.* ¶ 161.

¹⁹⁰ *Id.* ¶ 215.

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²⁰⁴ *Id.* at 5.

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²¹⁰ City of Miami Springs, Resolution No. 2012-3555 (Sept. 10, 2012), available at <http://www.miamisprings-fl.gov/sites/default/files/fileattachments/doc091812.pdf>.

²¹¹ Montgomery City and County, Alabama, Domestic Violence Awareness Month Proclamation, October.

²¹² Seattle Human Rights Commission, Resolution No. 12-03 (Sept. 6, 2012), available at http://www.seattle.gov/HumanRights/Documents/SHRC_Resolution12-3VAWAuthorization.pdf.

²¹³ See *Supra* note 206, Miami Dade County Resolution, Sec. 2.

²¹⁴ See Memorandum from the Columbia Law School Human Rights Institute (JoAnn Kamuf Ward and Elzbieta Matthews) (Jan. 25, 2013) (on file with authors).

²¹⁵ This section was adapted, in part, from Free Marissa Now! Coalition, *Free Marissa Now! Talking Points* (Aug. 6, 2013), available at <http://tiny.cc/fmntalkingpoints> [hereinafter FMN Talking Points].

²¹⁶ Dream Defenders, *Shadow Report - Prepared for the UN Human Rights Committee in connection to its review of United States’ Compliance with the International Covenant on Civil and Political Rights*, Oct. 2013 (on file with authors).

²¹⁷ On February 26, 2012, George Zimmerman, a White/Hispanic male, shot an African-American teenager, Trayvon Martin. Zimmerman was serving as a neighborhood watch volunteer at a gated community in Sanford, Florida in his car when he noticed Trayvon Martin walking along the street. Zimmerman perceived Martin’s activity suspicious. Zimmerman called the police, exited his car, and started following Martin. A few moments later an altercation between the two ensued. Zimmerman ended up shooting Martin in the chest. After a long-lasting trial, the jury returned the verdict of not guilty on the grounds of self-defense. The incident provoked national debate on race, evaluation of black life, and “stand your ground” laws.

²¹⁸ Fla. Stat. § 776.013(3) (2012).

²¹⁹ See FMN Talking Points at 4.

²²⁰ Florida's "10-20-life" Law, Connecticut General Assembly (Jan. 23, 2013), available at <http://www.cga.ct.gov/2013/rpt/2013-R-0067.htm> (a law that requires courts to impose a minimum sentence of 10 years, 20 years, or 25 years to life for certain felony convictions involving the use or attempted use of a firearm or destructive device).

²²¹ *Alexander v. State*, 1D12-2469, 2013 WL 5354419 (Fla. 1st DCA 2013).

²²² *Id.*

²²³ See FMN Talking Points at 4 (quoting Press Release, The White House, Office of the Press Secretary, Remarks by the President on Trayvon Martin (July 19, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/07/19/remarks-president-trayvon-martin>).

²²⁴ *The Sentencing Project Featured Stories - Kemba Smith*, The Sentencing Project Research and Advocacy for Reform, available at http://www.sentencingproject.org/detail/feature.cfm?feature_id=1 (last visited Sept. 9 2013); Nekima Levy-Pounds, *Beaten by the System and Down for the Count: Why Poor Women of Color and Children Don't Stand A Chance Against U.S. Drug-Sentencing Policy*, 3 U. St. Thomas L.J. 462, 469 (2006).

²²⁵ Dan Merica & Evan Perez, *Eric Holder Seeks to Cut Mandatory Minimum Drug Sentences*, CNN (Aug. 12, 2013), <http://www.cnn.com/2013/08/12/politics/holder-mandatory-minimums/index.html>.

²²⁶ See FMN Talking Points at 1; see also Dream Defender's Shadow Report (stating that research has shown that white people who kill black people in Stand Your Ground states are far more likely to be found justified in their killings than if they killed another white person. In non-Stand Your Ground states, white people are 250% more likely to be found justified in killing a black person than a white person who kills another white person; in Stand Your Ground states that number jumps to 354%.); Eric Lipton, *With Criminal Case Closed, Justice Department Will Restart Hate Crime Inquiry*, N.Y. Times, July 14, 2013, at A8 (stating that the U.S. Commission on Civil Rights is investigating racial bias in the application of "Stand Your Ground" Laws); Sarah Childress, *Is There Racial Bias in "Stand Your Ground" Laws?*, PBS Frontline, available at <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/is-there-racial-bias-in-stand-your-ground-laws/>.

²²⁷ Mary E. Gilfus, *Women's Experiences of Abuse as a Risk Factor for Incarceration*, National Online Resource Center on Violence Against Women 1 (Dec. 2002), available at http://www.vawnet.org/Assoc_Files_VAWnet/AR_Incarceration.pdf.

²²⁸ Am. Civil Liberties Union, *Prison Rape Elimination Act of 2003 (PREA)*, (Apr. 29, 2011), available at <https://www.aclu.org/prisoners-rights-womens-rights/prison-rape-elimination-act-2003-prea>.

²²⁹ See FMN Talking Points at 1.

²³⁰ Mary Anne Franks, *Men, Women, and Optimal Violence* (2013) (unpublished manuscript) (on file with the authors) (exploring the discriminatory treatment by the criminal justice system of women who commit violence against men).

²³¹ See FMN Talking Points at 2.

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