No. 04-278

IN THE

Supreme Court of the United States

TOWN OF CASTLE ROCK, COLORADO,

Petitioner,

—v.—

JESSICA GONZALES, individually and as next best friend of her deceased minor children, REBECCA GONZALES, KATHERYN GONZALES, and LESLIE GONZALES,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF INTERNATIONAL LAW SCHOLARS AND WOMEN'S, CIVIL RIGHTS AND HUMAN RIGHTS ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici curiae are international law scholars and women's, civil rights and human rights organizations,[1] all of whom recognize the world consensus that women and children have a fundamental human right to state protection from and remedies for domestic violence. *Amici* urge the Court to consider this strongly persuasive international authority to determine that Ms. Gonzales has a federal civil rights remedy for the Castle Rock police's violation of her right to due process in its enforcement of the mandatory restraining order issued by a Colorado court against her estranged husband, which led to her husband's murder of their three girls.

SUMMARY OF ARGUMENT

Ms. Gonzales' brief explains that the police failure to accord her due process in the enforcement of the protective order violated her constitutional right to due process of law. We concur in, but do not address, the legal arguments she makes. Rather, we explain that the principles expressed in the evolved international customary norm of protection from and remedies for domestic violence, as well as our obligations as a State Party to the International Covenant on Civil and Political

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[1] Names and statements of interest of the individual *amici* are set forth in the attached Appendix. Letters from the parties consenting to the filing of *amicus curiae* briefs in this case are on file with the Clerk of Court. This brief was authored by the *amici* and counsel listed on the front cover, and was not authored in whole or in part by counsel for a party. No one other than *amici* or their counsel made any monetary contributions to the preparation or submission of this brief.

Rights ("ICCPR"),[2] should inform this Court's consideration of the due process question at hand so as to grant Ms. Gonzales a federal remedy against the Town of Castle Rock.

This Court has repeatedly acknowledged that international and comparative law may be persuasive sources of authority for questions arising under our own Constitution. As it did in *Lawrence v. Texas*, 539 U.S. 558 (2003), this Court may appropriately consider the opinions of foreign jurisdictions in determining the scope of the Due Process Clause, and should also give due weight to other international sources of law. *Infra* Point I.

International human rights developments in recent decades have resulted in the emergence of a worldwide consensus that women and children have a fundamental human right to be protected from family violence, and to have effective remedies when such protection fails. This consensus is so powerful that it represents an evolved norm of customary international law -- a norm that provides additional persuasive authority to support a determination by this Court that Ms. Gonzales' due process rights were violated. *Infra* Point II.

Finally, the United States has ratified the ICCPR, a treaty whose terms are now recognized to encompass States Parties' obligations to ensure persons, particularly women and children, the right to freedom from domestic violence. Recognizing Ms. Gonzales' right of action under 42 U.S.C. § 1983 is both consistent with the federal obligations undertaken by ratifying that treaty and with

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[2] International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 171 (entered into force Mar. 23, 1976) ("ICCPR").

the federalism understanding that accompanied it. *Infra* Point III.

For these additional reasons, the decision of the Tenth Circuit Court of Appeals should be affirmed.

ARGUMENT

I.

COMPARATIVE AND INTERNATIONAL LAW PROVIDE STRONG PERSUASIVE AUTHORITY FOR INTERPRETING THE CONSTITUTIONAL ISSUES BEFORE THIS COURT.

This Court's recent jurisprudence has affirmed that international and comparative law provide valuable interpretive guidance in areas of constitutional law. In *Lawrence v. Texas*, 539 U.S. 558, 576-78 (2003), this Court overruled its own precedent in *Bowers v. Hardwick*, 478 U.S. 186 (1986), which held that the due process liberty interest in the United States Constitution did not encompass the right of homosexuals to engage in private, consensual, intimate conduct. The Court noted that the reasoning in *Bowers* had been explicitly rejected by the European Court of Human Rights and that "[o]ther nations, too, have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct" such that the right "has been accepted as an integral part of human freedom in many other countries." *Lawrence*, 539 U.S. at 576-77. *See also Grutter v. Bollinger*, 539 U.S. 306, 344 (2003) (Ginsburg, J., concurring, joined by Breyer, J.) (noting that the Court's opinion with regard to affirmative action "accords with the international understanding of the office of affirmative action" reflected in international

treaties). Similarly, in *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002), this Court examined the opinions of "the world community" to support its conclusion that execution of persons with mental retardation would offend the standards of decency required by the Eighth Amendment. And in *Washington v. Glucksberg*, 521 U.S. 702 (1997), in ruling that the State of Washington's statute prohibiting assisted suicide was not invalid on its face under the Due Process Clause of the Fourteenth Amendment, the Court noted that Canada, Great Britain, New Zealand and Australia had rejected efforts to establish a fundamental right to assisted suicide. *Id*. at 718 n.16.[3]

International and foreign law rulings on constitutional issues facing the Court "cast an empirical light on the consequences of different solutions to a common legal problem." *Printz v. United States*, 521 U.S. 898, 977 (1997) (Breyer, J., dissenting). As Justice Ginsburg has observed, "comparative analysis emphatically is relevant to the task of interpreting constitutions and enforcing human rights." Ruth Bader Ginsburg & Deborah Jones Merritt, *Affirmative Action: An International Human Rights Dialogue, Address at the Fifty-First Cardozo Memorial Lecture* (Feb. 11, 1999), *in* 21 Cardozo L. Rev. 253, 282 (1999). And as Justice O'Connor has stated: "While ultimately we must bear

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[3] *See also Thompson v. Oklahoma*, 487 U.S. 815, 830-31 (1988) (Stevens, J.) (looking to opinions of "other nations that share our Anglo-American heritage" and "leading members of the Western European community" as aids to deciding Eighth Amendment question); *Miranda v. Arizona*, 384 U.S. 436, 521-23 (1966) (considering law enforcement "experience . . . [in] other countries" in interpreting Fifth Amendment); *New York v. United States*, 326 U.S. 572, 584 n.5 (1946) (looking to constitutional experiences of other countries to help decide scope of federal taxation power).

responsibility for interpreting our own laws, there is much to learn from other distinguished jurists who have given thought to the same difficult issues that we face here." Sandra Day O' Connor, *Keynote Address Before the Ninety-Sixth Annual Meeting of the American Society of International Law* (Mar. 16, 2002), *in* 96 Am. Soc'y Int'l L. Proc. 348, 350 (2002).

In grappling with constitutional issues of the human right to state protection of women and children from, and remedies for, gender-based violence and discrimination, high courts of other countries have accorded substantial weight to the obligations set forth in various international human rights instruments.[4]

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[4] *See, e.g., R. v. Ewanchuk*, [1999] 1 S.C.R. 330 (Can.) (determining that there is no defense of "implied consent" to a sexual assault charge by interpreting Canadian sexual assault laws and the Canadian Charter of Rights and Freedoms in light of guarantees under the international women's rights convention and other international norms); *Vishaka v. State of Rajasthan*, [1997] 6 S.C.C. 241, ¶¶ 5-10 (India) (determining that the Indian Constitution's guarantee of equality for women should be interpreted in light of "global acceptance" of the principle that "[g]ender equality includes protection from sexual harassment," as reflected in international instruments, and finding that the complete absence of a sexual harassment law and damages remedy violated these norms and constitutional guarantees). *See also State v. Baloyi*, 2000 (1) BCLR 86, ¶ 26 (CC) (S. Afr.) (upholding a statutory interdict (restraining order), mandatory arrest, and subsequent criminal conviction and sentencing procedure for violations of the interdict, and reasoning that the interdict procedure ensures South Africa's compliance with its obligations under various international treaties to protect women from domestic violence). *See generally* United Nations Development Fund for Women, *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women* pt. 2 (Illana Landsberg-Lewis ed., 1998) (summarizing these and other domestic court decisions that rely on international instruments to analyze and apply domestic protection from gender discrimination, including violence against women).

Wisdom gleaned from the opinions of judicial colleagues in foreign jurisdictions, together with a developed international consensus mandating state protection from and remedies for domestic violence, can assist this Court in reaching sound conclusions under domestic law. This is particularly true here, given that the recent and rapid crystallization of the human right of women and children to state protection from gender-based violence is a worldwide phenomenon which post-dates this Court's 1989 decision in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).[5]

II.

THE RIGHT OF WOMEN AND CHILDREN TO PROTECTION FROM AND EFFECTIVE REMEDIES FOR GENDER-BASED VIOLENCE, INCLUDING DOMESTIC VIOLENCE, HAS EVOLVED AS A CUSTOMARY NORM OF INTERNATIONAL LAW.

In recent decades, international human rights treaties and other authoritative international agreements have underscored the systemic and grave nature of domestic violence and given rise to an evolved customary norm of international law that recognizes the right of persons, particularly women and children, to protection from and compensation for such violence. This Court recently reaffirmed that customary

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[5] *See generally* Elizabeth M. Schneider, *Battered Women and Feminist Lawmaking* 53 (2000) ("[c]ompared with the history of women's rights struggles in the United States and around the world, the development of feminist approaches to international human rights is a recent phenomenon" that "has exploded" in the last twenty years).

international law, or the "law of nations," is part of the "laws" of the United States pursuant to Article III, section 2, clause 1 of the U.S. Constitution.[6] Without reaching the question whether the norm concerning family violence would sustain a cause of action under the standards this Court recently set forth in the context of the Alien Tort Claims Act, *see Sosa v. Alvarez-Machain*, 124 S. Ct. 2739, 2765-66 (2004), this Court can, and should, consider the abundant evidence of this norm as at least highly persuasive authority that merits deep consideration.

Customary international law constitutes "specific, universal and obligatory" "customs and usages of civilized nations." *Sosa*, 124 S. Ct. at 2766-67. It "results from a general and consistent practice of states followed by them from a sense of legal obligation." *Restatement of the Law (Third), Foreign Relations Law of the United States* § 102(2) (1987). Under established principles, evidence tending to show customary international human rights law includes:

> [1] virtually universal participation of states in the preparation and adoption of international agreements recognizing human rights principles generally, or particular rights;

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[6] *Sosa v. Alvarez-Machain*, 124 S. Ct. 2739, 2764-65 (2004) ("For two centuries we have affirmed that the domestic law of the United States recognizes the law of nations"); *The Paquete Habana*, 175 U.S. 677, 700 (1900) ("International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination."). *See also The Nereide*, 13 U.S. (9 Cranch) 388, 423 (1815).

> [2] the adoption of human rights principles by states and in regional organizations in Europe, Latin America, and Africa;
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> [3] general support by states for United Nations resolutions declaring, recognizing, invoking, and applying international human rights principles as international law;
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> [4] action by states to conform their national law or practice to standards or principles declared by international bodies; [and]
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> [5] invocation of human rights principles in national policy, in diplomatic practice, in international organization activities and actions. . . .

Id. § 701, Reporter's Notes ¶ 2. *See also* Statute of the International Court of Justice, art. 38, 59 Stat. 1055, 3 Bevans 1179 (1945).

As to the first category, over the last two decades, as the United Nations has expounded upon the basic international human rights recognized in the United Nations Charter[7] and the Universal Declaration of Human Rights[8] in the 1940s, it has made clear that these rights encompass the right of women and children to be free from violence, including domestic violence, and that

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[7] *See U.N. Charter*, arts. 1(3), 55(c), 56.

[8] The 1948 Universal Declaration of Human Rights states that "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law," and "[e]veryone has the right to an effective [domestic] remedy . . . for acts violating the fundamental rights granted [ ] by the constitution or by law." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., arts. 3-8, 12, 16-19, 22-24 at 71, U.N. Doc. A/810 (1948).

nations have an affirmative obligation to protect that right.

At least three widely-ratified international human rights treaties recognize the right to state protection from and remedies for domestic violence, and thus constitute compelling evidence of an emergent international norm. These are the International Covenant on Civil and Political Rights ("ICCPR") (ratified by 152 states), the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") (ratified by 177 states), and the Convention on the Rights of the Child ("CRC") (ratified by 192 states).[9]

Each party to the ICCPR, including the United States,[10] agrees to "respect and [] *ensure* to all individuals within its territory . . . the rights recognized in the present Covenant." Art. 2(1) (emphasis added).[11] Although the

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[9] *See* United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties*, (2004), *available at* http://www.unhchr.ch/pdf/report.pdf (last visited February 6, 2005) ("*Status of Ratifications*").

[10] 138 Cong. Rec. S4781-01 (daily ed. Apr. 2, 1992).

[11] The obligation to "ensure" involves "tak[ing] the necessary steps . . . to give effect to the[se] rights"; "ensur[ing] an effective remedy . . . determined by competent judicial, administrative or legislative authorities . . . [or] develop[ing] the possibilities of a judicial remedy"; and "ensur[ing] that the competent authorities shall enforce such remedies when granted." ICCPR, art. 2. The Human Rights Committee, the body charged with interpreting the ICCPR and monitoring States Parties' compliance thereto, *see* ICCPR, art. 40, has repeatedly emphasized that the obligation to "ensure" under Article 2 embraces the responsibility of the state to prevent harm by private as well as official actors. Hum. Rts. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (80th Sess. 2004), *reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 12/05/2004, U.N. Doc. HRI/GEN/1/Rev. 7 ("*Compilation*") at 192 *et seq.* (replacing General

right to protection from domestic and gender-based violence is not explicit in the ICCPR, the Human Rights Committee has recognized since the early 1990s,[12] and States Parties have accepted,[13] that the ICCPR applies to

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Comment No. 3). *See also Compilation,* Hum. Rts. Comm., *General Comment No. 18: Non-Discrimination* (37th Sess. 1989) ¶ 9 ("discrimination . . . by public authorities, by the community, or by private persons or bodies"); *Compilation,* Hum. Rts. Comm., *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (44th Sess. 1992) ¶ 2 (requires state protection against torture and ill treatment, "whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity").

[12] The Human Rights Committee has identified protection from various forms of violence and subordination in the family as implicit under various articles of the ICCPR, including articles 6, 7, 12, 18 and 24 that protect the rights to: life; freedom from torture or cruel, inhuman or degrading treatment or punishment; liberty of movement and freedom to choose one's residence; freedom of thought, conscience, and religion; and the rights of children to protection without discrimination. *Compilation,* Hum. Rts. Comm., *General Comment No. 28: Article 3 (The equality of rights between men and women)* (68th Sess. 2000) ¶¶ 10, 11, 14, 16, 21. Since the early 1990s violence against women, including domestic violence, has been a frequent subject of monitoring and reporting by States Parties to the ICCPR. *See, e.g.,* Hum. Rts. Comm., *Concluding Observations/Comments, available at* http://www.unhchr.ch/tbs/doc.nsf (last visited February 6, 2005).

[13] Significantly, the General Assembly's Declaration on the Elimination of Violence Against Women reflects a universally accepted interpretation of the ICCPR as a source of the state obligation to prohibit gender-based violence, in public and private life. Declaration on the Elimination of Violence Against Women: Resolution, G.A. Res. 104, U.N. GAOR, 48th Sess., Agenda Item 111, at preamble, art. 3, U.N. Doc. A/Res/48/104 20 (1993). *See generally* Vienna Convention on the Law of Treaties, May 23, 1969, art. 31, U.N. Doc. A/Conf. 39/27 at 289 (1969), 1155 U.N.T.S. 331 ("Law of Treaties") (a treaty is interpreted according to the "ordinary meaning" of its terms in their "context[s] and in light of its object and purpose"; moreover, subsequent agreements, state practice and relevant rules of international law are principal sources of interpretation). *See United*

and requires both prevention and remedies for gender and domestic violence.

An international treaty broadly focused on the rights of women, CEDAW[14] condemns "discrimination against women in all its forms" and requires parties to "ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination."[15] The United Nations Committee charged with interpreting CEDAW ("CEDAW Committee") stated that "gender-based violence [including specifically within family relationships] is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms" [16] and recommended that States Parties "ensure that laws against family violence and abuse . . . give adequate protection to women."[17] The CEDAW Committee reminded States Parties that CEDAW calls on them to eliminate discrimination against women by state and private actors, and that states may be liable for private

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States v. Yousef, 327 F.3d 56, 95 n.28 (2d Cir. 2003) (United States has only signed the Law of Treaties; nonetheless, "the U.S. Department of State long has taken the position that 'the Convention is . . . the authoritative guide to current treaty law and practice'").

[14] Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (entered into force Sept. 3, 1981) ("CEDAW"). The United States has signed but not ratified CEDAW. *See Status of Ratifications, supra.* As a signatory to CEDAW, the United States "is obliged to refrain from acts which would defeat [its] object and purpose." *See* Law of Treaties, *supra,* art. 18.

[15] CEDAW, *supra*, art. 2(c).

[16] *Compilation,* CEDAW Comm., *General Recommendation No. 19: Violence Against Women* (11th Sess. 1992) ¶ 1. *See also Compilation,* CEDAW Comm., *General Recommendation No. 12: Violence Against Women* (8th Sess. 1989).

[17] *Id.* ¶ 24(b).

acts of violence if they fail to act with "due diligence" to prevent, investigate, or punish such violence.[18] Accordingly, state efforts to provide legal and social protection against gender-based violence have been a consistent focus of the CEDAW Committee's monitoring of state reporting.[19]

The Convention on the Rights of the Child ("CRC")[20] requires further protection from domestic violence for children. *See* art. 6 (requiring States Parties to ensure "the survival and development of the child"); art. 19 ("states Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse . . . while in the care of parent(s), legal guardian(s) or any other person who has the care of the child"). Under Article 2, States Parties are required to "ensure" the rights in the CRC "without discrimination of any kind, irrespective of the child's . . . sex." The Committee on the Rights of the Child has said that States Parties must "ensur[e] that all domestic legislation is fully compatible with the Convention and

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[18] *Compilation*, CEDAW Comm., *General Recommendation No. 19*, *supra*, ¶ 9. This CEDAW Committee recommendation calls on States Parties to ensure that laws against family violence and other forms of gender-based violence are adequate, *id.* ¶ 24(b); to provide effective complaint procedures and remedies, including compensation, *id.* ¶ 24(i); and to provide criminal penalties and civil remedies in case of domestic violence, *id.* ¶ 24(r)(i).

[19] *See* Committee on the Elimination of Violence Against Women, *Concluding Observations/Comments*, *available at* http://www.unhchr.ch/tbs/doc.nsf (last visited February 6, 2005).

[20] Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, G.A. Res. 44/25, Annex, Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989) (entered into force Sept. 2, 1990). Only the United States and Somalia have signed but not ratified this Convention. *See Status of Ratification*, *supra*.

that the Convention's principles and provisions can be directly applied and appropriately enforced."[21]

Considering the second type of evidence of customary human rights law, regional treaties and declarations also show development of the universal consensus that states must respect and enforce the right to protection from gender-based violence, including domestic violence. Several regional treaties, including the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará"),[22] the Convention for the Protection of Human Rights and Fundamental Freedoms

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[21] *Compilation*, Comm. On Rts. Of Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child* (34th Sess. 2003) ¶ 1.

[22] Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, *opened for signature* June 9, 1994, 33 I.L.M. 1534 (entered into force Mar. 5, 1995) ("Convention of Belém do Pará"). The Convention of Belém do Pará has been ratified by 31 out of 34 Inter-American states, not including the United States. *See* Inter-American Commission of Women, *Status of Signing and Ratification of the Convention of Belém do Pará*, *available at* http://www.oas.org/cim/English/Laws.Rat.Belem.htm (last visited February 6, 2005). Nonetheless, the United States' membership in the Organization of American States and its adherence to the American Declaration on the Rights and Duties of Man ("Declaration") obligate it to promote the right to protection from gender-based and domestic violence, as the Convention of Belém do Pará is based on the rights articulated in the Declaration and the American Convention on Human Rights, which the United States has signed. American Convention on Human Rights, *opened for signature* Nov. 22, 1969, 1144 U.N.T.S. 123 (entered into force July, 18, 1978); *see also* Advisory Opinion OC-1/82 of Sept. 24, 1982, ¶ 41, Inter-Am. Ct. H.R. (ser. A) No.1 (1982).

("European Convention"),[23] and the Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples' Rights ("African Protocol")[24] recognize women's right to be free from gender-based violence, including domestic violence; that states must undertake "due diligence" to prevent, investigate, and punish such acts of violence, whether perpetrated by a state or private actor; and to provide compensation and legal recourse for victims of such violence.[25]

Likewise, the Council of Europe's Committee of Ministers has issued a Recommendation reaffirming its "determination to combat violence against women" and "recognis[ing] that states have an obligation to exercise due diligence."[26] The Committee of Ministers further reaffirmed a 1986 European Parliament Resolution recommending that member states ensure victims receive compensation and consider, *inter alia*, the use of protective orders.[27]

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[23] Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953).

[24] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, *opened for signature* July 11-August 13, 2003, 2d Ord. Sess. of the Assemb. of the Union, *available at* http://www1.umn.edu/humanrts/africa/protocol=women2003.html (last visited February 6, 2005).

[25] *See* Convention of Belém do Pará, *supra*, arts. 3, 4, and 7; European Convention, *supra*, arts. 1, 8, and 13; African Protocol, *supra*, arts. 4 and 8.

[26] *Comm. of Ministers Recommendation Rec(2002)5 to Member States on the Protection of Women Against Violence*, at 3, 5, Comm. of Ministers, 794th meeting of the Ministers' Deputies, Council of Europe (Apr. 30, 2002).

[27] *Id*., *App. A*, ¶¶ 36, 58. *See also* European Parliament Resolution on Violence Against Women, ¶ 13, *Eur. Parl. Doc*. A2-44186, 1986 O.J. (C176) 23 (July 14, 1986) (calling on national authorities to "ensure that, in cases where the facts of violence have been established,

The "general assent of nations" to the right to protection against family violence is demonstrated by United Nations consensus documents, the third type of evidence of customary human rights law.[28] In particular, the 1993 General Assembly Declaration on the Elimination of Violence Against Women, adopted by consensus, is specific and comprehensive, not only recognizing the right to protection from family violence,

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victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered," to consider "enabl[ing] the judiciary to adopt, as interim measures aimed at protecting victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas" and "to ensure improvements in training of police officers dealing with . . . reports of sexual violence," including requiring the police "to respond actively when requests of help are received").

[28] While technically not binding under the United Nations Charter, widely accepted General Assembly Declarations and Resolutions may constitute authoritative statements of the world community and thus contribute to the development of custom. *See Filartiga v. Pena-Irala*, 630 F.2d 876, 883 (2d Cir. 1980):

> [Declarations] specify with great precision the obligations of member nations under the Charter . . . . [and constitute] a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated . . . . Thus, a Declaration creates an expectation of adherence, and insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon the States.

(internal quotations and citations omitted). *See also Fernandez v. Wilkinson*, 505 F. Supp. 787, 796 (D. Kan. 1980) ("There are a great number of other international declarations, resolutions, and recommendations. While not technically binding, these documents establish broadly recognized standards.").

but also calling upon states, in specific terms, to exercise due diligence.[29] The United Nations General Assembly subsequently adopted a detailed Resolution that "requires States to take serious action to protect victims and prevent domestic violence."[30]

The United Nations also has undertaken many other initiatives to encourage states to ensure the right to protection from and remedies for domestic violence. For example, in 1994, the United Nations Commission on Human Rights appointed the first U.N. Special Rapporteur on Violence Against Women to analyze and document the phenomenon, and hold governments accountable for violations against women. *See* U.N. High Comm'r for Human Rights Econ. and Soc. Council Decision, U.N. ESCOR, 1994 Sub. Sess., 42nd Plen.

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[29] Declaration on the Elimination of Violence Against Women, *supra* note 13, arts. 1, 2 (recognizing the right to be free from violence, and that "violence against women" includes "[p]hysical, sexual and psychological violence occurring in the family, including battering"); art. 4 (calling upon states to "pursue by all appropriate means and without delay a policy of eliminating violence against women," including "exercis[ing] due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or private persons").

[30] Resolution adopted by the General Assembly, Elimination of Domestic Violence Against Women, U.N. GAOR, 58th Sess., ¶ 1(d), U.N. Doc. A/Res/58/147 (2004). The Resolution stresses "that States have an obligation to exercise due diligence . . . and to provide protection to the victims," *id.* ¶ 5, including specifically, to "establish[] adequate legal protection against domestic violence"; "ensure greater protection for women, *inter alia*, by means of, where appropriate, orders restraining violent spouses from entering the family home"; "establish and/or strengthen police response protocols and procedures"; and "take measures to ensure the protection of women subjected to violence, access to just and effective remedies, *inter alia*, through compensation and indemnification and healing of victims." *Id.* ¶¶ 7(a), (e), (i), (j).

Mtg., U.N. Doc. E/DEC/1994/254 (1994). Her Reports have been the basis for the Commission's annual resolutions emphasizing states' obligations to eliminate violence against women in all contexts, including in the home.[31]

Moreover, United Nations World Conferences have condemned gender violence as a human rights violation and called for international and national remedies, in particular, the 1993 Vienna World Conference on Human Rights[32] and the 1995 Fourth World Conference on Women in Beijing.[33]

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[31] For Reports on domestic violence in the home, *see Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, Report of the Special Rapporteur on Violence Against Women, its causes and consequences*, U.N. ECOR, Hum. Rts. Comm. 59th Sess., U.N. Doc. E/CN.4/2003/75 (2003) ("2003 *Special Rapporteur Report*"); *Violence Against Women in the Family: Report of the Special Rapporteur on Violence Against Women, its causes and consequences*, U.N. ESCOR, Hum. Rts. Comm., 55th Sess., U.N. Doc.E/CN.4/RES/1999/42 (1999); *Report of the Special Rapporteur on Violence Against Women, its causes and consequences*, U.N. ESCOR, Hum. Rts. Comm., 54th Sess., U.N. Doc. E/CN.4/1998/54 (1998); *Report of the Special Rapporteur on Violence Against Women, its causes and consequences*, U.N. ESCOR, Hum. Rts. Comm., 53rd Sess., U.N. Doc. E/CN.4/1997/47 (1997).

[32] The Vienna Declaration and Programme of Action recognized gender violence as a human rights violation and triggered system-wide as well as national reforms designed to eliminate gender violence and advance the human rights of women. *Vienna Declaration and Programme of Action*, World Conference on Human Rights, at ¶ 18, U.N. Doc. A/CONF. 157/24 (Part I) (1993).

[33] *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, at Annex I, ch. IV ¶¶ 125-30, U.N. Doc. A/CONF.177/20 and A/CONF.177/20/Add.1 (1995). Significantly, the consensus Beijing Platform included the elimination of all forms of violence against women as one of its twelve strategic objectives, and called for states to ensure the right of women to be free from violence by, *inter alia*, providing "women who are subjected to

The emergence of an international customary norm is further illustrated by the rapid, world-wide reform of laws and practices to provide protection against gender and domestic violence, the fourth category of relevant evidence. Recent international surveys indicate that states are adopting a range of protective measures, including protective orders, to prevent domestic violence,[34] and that there is increasing recognition of the importance of effective enforcement of restraining orders such as that at issue here.[35]

Finally, the decisions of international human rights courts and commissions determining that women's international human rights were violated by state failure to provide or enforce fair and effective protections against gender-based violence, including domestic violence, provide the fifth type of evidence for this customary human rights norm.

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violence with access to the mechanisms of justice and . . . to just and effective remedies for the harm they have suffered." *Id*. at ¶ 125(h). The United Nations reaffirmed its commitment to eliminating violence against women as outlined in the Beijing Declaration and Platform in the Resolution Adopted by the General Assembly ¶ 2, U.N. GAOR, 33rd Special Sess, U.N. Doc. A/RES/S-23/2 (2000).

[34] *See generally Violence Against Women: Report of the Secretary General*, U.N., GAOR, 59th Sess., U.N. Doc. A/59/281 (2004) ("*Sec'y Gen. VAW Report")*; 2003 *Special Rapporteur Report*, *supra*; World Health Organization, *World Report of Violence and Health* 105 (Etienne G. Krug et al., eds. 2002) ("*WHO World Report*").

[35] *See, e.g.*, 2003 *Special Rapporteur Report*, *supra*, at ¶ 1857*; WHO World Report, supra*, at 105*; Sec'y Gen. VAW Report, supra*, at ¶ 65 ("Women victims of violence, or women who are at risk of repeated acts of violence in the home, should have immediate means of redress and protection, including protection or restraining orders, access to legal aid, and shelters staffed with personnel who are sensitive to victims' needs.").

In *M.C. v. Bulgaria*, 2003-I Eur. Ct. H.R. 646 ¶¶ 185-87 (2004), the European Court of Human Rights held that Bulgaria violated the rights of a 14-year-old alleged rape victim to be free from inhuman or degrading treatment and to privacy guaranteed under Articles 3 and 8 of the European Convention by failing to investigate the alleged rapes fully and effectively.[36] The court awarded M.C. compensation for "distress and psychological trauma," resulting "at least partly from the shortcomings in the authorities' approach" to the criminal investigation. *Id.* ¶¶ 191, 194.

Likewise, in *Maria da Penha Maia Fernandes v. Brazil*, *in Annual Report of the Inter-American Commission on Human Rights*, Case No. 12.051, Inter-Am. C.H.R. 704, OEA/Ser. L/V/II.111 doc. 20 rev. (Apr. 16, 2001), the Inter-American Commission on Human Rights concluded that Brazil had violated Ms. Fernandes' rights under the Convention of Belém do Pará, arts. 3 and 4, by delaying for more than 15 years the prosecution of her abusive husband for her attempted murder, noting that "this violation form[ed] a pattern of discrimination evidenced by the condoning of domestic violence against women in Brazil through ineffective judicial action." *Id.* ¶ 3. The Commission therefore recommended "prompt

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[36] The court concluded that "the approach taken by the investigator and prosecutors in the case fell short of the requirements inherent in the States' positive obligations – viewed in the light of the relevant modern standards in comparative and international law – to establish and apply effectively a criminal-law system punishing all forms of rape and sexual abuse." *M.C. v. Bulgaria*, 2003-I Eur. Ct. H.R. 646 ¶ 187 (2004). The court further acknowledged that "[w]hile the choice of the means to secure compliance with [international human rights law] . . . is in principle within the State's margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions." *Id.* ¶ 150.

and effective compensation for the victim, and the adoption of measures at the national level to eliminate tolerance by the State of domestic violence against women." *Id.*[37]

Taken together, these international and regional treaties and other documents evidencing state practice establish that state failure to provide effective protection from domestic violence is recognized as a "specific, universal and obligatory" violation of human rights throughout the world, *see Sosa*, 124 S. Ct. at 2766-67, that gives rise to a right to compensation. This international consensus, reflecting an evolved customary norm of international law, lends further and compelling support for interpreting the Due Process Clause to permit Ms. Gonzales to pursue her federal civil rights claim in this case.

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[37] *See also Airey v. Ireland*, 32 Eur. Ct. H.R. (Ser. A) ¶¶ 9, 24, 28 (1979) (holding that Ireland violated right to access to court for a decree of separation from woman's abusive and alcoholic husband by failing to provide her with legal aid to do so); *MZ v. Bolivia*, *in Annual Report of the Inter-American Commission of Human Rights*, Case No. 12.350, Inter-Am. C.H.R. 121, OEA/Ser. L/V/II.114 doc. 5 rev. (Oct. 10, 2001) (determining that, if the allegations concerning the judicial overturning of a rape conviction in the face of overwhelming evidence were true, violations of the Inter-American Convention by Bolivia would be established); cases cited *supra* note 4.

III.

AS A STATE PARTY TO THE ICCPR, THE UNITED STATES' COMMITMENT TO ENSURE THE PROTECTION OF WOMEN AND CHILDREN FROM GENDER AND DOMESTIC VIOLENCE PROPERLY INFORMS THIS COURT'S INTERPRETATION OF THE DUE PROCESS CLAUSE AND THE AVAILABILITY OF A REMEDY UNDER 42 U.S.C. § 1983.

The United States' ratification of the ICCPR, which largely parallels the Bill of Rights,[38] supports the Court's determination in this case that the police deprived Ms. Gonzales and her children of due process in their enforcement of the mandatory protective order. As set forth in Point II, *supra*, the ICCPR commits States Parties to ensure women's and children's right to protection from gender and domestic violence and to provide effective remedies for violations by official and private actors. Considering this case in light of the ICCPR highlights the contemplated, complementary and essential role of the federal courts in promoting this right through the section 1983 remedy.[39]

As a ratified treaty, the ICCPR constitutes "a 'Law of the Land' under the Supremacy Clause, Art. VI, Cl. 2, of the Constitution," *see U.S. v. Pink*, 315 U.S. 203, 230 (1942), which implements the fundamental international

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[38] *United States Senate Report on Ratification of the International Covenant on Civil and Political Rights*, S. Exec. Rep. No. 102-23, at 2 (1992) ("The rights guaranteed by the Covenant are similar to those guaranteed by the U.S. Constitution and the Bill of Rights").

[39] As discussed below, the Senate's reservations, understandings and declarations to the ICCPR do not undermine, but rather support, this Court's authority to consider the treaty as persuasive authority.

principle of *pacta sunt servunda* that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." Law of Treaties, *supra*, art. 26. As Justice O'Connor has noted, "domestic courts should faithfully recognize the obligations imposed by international law. The Supremacy Clause of the United States Constitution gives legal force to foreign treaties, and our status as a free nation demands faithful compliance with the law of free nations." Sandra Day O'Connor, *Federalism of Free Nations*, 28 N.Y.U. J. Int'l L. & Pol. 35, 42 (1997).[40]

Under both ICCPR article 50 and international law, the United States may, as a federal state, relegate different functions to its constituent parts, but concurrently it must ensure that the treaty is fully effective throughout its territory.[41] Consistent with this obligation, the U.S. Senate did not take a reservation to ICCPR art. 50.[42] Rather, it ratified the ICCPR with the

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[40] *See also* Exec. Order No. 13,107, 63 Fed. Reg. 68,991 § 1 (Dec.10, 1998) (stating that "[i]t shall be the policy and practice of the Government of the United States . . . fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR").

[41] ICCPR, *supra*, art. 50 provides: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." *See generally* Law of Treaties, *supra*, art. 27 ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."); *id.* art. 29 ("[u]nless a different intention appears from the treaty . . . a treaty is binding upon each party in respect of its entire territory"); *The Restatement of the Law (Third), Foreign Relations Law of the United States* § 207(b) (1987) (a federal state "is responsible for any violation of its obligations under international law resulting from action or inaction by the government or authorities of any political subdivision of the state").

[42] The Senate considered a reservation to article 50 "not necessary . . . since the intent is not to modify or limit U.S. undertakings under the

following express understanding (the "federalism understanding"):

> That the United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Convention.

Understanding III(5), *U.S. Reservations, Declaration, Understandings, and Proviso, International Covenant on Civil and Political Rights*, 138 Cong. Rec. S4781-01 (1992).

The Senate explained, as did the Administration's 1994 Report to the United Nations Human Rights Committee (the "1994 Report"), that this understanding was intended "to emphasize domestically that there is no intent to alter the constitutional balance of authority between the State and Federal governments" and "to signal to our treaty partners that the U.S. will implement its obligations under the Covenant by appropriate legislative, executive and *judicial* means, *federal* or state

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Covenant but rather to put our future treaty partners on notice with regard to the implications of our federal system concerning implementation." S. Exec. Rep. No. 102-23 at 18.

as appropriate."[43] When presenting the 1994 Report to the Human Rights Committee, the U.S. spokesperson stated that while federalism concerns would not permit the federal government to obligate the states to undertake particular action -- such as "dictat[ing] the basic form or internal workings of state government" -- federal responsibility did extend to "*enforc[ing] uniform standards* for the respect of civil and political rights."[44]

The Senate also attached a non-self-executing declaration as to ICCPR articles 1-27, stating:

> For reasons of prudence, we recommend including a declaration that the substantive provisions of the Covenant are not self-executing. The intent is to clarify that the *Covenant will not create a private cause of action in U.S. courts . . . . [E]xisting U.S. law generally complies with the Covenant; hence, implementing legislation is not contemplated*.

S. Exec. Rep. No. 102-23 at 18-19 (emphasis added).

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[43] S. Exec. Rep. No. 102-23 at 19-20 (emphasis added). *See also Consideration of Reports Submitted by States Parties Under Article 40: Initial Reports of States Parties Due in 1993: United States of America*, Hum. Rts. Comm., Annex II, ¶ I-III, U.N. Doc. CCPR/C/81/Add.4 (1994).

[44] *Summary of Record of the 1405th Meeting: United States of America*, U.N. GAOR, Hum. Rts. Comm., 53rd Sess. ¶ 10, U.N. Doc. CCPR/C/SR.1405 (1995) (emphasis added). Significantly, the Human Rights Committee noted "with satisfaction the assurances of the [United States] Government that its declaration regarding the federal system is not a reservation and is not intended to affect the international obligations of the United States." *Concluding Observations of the Human Rights Committee: United States of America*, U.N. GAOR, Hum. Rts. Comm. ¶¶ 266-304, U.N. Doc. A/50/40, CCPR/C/79/Add.50 (1995).

Given this Senate recognition of the relevance of existing U.S. law to the rights protected by the ICCPR, and the Senate commitment to employ "appropriate legislative, executive and judicial means, federal or state as appropriate" in service of the ICCPR, S. Exec. Rep. No. 102-23 at 19-20, it is reasonable to assume that the Senate contemplated that achieving compliance with the treaty's terms could require the use of already-existing domestic rights and remedies, and moreover, in light of the federalism understanding, that such remedies could include federal civil rights remedies.[45]

In considering the weight that the ICCPR commands in this context, it is useful to recognize that the non-self-executing declaration does not undermine this Court's authority to consider the ICCPR in deciding this section 1983 claim.[46] In reporting to the Human Rights Committee, the United States stated: "The [self-executing] distinction is one of domestic law only; in either case, the treaty remains binding on the United States as a matter of international law." HRI/CORE/1/Add.49: *United States of America*, ¶ 138

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[45] This reading of the non-self-executing declaration is entirely consistent with this Court's ruling in *Sosa* that by virtue of the non-self-executing declaration "the [Covenant] did not *itself* create obligations enforceable in the federal courts." 124 S. Ct. at 2767 (emphasis added).

[46] The validity of such declarations has been sharply criticized, however, including on constitutional grounds. *See, e.g.*, Louis Henkin, *Foreign Affairs and the United States Constitution* 201-03 (2d ed. 1996); Louis Henkin, *Two Hundred Years of Constitutional Confrontations in the D.C. Courts*, 90 Geo. L. J. 725, 733-34 (2002); Martin S. Flaherty, *History Right?: Historical Scholarship, Original Understanding, and Treaties as "Supreme Law of the Land,"* 99 Colum. L. Rev. 2095 (1999); David Sloss, *Non-Self-Executing Treaties: Exposing a Constitutional Fallacy*, 36 U.C. Davis L. Rev. 1, 45-76 (2002); John Quigley, *Judge Bork is Wrong: The Covenant is the Law*, 71 Wash. U. L.Q. 1087, 1101-1102 (1993).

(August 1994). The United States representative affirmed this view in response to the Human Rights Committee's concerns regarding the declaration, stating: "[t]o clarify an apparent misunderstanding, the courts [of the United States] could refer to the Covenant and take guidance from [the Covenant] even though it was not self executing. What the Covenant could not do was provide a cause of action." *Summary of Record of the 1405th Meeting: United States of America*, U.N. GAOR, Hum. Rts. Comm., 53rd Sess. ¶ 8, U.N. Doc. CCPR/C/SR.1405 (1995) (Remarks of Conrad Harper).[47] Thus, the non-self-executing declaration neither nullifies the binding nature of the ICCPR nor the appropriateness of federal judicial attention to the treaty; nor does it disturb the fundamental principle, embodied in the Supremacy Clause, that absent irreconcilable conflict, international law carries great weight in the interpretation of domestic law.[48]

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[47] *See also Observations of State Parties under article 40(5) of the Convention, United States of America*, CCPR A/50/40/Vol. 1, Annex VI Pt. 4 (if a state party "lacks any means under its domestic law by which Covenant rights may be enforced. . . such an approach would not, of course, be consistent with the fundamental principle of *pacta sunt servunda*").

[48] The principle, most often discussed in relation to customary international law, applies with at least equal rigor to treaty commitments. *See Weinberger v. Rossi*, 56 U.S. 25, 32 (1982) ("It has been a maxim of statutory construction since the decision in *Murray v. The Charming Betsy*, 2 Cranch 64, 118 [6 U.S. 64, 118] (1804), that 'an act of congress ought never to be construed to violate the law of nations, if any other possible construction remains. . . . .'"); *see also* Joan Fitzpatrick, *The Significance and Determination of Customary International Human Rights Law: Relevance of Customary International Norms to the Death Penalty in the United States*, 25 Ga. J. Int'l & Comp. L. 165, 179-180 (1995/1996) (explaining that courts should interpret constitutional norms consistently with international norms because "[n]ot only does this approach help insure the international law-abiding character of the

Turning to the case before this Court, here, Colorado sought to protect Ms. Gonzales and her children from domestic violence through a mandatory restraining order. Colorado failed in its obligations only when the police failed to accord her due process in enforcing the order.[49] In light of our treaty obligations and the federalism understanding, it is appropriate for this Court to interpret the Constitution to require due process in the enforcement of a mandatory protective order and a remedy under 42 U.S.C. § 1983. Section 1983 jurisdiction does not supplant the states, but "interpose[s] the federal courts . . . to protect the people from unconstitutional action under color of state law," *Mitchum v. Foster*, 407 U.S. 225, 242 (1972), and to provide a balanced means of "at least indirect federal control over the unconstitutional actions of state officials." *Ngiraingas v. Sanchez*, 495 U.S. 182, l89 (1990) (citing *District of Columbia v. Carter*, 409 U.S. 418, 428 (1973)). Thus, considering the ICCPR in these circumstances not only supports a remedy for Ms. Gonzales, but also encourages future enforcement of protective orders on the local level consistent with our international commitment. Just as federal courts adjudicate section 1983 claims against local officials and entities when they fail to accord positive

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United States, it helps to avoid a clash between two important interpretive principles -- that statutes should be construed where possible, to be consistent with the Constitution and with international law").

[49] This breakdown of legal protection from domestic violence at the police level is not unique to Colorado or the United States. According to the World Health Organization, internationally, "[a]fter support services for victims, efforts to reform police practice are the next most common form of intervention against domestic violence . . . . when training alone proved largely ineffective in changing police behaviour, efforts shifted to seeking laws requiring mandatory arrest for domestic violence and policies that forced police officers to take a more active stand." *WHO World Report*, *supra*, at 105.

federal due process protections to those accused of taking life,[50] so it would be consistent to the task of preserving life, and precious family relationships, to do so here.

In sum, by recognizing federal civil rights jurisdiction to provide an effective remedy for the due process violation and resultant unspeakable violence suffered by Ms. Gonzales and her children, this Court will "give[] legal force" to this treaty and will also signal to the world that the United States takes seriously its treaty and international legal commitments.

[50] *See, e.g, Mayer v. City of Chicago*, 404 U.S. 189 (1991) (indigent access to appeal in quasi-criminal cases); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (right to counsel).

CONCLUSION

For the foregoing reasons, as well as those stated in the brief for Respondents, the decision of the court below should be affirmed.

Respectfully submitted,

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◆ Counsel wish to acknowledge the contributions of the interns in the International Women's Human Rights Law Clinic to this brief.

APPENDIX

NAMES AND STATEMENTS OF INTEREST

OF *AMICI CURIAE*

Organizations

The Allard K. Lowenstein International Human Rights Clinic (the "Clinic") is a Yale Law School program that gives students first-hand experience in human rights advocacy. The Clinic undertakes numerous litigation and research projects on behalf of human rights organizations and individual victims of human rights abuses. The Clinic's work is based on the human rights standards contained in international customary and conventional law, at the core of which is the prohibition against discrimination. Since the Clinic began more than ten years ago, its students have worked on a number of lawsuits and other projects designed to combat racial, gender, ethnic and other kinds of discrimination. In recent years, the Clinic has focused increasing attention on efforts to ensure respect for international human rights standards in the United States.

Amnesty International USA is the U.S. section of Amnesty International, a Nobel Prize-winning organization with more than 1.8 million members, supporters and subscribers in over 150 countries and territories throughout the world. Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights. Amnesty International is privately funded and is independent of any political ideology or economic interest.

The Center for Constitutional Rights ("CCR") is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. CCR has successfully litigated many important international human rights cases since 1980, including *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), and currently represents the plaintiffs in *Doe v. Unocal*, *Wiwa v. Royal Dutch Petroleum*, *Bowoto v. Chevron* and *Saleh v. Titan*.

Center for Women's Global Leadership ("Global Center"), a project of Douglass College, Rutgers University (New Brunswick) has developed and facilitated women's leadership for women's human rights and social justice worldwide since 1989. The Global Center has advocated the recognition of women's human rights, and, in particular, violence against women, in international, regional and national contexts and has played a major role at various United Nations meetings addressing human rights norms and intergovernmental and national implementation of commitments relating, *inter alia*, to states' obligations to prevent, punish and eliminate violence against women.

Federation International de Droits de L'Homme ("FIDH") is an international nongovernmental organization for the defense of the human rights enshrined in the Universal Declaration of Human Rights of 1948. Created in 1922, it has its central office in Paris, France and includes 89 national affiliates throughout the world, including in the United States of America. FIDH enjoys consultative status with the United Nations, UNESCO, the European Council and observer status with the African Commission of Human and Peoples' Rights. FIDH participates in the defense of human rights through,

inter alia, sponsoring human rights missions and through advancing rights in intergovernmental as well as national courts and tribunals.

Human Rights Advocates ("HRA") is a human rights organization based in Berkeley, California dedicated to promoting and protecting international human rights. HRA participates actively in the work of various United Nations human rights bodies and is a fully accredited Non-Governmental Organization before the United Nations. HRA seeks to advance the panoply of human rights issues, including the rights of the child and women's rights, among others, through the United Nations system, by participation in international conferences, and through participation in litigation and other activities in the United States.

International Women's Human Rights Law Clinic ("IWHR"), founded in 1992, is an educational project of the City University of New York School of Law dedicated to promoting the international human rights of women and to implementation internationally, regionally and in the United States. IWHR is recognized for its expertise in the gender dimensions of international human rights and international criminal law as well as in constitutional issues of domestic implementation of human rights.

Legal Momentum advances the rights of women and girls by using the power of the law and creating innovative public policy. Legal Momentum advocates in the courts, Congress and state legislatures, as well as with unions and private business, to improve the protection afforded victims of domestic violence, and is a leading authority on the rights of immigrant victims of such violence. As with its ***amicus curiae*** brief in the cases

Grutter v. Bollinger and *Gratz v. Bollinger*, Legal Momentum here seeks to provide the Court with relevant, persuasive authority from international and comparative law that is relevant to the constitutional issues at hand.

National Economic and Social Rights Initiative ("NESRI"), founded in 2003 and located in New York City, promotes a cultural and political commitment to a human rights vision for the United States that ensures dignity and access to the basic resources needed for human development and civic participation. NESRI develops expert materials on human rights issues and works to strengthen legal standards in applying human rights to the United States.

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