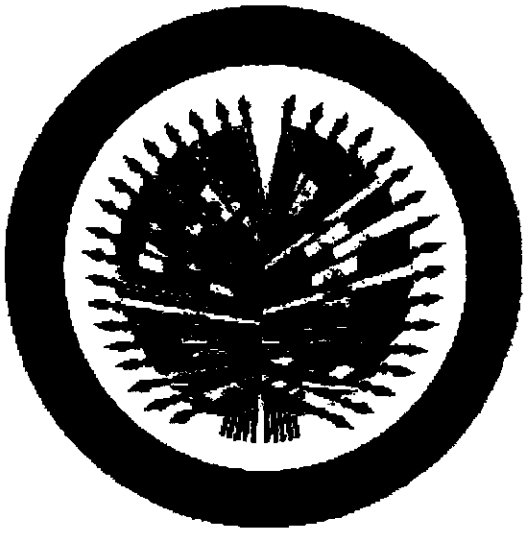
RESPONSE OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REGARDING JESSICA GONZALES PETITION # P-1490-05



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Summary of Argument

I. Factual and Procedural Background
   a. Summary of Facts
   b. Procedural history of Jessica Gonzales' claims in U.S. federal court
   c. Problem of domestic violence in the United States

II. U.S. Legal Framework Regarding Domestic Violence – Availability of Domestic Judicial Remedies and Other Protections Against Domestic Violence Under Federal and State Law
   a. Federal level
      i. Judicial remedies
      ii. Federal Legislation: Overview of the Violence Against Women Acts of 1994, 2000, and 2005
      iii. Federal Funding for Projects Targeted at Improving the Issuance and Enforcement of Protection Orders
   b. State Responses to Domestic Violence
   c. State of Colorado
      i. Judicial remedies
      ii. Training of police officers in the State of Colorado

III. Petitioner Does Not State Facts that Demonstrate that the United States has Breached Any Duty Under the American Declaration.
   a. No provision of the American Declaration imposes a duty on the United States to have successfully prevented the murders of the Gonzales daughters.
   b. The "due diligence standard" as employed by non-binding U.N. human rights instruments in the violence against women context.
   c. Petitioner's inability to prevail in her complaint filed in U.S. federal court and her failure to pursue all available forms of domestic relief do not mean that she lacked access to the courts or that victims of domestic violence lack effective remedies or access to the courts to pursue them.

d. Even under the most expansive interpretations of the duty of the United States under the American Declaration, the actions of the U.S., the State of Colorado, and the Castle Rock Police Department have satisfied such a duty in this case.

IV. Conclusion: Petition Should Be Determined to be Inadmissable and the Request for Relief Should be Denied.

ATTACHMENTS:

TAB A: Jessica Gonzales/Dispatch, Tape Transcription
TAB B: CRPD Incident Report 06/22/99, 19:42 hrs
TAB C: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR# 99-3226, Call from Officer Brink to Jessica Gonzales
TAB D: Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Third Call at 21:57 hrs., CR# 99-3226
TAB E: Office of the District Attorney, Eighteenth Judicial District. Report Date: 07/01/99. Report by Karen Meskis, Date of Offense: 06/23/99
TAB F: Castle Rock Police Department Incident Report 90623004, 06/23/99, 00:06 hrs
TAB G: Statement signed by Cpl. Patricia A. Lisk

The Government of the United States appreciates the opportunity to provide the following response to your request of April 17, 2006, regarding the above referenced petition of Jessica Gonzales.

As a preliminary matter, it should be noted that there can be no question that the Government of the United States recognizes that the murders of Jessica Gonzales' three daughters, Leslie, Katheryn and Rebecca are unmistakable tragedies. The United States sympathizes with Ms. Gonzales for her horrific loss. In light of the horrible tragedy that resulted in the deaths of her three daughters, it is understandable that Ms. Gonzales feels that this tragedy should never have occurred and that more should have been done to prevent this loss. However, any petition must be assessed on its merits and based on the evidentiary record. For the following reasons the United States believes the facts alleged by Ms. Gonzales in her petition are not supported by the evidence of the information available to the Castle Rock Police Department at the time the events arose, and that the petition itself is inadmissible for failure to state a breach of a duty by the United States under the American Declaration of the Rights and Duties of Man ("American Declaration"). Accordingly, the United States respectfully requests that the petition be determined inadmissible and the request for relief denied.

I. Factual and Procedural Background

a. Summary of Facts

The evidentiary record of the events that occurred prior to the tragic murders of Ms. Gonzales' three daughters, Leslie, Katheryn and Rebecca, on June 23' 1999 do not support the allegations contained in Ms. Gonzales' petition. Rather, the police reports and transcripts of conversations between Ms. Jessica Gonzales and her estranged husband, Mr. Simon Gonzales, clearly document that Ms. Gonzales informed the Castle Rock Police Department ("CRPD") that she had agreed that Mr. Gonzales could see their three daughters that evening, and that the visit was consistent with the restraining order. Furthermore, the evidentiary record demonstrates that throughout the evening of June 22, 1999 and the early hours of June 23, 1999, the CRPD responded professionally to the information Ms. Gonzales provided it and that the information available at the time revealed no

indication that Mr. Gonzales was likely to commit this tragic crime against his own children.

The evidentiary record demonstrates that, contrary to Ms. Gonzales' assertions she had in fact agreed that Mr. Gonzales could visit the children that evening, and that, consequently, he had not violated the restraining order when he picked up his daughters for a mid-week dinner visit. Ms. Gonzales' first call to members of the CRPD occurred at approximately 7:40 p.m. when she spoke to the CRPD dispatcher on duty, Cindy Dieck. The transcript of that call demonstrates that, contrary to Ms. Gonzales' allegations in the petition that there had been "[n]o advance notice or arrangements ... for Mr. Gonzales to have parenting time with the children that evening,"[1] Ms. Gonzales informed the CRPD that she had in fact granted Mr. Gonzales permission to see the children that evening for a mid-week dinner visit, and that she had discussed with him the logistics for picking up the girls.[2] Specifically, in that initial call she told the dispatcher that even though Mr. Gonzales did not normally see his daughters on Tuesday nights, she had agreed to it because she was being "nice."[3] Ms. Gonzales explained that they had agreed that, due to the restraining order, Mr. Gonzales would wait for the children in his car across the street.[4] Additionally, in her subsequent conversations with Officer Brink, one of the officers dispatched to her house, Ms. Gonzales later confirmed that she had agreed that her husband could take the children out for dinner.[5]

Although the restraining order granted Ms. Gonzales "temporary sole physical custody" of the children, it granted Mr. Gonzales "parenting time with the minor children on alternating weekends commencing after work on Friday evening and continuing through 7:00 p.m. Sunday evening." Importantly, it also granted Mr. Gonzales a "mid-week dinner visit" to be "arranged by the parties." Finally, it also granted Mr. Gonzales two weeks of "extended parenting time during the summer."[6] Accordingly, since Ms. Gonzales consented to the mid-week dinner visit, Mr. Gonzales did not

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[1] Petition, at 9.
[2] Jessica Gonzales/Dispatch, Tape transcription, Tab A.
[3] *Id.*
[4] *Id.*
[5] CRPD Incident Report 6/22/99, 19:42 hrs., Tab B; Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.
[6] Petition, Exhibit B.

violate the restraining order by taking his daughters out for the evening, a fact Ms. Gonzales later acknowledged to the CRPD.[7]

The evidentiary record further demonstrates that, contrary to Ms. Gonzales' assertions, members of the CRPD were responsive to her numerous requests for assistance that evening, were sensitive to her concerns, and took her concerns seriously. In response to Ms. Gonzales' initial call to the CRPD, Ms. Dieck dispatched two officers to Ms. Gonzales' house. While they were enroute to Ms. Gonzales' house, Ms. Dieck recounted that Ms. Gonzales had indicated that the children may be at her husband's house. In response, one officer, Officer Brink, went to Mr. Gonzales' house, while another, Officer Ruisi, went to Ms. Gonzales' house. After knocking several times and finding no one at Mr. Gonzales' residence, Officer Brink joined Officer Ruisi at Ms. Gonzales' residence. Although Ms. Gonzales' petition states that "she handed [the officers] a copy of the restraining order and asked that it be enforced as the law required"[8] at no point did she show the officers a restraining order. In fact, in a later phone conversation with Officer Brink, Ms. Gonzales subsequently acknowledged that Officer Brink had not seen the order.[9] Instead, in his report of his visit to Ms. Gonzales' house, Officer Brink noted that Ms. Gonzales had "stated she had made a verbal agreement with [Mr. Gonzales] that he could take their daughters for the evening."[10] In his report, Officer Brink also noted that Ms. Gonzales "seemed calm" and indicated that she would be heading to work and that her neighbor would be at her house when her daughters were dropped off.[11] Contrary to Ms. Gonzales' allegations that the officers did not document Ms. Gonzales' statements or their visits to Ms. Gonzales' home,[12] Officer Brink documented this visit in a police report as well as the fact that he and Sergeant Ruisi then drove throughout the town of Castle Rock looking for Mr. Gonzales' pick up truck.[13]

Shortly thereafter, at approximately 8:43 p.m., Ms. Gonzales called the CRPD and informed the dispatcher that she had received a phone call

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[7] Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.
[8] Petition, at 10.
[9] Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.
[10] CRPD Incident Report 6/22/99, 19:42 hrs., Tab B.
[11] *Id.*
[12] Petition, at 10.
[13] CRPD Incident Report 6/22/99, 19:42 hrs., Tab B.

from her husband and that he was with the children at Elitch's amusement park in Denver. After being informed of the call by dispatch, Officer Brink returned to the police department and returned Ms. Gonzales' call.[14] The transcript of this phone call does not support Ms. Gonzales' account of the conversation as described on page 11 of the petition. At no point did Ms. Gonzales mention any conversation with Rosemary Young, nor did she mention any concerns about Mr. Gonzales' mental state or the safety of her children, nor did she request that Officer Brink dispatch an officer to locate Mr. Gonzales at the amusement park or enlist the assistance of other police departments. Instead, the transcript of the call indicates that after Ms. Gonzales told Officer Brink of the girls' whereabouts she expressed concern that there was something wrong with the fact that Mr. Gonzales had taken them to the amusement park given that it was a school night. When she learned that Mr. Gonzales had dropped one of the girl's playmates off at her own house rather than taking her with them, Ms. Gonzales stated it was "cruel" of him not to have taken her to the amusement park, indicating that she did not believe the girls were in any danger.[15]

The transcript of the call then indicates that Ms. Gonzales again acknowledged that she had granted Mr. Gonzales permission to see his children and that the visit was not in violation of the restraining order. Officer Brink specifically asked whether the visit was consistent with the custodial arrangement under which they had made the "verbal agreement" for the visit that night. Ms. Gonzales responded that she was the legal custodian but that she intended to file for full custody because joint custody left all of these decisions to mutual agreement. At that point she mentioned the restraining order, which they both acknowledged Officer Brink had not seen. Officer Brink reminded her of the fact that she had granted permission to Mr. Gonzales to see the children, to which she responded "Exactly." Officer Brink then continued, "Ok, so there's no violation there." Ms. Gonzales responded, "No." Later, Officer Brink then said, "Well unfortunately there, it doesn't sound like there's anything criminally I can go after him for." Ms. Gonzales agreed, explaining, "No, I was just so worried." Officer Brink offered words of reassurance, "at least you know where the kids are right now," to which Ms. Gonzales replied "yeah". Ms. Gonzales then thanked Officer Brink for all his help.[16]

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[14] Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C

[15] *id.*

[16] *Id.*

At 9:57 p.m. that evening Ms. Gonzales called the CRPD again and spoke to the dispatcher, not to Officer Brink, as she alleged on page 12 of the petition. Her account on page 12 of the petition differs dramatically from the transcript of the call. The transcript makes clear that Ms. Gonzales informed the dispatcher that the children were still not home and that she was a "little wigged out." Ms. Gonzales also acknowledged that there was "nothing in the restraining order" that dealt with the situation.[17] She again expressed frustration that her husband had taken her daughter's playmate home and that her daughter, Rebecca, must have been heartbroken over that. However, she did not mention that she was concerned about the safety of any of the children. Nor did she request that the CRPD put out an "APB" [all points bulletin to other police departments]. Ms. Gonzales then indicated that she was going to work. When asked by the dispatcher how Ms. Gonzales would know if the children made it home, Ms. Gonzales replied that a friend would be waiting. The dispatcher then asked that Ms. Gonzales call when the girls got home or to call back by midnight if they weren't home by then.[18]

As indicated above, during her initial conversations with members of the CRPD Ms. Gonzales explicitly and repeatedly acknowledged that there was no violation of the restraining order. Moreover, as described above, Ms. Gonzales implicitly acknowledged that there was no restraining order violation when she explained to the CRPD dispatcher in her first call to the CRPD and in her subsequent conversations with Officer Brink that she had agreed to the visit.[19] Additionally, Ms. Gonzales later explicitly acknowledged that there was no restraining order violation when Officer Brink returned her phone call after learning that the children's whereabouts had been established.[20]

Although in various places Petitioner states that Mr. Gonzales demonstrated threatening behavior towards Ms. Gonzales and her children, Ms. Gonzales did not make this information available to the CRPD during the numerous interactions she had with members of the CRPD between 7:00

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[17] Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, Third call at 2157 hrs, CR# 99-3226, Tab D.

[18] *Id.*

[19] Jessica Gonzales/Dispatch, Tape transcription, Tab A; CRPD Incident Report 6/22/99, 19:42 hrs., Tab B.

[20] Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.

p.m. and midnight the evening of June 22, 1999. Rather, the CRPD records indicate that Ms. Gonzales did not appear to be concerned about the safety of her children, but was troubled instead by the fact that she did not know where her husband had taken them, and that she was concerned about the whereabouts of a playmate of her daughter's, who she soon realized Mr. Gonzales had taken home.[21] It was not until much later in the evening, at approximately 12:30 a.m., Wednesday, June 23rd, as detailed below, that she expressed concern about Mr. Gonzales' emotional state, but even at that point Ms. Gonzales explicitly stated that she did not fear for the children's safety.[22] Finally, the fact that the restraining order granted such regular and substantial parenting time to Mr. Gonzales would lead a reasonable person to conclude that at the time the restraining order was modified to permit such custodial arrangements neither Ms. Gonzales nor the court considered Mr. Gonzales a threat to his children.

Around midnight, Ms. Gonzales called the CRPD again and spoke to a newly-hired dispatcher assigned to the graveyard shift, Melissa O'Neill. It was Ms. O'Neill's second night on the job and she was being trained by another dispatcher, Cpl. Patricia Lisk. Both Ms. O'Neill and Cpl. Lisk had been briefed on the situation involving Jessica Gonzales and her children by Ms. Dieck, the outgoing dispatcher. In a subsequent interview the next day by the District Attorney's Office with Ms. O'Neill and Cpl. Lisk about the shooting incident involving Mr. Gonzales later that evening, Ms. O'Neill recalled that during the midnight call, Ms. Gonzales "was very worried about her children" and that she wanted an officer to meet her outside Mr. Gonzales' residence. According to Ms. O'Neill, Ms. Lisk dispatched an officer in response to the call. However, Ms. Lisk also recalled that at the same time, three other calls were pending, including one that involved a domestic disturbance in progress with an injured child, and the officer was unable to respond immediately.[23]

At approximately 12:30 a.m. on Wednesday, June 22, Ms. Gonzales showed up at the police department in tears.[24] Officer Ahlfinger was dispatched to meet with her and did so at approximately 12:36 a.m. After Ms. Gonzales told him that Mr. Gonzales had limited visitation of the

[21] Investigator's Progress Report, Castle Rock Police Department, Castle Rock, Colorado, CR #99-3226, Call from Officer Brink to Jessica Gonzales, Tab C.
[22] Castle Rock Police Department Incident Report 90623004, 6/23/99, 00:06 hrs, Tab F.
[23] Office of the District Attorney, Eighteenth Judicial District. Report Date: 7/1/1999. Report by Karen Meskis, Date of offense: 6/23/99, Tab E.
[24] *Id.*

children, including a dinner night once a week, Officer Ahlfinger asked Ms. Gonzales if she knew where he might have taken the children and asked for a description of Mr. Gonzales' car. It was at this point that Ms. Gonzales first expressed concern about Mr. Gonzales' mental state saying that he had "lost it" and that he might be "suicidal."[25] When Officer Ahlfigner asked her whether she knew if her husband had any weapons, she said that she was not aware of any. Notably, when asked whether she thought Mr. Gonzales would hurt the children, she responded "no."[26]

After speaking with Ms. Gonzales, Officer Ahlfinger requested that the dispatcher, Cpl. Lisk, send an "Attempt to Locate BOLO" [an acronym for "Be On the Look Out", which is directed to other jurisdictions so that they may notify the requesting police department if they locate the individual in question] for Mr. Gonzales and his vehicle. He further advised that if Mr. Gonzales was contacted, the officers were to check the welfare of the children and contact Jessica Gonzales.[27] In a subsequent statement Cpl. Lisk recalled that Officer Ahlfinger requested the attempt to locate at approximately 1:40 a.m.[28] Officer Ahlfinger then drove by Mr. Gonzales' residence and did not see his car, and called Mr. Gonzales both on his home phone and his cellular phone.[29]

After Officer Ahlfinger left, Cpl. Lisk began investigating how to send the bulletin on the "attempt to locate" based on the information she had. During the next 1 hour and 45 minutes before Mr. Gonzales arrived at the police department and shots broke out, Cpl. Lisk tried to locate information on Mr. Gonzales' driver's license and valid license plate for the truck he was driving, including by sending requests to the Colorado Department of Motor Vehicles (DMV), necessary information required in order to enter an "attempt to locate" into the system. In fact, three minutes before Mr. Gonzales fired shots into the CRPD, she received a reply from the DMV that showed that the only license plate registered to Mr. Gonzales was for a Chevy, not the Ford truck Ms. Gonzales had identified. During this period, Cpl. Lisk was also responding to calls coming into dispatch and coordinating with the three officers and one trainee on duty during the graveyard shift and training the new dispatch officer.[30] Thus, although Cpl.

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[25] Castle Rock Police Department Incident Report 90623004, 6/23/99, 00:06 hrs, Tab F.
[26] *Id.*
[27] *Id.*
[28] Statement signed by Cpl. Patricia Lisk, Tab G.
[29] Castle Rock Police Department Incident Report 90623004, 6/23/99, 00:06 hrs, Tab F.
[30] Statement signed by Cpl. Patricia Lisk, Tab G.

Lisk was preparing to enter the "attempt to locate" into the system at the time Mr. Gonzales arrived at the CRPD at approximately 3:25 a.m., she had not yet done so. However, her inability to make such an entry was not as a result of a lack of considerable effort on the part of members of the CRPD to identify the necessary information in order to accomplish the task.

According to the investigation by the Office of the District Attorney, Mr, Gonzales drove his pick-up truck to the CRPD at approximately 3:25 a.m. and fired shots through the window, resulting in an exchange of gunfire with officers who were called to the scene. Mr. Gonzales was fatally wounded. When the officers approached the truck they discovered the bodies of three young girls subsequently identified as Leslie, Katheryn and Rebecca Gonzales.

b. Procedural history of Jessica Gonzales' claims in U.S. federal court

By way of background to the statement of facts provided above, and the numerous and substantial inconsistencies between the evidentiary record and the allegations made by Ms. Gonzales in her petition, it is important to emphasize that the actual facts of the case were not addressed in the domestic litigation. At the district court level, the Town of Castle Rock filed a motion to dismiss the claim. In accordance with the usual rules of procedure for testing the legal sufficiency of a claim, in deciding the motion to dismiss, the District Court accepted the allegations as true and construed them in the light most favorable to the plaintiff. The court found that, as a matter of law, Ms. Gonzales had failed to state a claim upon which relief could be granted.[31] Accordingly, the actual facts were not addressed in the litigation because the appeals process dealt with whether the federal law invoked by Ms. Gonzales was available based on the allegations set forth in her complaint.

Because Petitioner attached the relevant decisions to her petition, the United States will provide only a brief summary of the domestic litigation. For ease of reference, however, the following brief summary is provided. Ms. Gonzales filed a complaint in federal court alleging that a Colorado statute regarding the enforcement of restraining orders granted her a property interest in its enforcement by the police and that when the police

[31] Gonzales v. City of Castle Rock, No. 00-D-1285 (D. CO. filed Jan. 23, 2001).

failed to enforce the restraining order, she was deprived of property without due process of law, in violation of the 14th Amendment to the U.S. Constitution. As noted above, the District Court granted the town's motion to dismiss, but a narrow majority of the *en banc* Court of Appeals for the Tenth Circuit reversed. The court concluded that state law had given her a "property interest in the enforcement of the terms of her restraining order," and that she had stated a cognizable claim that the police had denied her of that property interest without due process of law. At the same time, however, the Tenth Circuit ruled that the individual police officers in question (but not the City of Castle Rock) were entitled to the defense of qualified immunity on the grounds that a reasonable officer would not have known that a restraining order, together with the Colorado statute mandating its enforcement, would create a constitutionally protected property interest.[32] The Town of Castle Rock sought review of the decision by the United States Supreme Court.

The Supreme Court, reversing the Tenth Circuit's decision, held that under the Due Process Clause of the 14th Amendment of the U.S. Constitution, Colorado's law on police enforcement of restraining orders did not give Jessica Gonzales a property interest in the enforcement of the restraining order against her husband. In reaching that conclusion, the Supreme Court carefully considered the Colorado statute in question and the pre-printed notice to law enforcement officers on the restraining order and determined that the statute granted police officers discretion in enforcing restraining orders, and determined that Jessica Gonzales therefore did not have a federal entitlement to enforcement of the restraining order.

The Supreme Court also noted that domestic abuse restraining orders still had value even if police have discretion in their enforcement. The Court reasoned that regardless of whether Ms. Gonzales "had a right to enforce the restraining order, it rendered certain otherwise lawful conduct by her husband both criminal and in contempt of court."[33] The Court continued, "[t]he creation of grounds on which he could be arrested, criminally prosecuted, and held in contempt was hardly 'valueless' – even if the prospect of those sanctions ultimately failed to prevent him from committing three murders and a suicide."[34] Additionally, the Court noted that the "deep-rooted nature of law-enforcement discretion, even in the presence of

[32] 366 F.3d 1093 (10th Cir. 2004).
[33] *Town of Castle Rock, Colorado, v. Gonzales*, 125 S.Ct. 2796 (2005), 2805.
[34] *Id.*

seemingly mandatory legislative commands" had been previously recognized by the Supreme Court. The Court then opined, "It is hard to imagine that a Colorado police officer would not have some discretion to determine that – despite probable cause to believe a restraining order has been violated – the circumstances of the violation or the competing duties of that officer or his agency counsel decisively against enforcement in a particular instance. The practical necessity for discretion is particularly apparent in a case such as this one, where the suspected violator is not actually present and his whereabouts are unknown."[35]

c. Problem of domestic violence in the United States

It is indisputable that domestic violence is a significant problem in the United States, as it is elsewhere in the world. However, the available data does not support Petitioner's allegations that the United States consistently and systemically treats crimes of domestic violence as less serious crimes than other crimes and fail to investigate such crimes, and arrest and prosecute the perpetrators.[36] Instead, a 2005 study by the Department of Justice's Bureau of Justice Statistics demonstrates that the United States, at the federal, state and local levels, is establishing as high priorities the investigation and prosecution of these crimes and that severe penalties are imposed as a result of such efforts.[37]

The study shows that while the problem of family violence remains acute, the rate of family violence actually fell between 1993 and 2002 from an estimated 5.4 victims to 2.1 victims per 1,000 U.S. residents age 12 or older. During this period, family violence accounted for 11% of all reported and unreported violence between 1998 and 2002.[38] Of these roughly 3.5 million violent crimes committed against family members, 49% were crimes against spouses, 11% were sons or daughters victimized by a parent, and 41% were crimes against other family members.[39]

The study also demonstrates that the successful arrest and prosecution of perpetrators of family violence crimes is a priority in the United States

[35] *Id.*, at 2796.
[36] Petition at 32, 46, 81.
[37] Matthew DuRose et. al., U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Family Violence Statistics* (2005).
[38] *Id.*, at 1. (The study noted that approximately 60% of family violence victimizations were reported to police between 1998 and 2002). *Id.*, at 2.
[39] *Id.*, at 1.

and the data also indicates that perpetrators of family violence have served heavy sentences in prison or jail as a result of these successful prosecutions. It found that about 49% of family violence crimes recorded by police resulted in an arrest. Regarding prosecution of family violence at the state level, of the approximately 1500 defendants charged with felony assault during May 2000 in the State courts of 11 large counties, about a third were charged with family violence. Among the 1500 felony assault cases, the probability of the case leading to conviction (felony or misdemeanor) was greater for family assault defendants (71%) than nonfamily assault defendants (61%).[40] Regarding federal prosecution of domestic violence,[41] federal courts convicted 90% of defendants adjudicated for an interstate domestic violence offense. Of 47 Federal defendants sentenced for an interstate domestic violence offense between 2000 and 2002, 91% received a prison term with a median length of 60 months.[42] Of the nearly 500,000 men and women in State prisons for a violent crime in 1997, 15% were there for a violent crime against a family member. Additionally, convicted family violence offenders made up about 22% of the nearly 86,500 convicted violent offenders in local jails in 2002. Most (60%) of these approximately 18,700 jail inmates incarcerated for family violence were in jail for an aggravated assault.[43]

II. U.S. legal framework regarding domestic violence – availability of domestic judicial remedies and other protections against domestic violence under federal and state law

When it comes to measures the United States has taken to protect individuals from domestic violence, the commitment of the United States is beyond question. The following is a brief description of some of the judicial remedies available to victims of domestic violence in the United States, both at the federal level, as well as in the State of Colorado, who find themselves in situations similar to that alleged by Ms. Gonzales. It is possible that some of these remedies would have been available to Ms. Gonzales herself had the factual circumstances of her case actually warranted them. Additionally, a brief description of additional remedies and protections for victims of

[40] *Id.*, at 2.

[41] The report notes that persons suspected of domestic violence made up 4% of the total 18,653 Federal suspects referred to U.S. attorneys for alleged violent crimes from 2000 to 2002. Of the 757 suspects referred during this period, most were firearm-related domestic violence offenses rather than interstate domestic violence offenses.

[42] *Id.*, at 2.

[43] *Id.*, at 3.

domestic violence at the national and state level, including in the State of Colorado, is provided. The comprehensive programs at the federal, state and local levels, and the billions of dollars devoted to implement these programs, demonstrate that Petitioner's allegations that the United States fails to prioritize crimes of domestic violence, that U.S. law enforcement agencies lack the tools to effectively address and prosecute these crimes, and that victims of domestic violence lack legal avenues to ensure protection of their rights are unfounded.

a. Federal level

i. Judicial Remedies

In the United States, most criminal laws and civil tort remedies are matters of state and local, rather than federal, law. With respect to the availability of domestic judicial remedies, it is important to understand that the holding of the Supreme Court in *Town of Castle Rock, Colorado, v. Gonzales*,[44] was limited to the particular claims raised by Ms. Gonzales, including regarding the particular Colorado statutory regime concerning enforcement of restraining orders, and should not be construed to mean that there are no remedies available to victims of domestic violence in the United States or that restraining orders in such cases offer no protection to their beneficiaries. The Court did not address alternative remedies that would have been available to Petitioner, including for example, a civil suit in state court against the police officers under state tort law, which is discussed more fully below.

Additionally, in other cases, federal courts have provided remedies to victims of domestic violence where victims have alleged a failure to protect by police officers. There are a number of such cases where victims of domestic violence have established liability of police for failure to protect when they have successfully demonstrated that the police treated domestic violence and stalking cases differently from other assault cases or that a police policy of failing to protect domestic violence or stalking victims had a discriminatory impact on women because they are most often the victims of such crimes. One of the first such cases was successfully brought by Tracey Thurman, a Connecticut woman who sued police officers in her local police department and the City for failing to protect her from brutal assaults by her

[44] 125 S.Ct. 2796 (2005)

estranged husband.[45] In a subsequent case the U.S. Court of Appeals for the Ninth Circuit found a potential equal protection violation in a case alleging that the police treated emergency domestic violence calls with less priority than non-domestic emergency calls.[46]

Accordingly, Ms. Gonzales' failure to pursue alternative remedies does not mean that such remedies do not exist for individuals in the United States who have legitimate claims. Alternatively, it may mean that she was aware that her case against the police officers and the City of Castle Rock for their alleged inaction and insensitivity or discriminatory treatment was not actually supported by the evidentiary record.

ii. Federal Legislation: Overview of the Violence Against Women Acts of 1994, 2000, and 2005

In addition, at the national level, Congress has enacted three major pieces of legislation that recognize the seriousness of domestic violence and the importance of a nationwide response: the Violence Against Women Act of 1994 (VAWA),[47] the Violence Against Women Act of 2000,[48] (VAWA 2000), and the Violence Against Women and Department of Justice Reauthorization Act of 2005[49] (VAWA 2005). VAWA itself is a comprehensive legislative package, which addressed numerous facets of the problem of violence against women. Among its many provisions, VAWA strengthened federal penalties for repeat sex offenders; provided for mandatory restitution; required states and territories to enforce protection orders issued by other states, tribes, and territories; created relief for battered immigrants that prevented abusers from using immigration law to control victims; and established the toll-free National Domestic Violence Hotline. In addition, VAWA authorized funds to support domestic violence shelters, rape prevention education, domestic violence intervention and prevention programs, and programs to improve law enforcement, prosecution, court, and victim services responses to violence against women.

VAWA 2000 strengthened the original law by improving protections for battered immigrants, sexual assault survivors, and victims of dating

[45] *Thurman v. City of Torrington*, 595 F. Supp. 1521 (D.CT. 1984).
[46] *Fajardo v. County of Los Angelels*, 179F.3d 698 (9th Cir. 1999).
[47] Pub. L. No. 103-322, tit. IV.
[48] Pub. L. No. 106-386
[49] Pub. L. No. 109-162

violence. VAWA 2000 also re-authorized for five years key grant programs created by VAWA and subsequent legislation and established new programs to address elder abuse, violence against individuals with disabilities, the need for safe visitation and exchange of children in cases of domestic violence, child abuse, sexual assault or stalking, and legal assistance for victims.

VAWA 2005 improved and expanded legal tools and grant programs addressing domestic violence, dating violence, sexual assault, and stalking. VAWA 2005 reauthorized grant programs created by the original VAWA and subsequent legislation and strengthened federal criminal and immigration laws. The Act also authorized numerous new programs, with an increased emphasis on violence against Indian women, sexual assault, and youth victims.

iii. Federal Funding for Projects Targeted at Improving the Issuance and Enforcement of Protection Orders

In 1995, the Office on Violence Against Women (OVW) was created within the U.S. Department of Justice to implement VAWA and provide national leadership in combating domestic violence, dating violence, sexual assault, and stalking. In 2003, Congress directed that OVW become a separate and distinct office within the Department, with a Presidentially-appointed, Senate-confirmed director.[50] At present, OVW administers one formula grant program and eleven discretionary grant programs authorized by VAWA 1994 and VAWA 2000, as well as related legislation.[51] All twelve of these programs respond to different facets of the problem of violence against women and the needs of victims; two, however, have a particular focus on funding projects that address domestic violence and protection orders.

First, the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant program awards grants to states to develop and strengthen the criminal justice system's response to violence against women and to support and enhance services for victims.[52] Each state and territory must allocate 25 percent of the grant funds for law

[50] 42 U.S.C. 3796gg-0.
[51] *See* Higher Education Amendments of 1998, Pub. L. No. 105-222 § 826 (previously codified at 20 U.S.C. 1152) and the PROTECT Act of 2003, Pub. L. No. 108-21 § 611 (codified at 42 U.S.C. 13975).
[52] 42 U.S.C. § 3796gg.

enforcement, 25 percent for prosecution, 5 percent for courts, and 30 percent for victim services. The remaining 15 percent is discretionary within statutory parameters. All states, territories, and the District of Columbia are eligible to apply for a STOP formula grant award; monies are distributed using a population-based formula.[53] To be eligible for funds, states must certify that their state laws and practices meet certain minimum requirements, including that they do not require victims of domestic violence to bear the cost of filing for a protection order.[54]

States may use STOP funding for projects that meet certain statutory program purpose areas, including a number directly pertinent to issues where Petitioner claims the United States is deficient: (1) training law enforcement officers, judges, and prosecutors to respond to domestic violence, (2) developing special units of law enforcement officers, judges, or prosecutors to target domestic violence, (3) developing and implementing more effective police, court, and prosecution policies specifically devoted to responding to domestic violence, (4) developing data collection systems to track protection orders and violations of those orders, and (5) providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted.[55]

Furthermore, in direct response to the tragic murder of Jessica Gonzales' daughters, Congress added a new statutory purpose area to the STOP program in VAWA 2005. Under this new provision, states will be able to use STOP funds to place special victim assistants, known as "Jessica Gonzales Victim Assistants," in local law enforcement agencies to serve as liaisons between victims of domestic violence and the agencies, in order to improve the enforcement of protection orders. The activities of these victim assistants may include developing standardized response policies for local law enforcement, including triage protocols to ensure that dangerous or potentially lethal cases are identified and prioritized.[56]

Second, the Grants to Encourage Arrest Policies and Enforcement of Protection Orders program (Arrest program) encourages jurisdictions to treat

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[53] *Id.* at § 3796gg-1.
[54] *Id.* at § 3796gg-5.
[55] 42 U.S.C. § 3796gg(b).
[56] 42 U.S.C. § 3796gg(b)(13); *see also* H.R. Rep. No. 109-233, at 652 (2005) (Statement of Rep. Nadler supporting provision).

domestic violence as a serious violation of criminal law.[57] States, Indian tribal governments, state and local courts, and units of local government are eligible to receive Arrest program funding.[58] All applicants for grants, however, must certify that their laws, policies, or practices meet certain minimum standards. Applicants cannot receive funding unless their laws or official policies, among other things, encourage or mandate arrests of domestic violence offenders who violate the terms of a protection order, discourage the issuance of mutual restraining orders, and do not require victims of domestic violence to bear the cost of filing for a protection order.[59]

By statute, Arrest programs funds must be used for projects that address certain purpose areas. As with the STOP program, a number of these purpose areas focus on improving the issuance and enforcement of protection orders. In particular, the statute requires that grants fund projects that (1) implement pro-arrest programs and policies in police departments, including policies for protection order violations, (2) develop special domestic violence units of police officers, prosecutors, probation and parole officers, or judges, (3) educate judges about domestic violence, and (4) provide technical assistance and computer and other equipment to police departments, prosecutors, courts, and tribal jurisdictions to facilitate the widespread enforcement of protection orders.[60]

In addition, OVW funding under many of its other grant programs is directed toward ensuring that appeals for protection by victims of domestic violence are not ignored by law enforcement, prosecution, and courts. For example, most of OVW's programs place a significant emphasis on training professionals to improve their response to victims. During just the six-month period between January and June, 2005, OVW grantees reported training over 110,000 people, including 18,789 law enforcement officers, 2,130 prosecutors, and 2,112 court personnel. Moreover, for calendar year 2004, subgrantees of the STOP formula program reported training over 300,000 people, including 105,566 law enforcement officers, 6,842 prosecutors, and 8,943 court personnel.

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[57] 42 U.S.C. § 3796hh(a). VAWA 2005 amended the Arrest program statute to cover dating violence, sexual assault, and stalking, as well as domestic violence. VAWA 2005, Pub. L. No. 109-162 , § 102(b)(1). OVW has not yet awarded Arrest funding for these new program purposes.
[58] *Id.* at § 3796hh(b).
[59] *Id.* at § 3796hh(c).
[60] 42 U.S.C. § 3796hh(b).

Since 1995, OVW alone has awarded more than $2.4 billion in grants authorized by VAWA and related legislation. Moreover, since the passage of VAWA, the United States has committed an increasingly large amount of funding to VAWA programs, enabling OVW to provide grants and technical assistance to more communities nationwide than ever before. For example, during fiscal years 2001 through 2004, OVW awarded nearly $1.25 billion in grants and cooperative agreements, compared to approximately $930,000,000 in the four years prior to that. During fiscal years 1997 through 2000, OVW made approximately 1500 such awards; during fiscal years 2001 through 2004, that number grew to nearly 2400.[61] In particular, during fiscal years 2001 through 2004, OVW awarded 816 grants totaling over $363 million under the Arrest program alone.

In addition to grant programs, the Department of Justice, through OVW, has funded a number of special projects to improve both inter- and intrastate enforcement of protection orders. Five of these illustrate the breadth and intensity of the Department's commitment to improving the effective issuance and enforcement of protection orders nationwide.

The National Center for Full Faith and Credit was created in 1997 with OVW funding to respond to the mandate in VAWA that states enforce protection orders issued by other jurisdictions. Although the Center focuses on interstate enforcement, it provides nationwide technical assistance to any entity or person experiencing challenges around enforcing protection orders. Among its other work, the Center provides training to law enforcement and judges, provides onsite technical assistance to jurisdictions, and tracks state protection order legislation and forms. The National Center on Full Faith and Credit has received approximately $5.5 million dollars in support, and an additional $653,000 is being processed at this time. Additionally, other full faith and credit projects have been supported over the last 8 years for more than $1.5 million.

In 2005, with funding from OVW, the National Council of Juvenile and Family Court Judges (NCJFCJ) issued "A Guide for Effective Issuance & Enforcement of Protection Orders." This publication, known as the Burgundy Book, was developed to give communities and professional tools and strategies they can implement to broaden the effectiveness of protection

[61] Statement of Diane M. Stuart, Director, Office on Violence Against Women Department of Justice, before the Committee on the Judiciary, United States Senate, Concerning Reauthorization of the Violence Against Women Act (July 19, 2005), available at www.usdoj.gov/ovw/pressreleases.htm.

orders. The Burgundy Book, which was developed over the course of four years with extensive input from national domestic violence experts, is divided into chapters focusing on advocates, civil attorneys, courts and judiciary, law enforcement and prosecutors. 4420 copies of the book have been provided to professionals working in the domestic violence field thus far.

The National Center for State Courts, with OVW funding, established "Project Passport" to encourage courts to issue uniform protection orders and thereby enhance nationwide enforcement. Through Project Passport, six of eight regions nationally have held meetings to promote the adoption of uniform protection order coversheets. Such coversheets have been adopted in 22 states and the District of Columbia.

OVW also funded the International Association of Chiefs of Police to develop, and subsequently revise, a guide for law enforcement officers on enforcing protection orders. IACP has distributed the booklet to law enforcement agencies across the country and used it as the basis for training.

Finally, OVW funds NCJFCJ, in partnership with the Family Violence Prevention Fund, to conduct National Judicial Institutes on Domestic Violence. Now in its seventh year, the Judicial Institutes train judges from every state and the District of Columbia on issues related to domestic violence, including protection order enforcement and issuance. Institutes also serve to create a national community of judges leading the nation in responding to domestic violence. Since 1998, the Judicial Institutes training project has received $9.2 million dollars in support from OVW. An additional $653,000 is being processed at this time to carry the project through the end of 2008. Since 1999, more than 5,500 judges have been trained through this Judicial Institutes program.

b. State Responses to Domestic Violence

As noted above, in the United States, most criminal laws and civil tort remedies are matters of state and local, rather than federal, law. Therefore, most laws that protect persons in the United States from domestic violence and provide civil remedies against perpetrators and other responsible parties are state and local laws and ordinances.

Over the past two decades, states have adopted a host of new laws to improve the ways that the criminal and civil justice systems respond to domestic violence. Between 1997 and 2003 alone, there were over 700 new domestic-violence related enactments.[62] For example, 39 states have adopted laws specifically directed at domestic violence, even though many other criminal statutes would apply to acts of domestic violence. These laws provide for enhanced penalties and "ensure equality of treatment for victims of domestic violence."[63] Since 1990, every state has adopted a stalking law to deal with the harassment and implicitly threatening behavior that may accompany domestic violence.[64] As of 2000, in response to concerns that police were not making arrests in domestic violence cases, all states now authorize warrantless arrests of domestic violence offenders based only on a probable cause determination.[65] In 21 states and the District of Columbia, arrest in such cases is mandatory.[66] Violation of a court order of protection is a crime in most states, and state laws in all but one state and the District of Columbia explicitly authorize warrantless arrests based on a probable cause determination that the order has been violated.[67]

c. State of Colorado

i. Judicial remedies

As noted above, the Supreme Court's decision in *Town of Castle Rock, Colorado vs. Jessica Gonzales* was limited to the federal constitutional claims raised by Ms. Gonzales in her petition and did not address the remedies and protections that were available to Ms. Gonzales under Colorado law.

Although Ms. Gonzales chose not to pursue such a claim, had she been able to establish that the Castle Rock police officers acted "willfully and wantonly" outside the scope of their employment, she could have filed a civil suit against them in state court. In the context of the general allegations contained in Ms. Gonzales' petition, this avenue certainly existed and the

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[62] Neil Miller, Institute for Law and Justice, *Domestic Violence: A Review of State Legislation Defining Police and Prosecution Duties and Powers*, June 2004 at 1, available at http:/www.ilj.org/publications/DV_Legislation-3.pdf.
[63] *Id.*, at 14.
[64] *Id.*, at 19.
[65] *Id.*, at 27.
[66] *Id.*, at 28.
[67] *Id.*, at 31.

Colorado Governmental Immunity Statute would have permitted such a suit had she been able to meet this standard.[68] In order to file such a suit, notice of intent to sue must be given to the public entity and its attorneys within 180 days of the incident in order to bring a tort or negligence suit.[69] Ms. Gonzales never filed such a notice. Additionally, Ms. Gonzales never even filed a formal administrative complaint with the CRPD or the Town of Castle Rock for mishandling the events that night. The United States is not in a position to speculate on what accounts for Ms. Gonzales' failure to file an administrative claim against the officers or to file a civil suit in state court in light of her allegations that the police "did nothing" and "failed to investigate the children's disappearance."[70]

Finally, it should be noted that had Mr. Gonzales himself not been killed in the shoot-out he initiated at the Castle Rock police department on Wednesday, July 23rd, 1999, there would have been an additional range of available remedies. As is true of all states, Colorado has a wide array of criminal statutes that would have been potentially applicable (some of which would have turned on whether Ms. Gonzales was able to establish that Mr. Gonzales had actually violated the restraining order). They include homicide statutes, found at C.R.S. § 18-3-102 *et seq.*, assaults at C.R.S. § § 18-3-201 *et. seq.*, kidnapping at § 18-3-301 *et. seq.*, false imprisonment at § 18-3-303, violation of custody order or order relating to parental responsibilities, § 18-3-304, and child abuse, § 18-6-401 *et. seq.* Furthermore, as observed by the Supreme Court, had Mr. Gonzales not murdered his children and been killed himself and had Ms. Gonzales been able to establish that there was an actual violation of the restraining order, either civil or criminal contempt proceedings could have been brought against Mr. Gonzales. Violation of restraining orders is a crime in Colorado pursuant to C.R.S. § 18-6-803.5, and is a class 2 misdemeanor, unless the restrained person has previously been convicted of a restraining order or no contact order violation, or the restraining order was issued pursuant to C.R.S. § 18-1-1001, in which the case the violation is a class 1 misdemeanor.

Additionally, like many other states, Colorado has specific criminal statutes relating to domestic violence. In Colorado, domestic violence is defined to mean "an act or threatened act of violence upon a person with

[68] C.R.S. § 24-10-102 *et seq.*
[69] C.R.S. § 24-10-109.
[70] Petition, at 4.

whom the actor is or has been involved in an intimate relationship." It includes "any other crime against a person or against property or any municipal ordinance violation against a person or against property, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship."[71] Among other aspects of Colorado's statute are the increased penalties it establishes for persons convicted of crimes involving acts of domestic violence, including that the individual must complete a treatment program.[72]

ii. Training of police officers in the State of Colorado

As a matter of Colorado state law, of the 80 hours of training mandated for every peace officer, each student is required to complete 28 hours on human and victim's rights, which includes a minimum of eight hours of training on domestic violence. These standards are mandated by Colorado's Commission on Peace Officer Standards and Training (POST), which monitors all peace officer training in the State of Colorado. The goal of the training is that the student will demonstrate the ability to effectively assess and intervene in incidents of domestic violence.

In order to successfully complete the training, each peace officer must demonstrate an understanding of a range of issues directly relevant to responding to incidents of domestic violence. These include the following: the duty to report; mandatory arrest procedures; victim's rights; injury identification and documentation; victim/witness interviews; the fast track system; safe houses; restraining orders, including out-of-state orders; stalking and harassment; predominant aggressor; domestic violence dynamics; witness intimidation; children's issues. Additionally, through the use of field exercises, each student must demonstrate the proper and effective response to domestic violence incidents and the ability to document the event in a written report. In addition to the required source material mandated by the statute, it is a recommendation by POST that officers are provided with the Colorado Coalition Against Domestic Violence (CCADV) publication on domestic violence training.

[71] C.R.S. § 18-6-800.3
[72] C.R.S. § 18-6-801

In conjunction with the mandatory training highlighted above, there are several elective training programs that many police departments in Colorado provide as additional training to officers. A brief description of some of these programs is provided below.

The Colorado Coalition Against Domestic Violence (CCADV) is a non-profit organization dedicated to the elimination of domestic violence in all of its forms and provides domestic violence extensive training to peace officers in Colorado. In conjunction with this training, they publish two manuals that provide essential training devoted to responses to domestic violence: i) the *Law Enforcement Training Manual on Domestic Violence*[73] that POST recommends as supplemental material for all peace officers and ii) *The Ending Violence Against Women (EVAW) Project, Domestic Violence Training Manual.* The *Law Enforcement Training Manual* is comprehensive, and the CCDAV has strongly encouraged law enforcement groups to utilize it in their training, as it explores in depth the dynamics of domestic violence and the legislative history of Colorado statutory provisions on domestic violence, the law enforcement response, domestic violence risk factors, restraining and protection orders, full faith and credit, violation of protection orders, other Colorado statutes governing protection orders, and the procedure of enforcement of protection orders and other considerations. In addition, the manual provides officers detailed procedures for conducting on scene investigations that includes a Domestic Violence Investigation Checklist, specifics on how to deal with recanting victims, what factors should be considered in an arrest decision, victim assistance, information on peace officer and law enforcement agency civil liability and many additional vital training on specific issues that arise in domestic violence cases.

Another Colorado organization active in training of police officers in the State of Colorado is Project Safeguard, a community-based non-profit agency dedicated to ending violence experienced by women in intimate relationships. This agency has been actively training police officers in issues relating to domestic violence and protection orders for over 25 years. Project Safeguard provides legal advocacy to victims in the form of protection order and courtroom assistance, phone crisis intervention, divorce & custody clinics, CourtWatch (a program in which advocates observe

[73] The updated Law Enforcement Training Manual, 2nd Edition was published in October 2003 and is available online at www.ccadv.org/publications/law_enforcement_manual_11-03.pdf

courtroom procedures, make recommendations for improvements and recognize best practices), Fatality Review (a program which reviews details of homicides or suicides where domestic violence is identified to determine when/if community intervention may have positively effected the outcome ~~and how to use this information~~ to prevent future deaths), counseling, and community outreach. Specific to peace officers and protection orders, Project Safeguard provides periodic training at police academies and change of shift roll calls. These trainings include an overview of what victims go through to obtain a protection order (revealing their most frightening secret to strangers, beginning their lives over, facing financial burdens and parenting challenges as well as the criminal and or civil justice system), the enforcement of protection orders, Full Faith and Credit, the reasons for protection orders, when to refer someone for a protection order, details of the dedicated protection order court rooms and statistics regarding the effectiveness of protection orders. Last year, training on risk assessment/safety planning and dynamics of domestic violence was also accomplished for the Colorado Regional Community Policing Institute.

In short, it is the goal of Project Safeguard to insure that officers and other system or community based agencies who come in contact with domestic violence victims have the most current and accurate information regarding protection orders so that victims may be safe and receive the best services available.

III. Petitioner does not state facts that demonstrate that the United States has breached any duty under the American Declaration

a. No provision of the American Declaration imposes a duty on the United States to have successfully prevented the murders of the Gonzales daughters.

Petitioner's claims that the "preventable deaths of petitioner's children and harms suffered by petitioner"[74] violated numerous rights under the American Declaration are without merit. She cites no provision of the Declaration that imposes an affirmative duty on States to actually prevent the commission of individual crimes by private parties such as the tragic and criminal murders by Mr. Simon Gonzales of his three daughters. As noted

[74] Petition, at 46.

below, Petitioner cites caselaw of the Inter-American Court of Human Rights and of the Inter-American Commission on Human Rights, but none of these can be interpreted to impose such a broad affirmative obligation upon the United States to have successfully prevented Mr. Gonzales from murdering his three daughters.

Specifically, Petitioner asserts that her rights and those of her children under Article 1 (right to life, liberty and personal security), Article VII (rights of protection for mothers and children), Article V (right to protection of honor, personal reputation, and private and family life), Article VI (right to a family and protection thereof), and IX (right to inviolability of the home) of the American Declaration were violated. Petitioner also alleges that the failure of the United States' failure to provide Ms. Gonzales with these rights and the rights to judicial remedies discussed further below violated her right to equality under Article II. However, none of these provisions actually describe the specific content of the right protected, let alone impose an affirmative duty upon States to prevent crimes by private parties that might undermine an individual's enjoyment of these rights. For example, although Article VII speaks of "special protection for mothers and children" it does not define this term, nor address the circumstances in which the State is expected to respect this right. Notably, none of these rights address the complex issues involved in this case, such as particular steps police officers should take when confronted with a mother who is concerned about the whereabouts of her children, but who nevertheless acknowledged that her husband had a right to see them that evening, and admitted that she was not concerned about their safety. This lack of specificity in the Declaration is not surprising when it is recalled that the American Declaration is a non-binding instrument, and its provisions are aspirational.

Furthermore, no other provision of the Declaration contains language that even addresses implementation of the enumerated rights, let alone imposes an affirmative duty to prevent crimes such as those at issue here. By contrast, the American Convention on Human Rights ("American Convention"), which imposes legal obligations on those States which have chosen to ratify or accede to it, includes a provision that describes the actual obligations of States Parties regarding implementation of the rights enumerated under the Convention.[75] In Article 1.1, the Convention

[75] The United States has not ratified the American Convention and therefore has assumed no legal obligations thereunder.

describes an obligation to respect the rights protected by the American Convention and to ensure their enjoyment without discrimination. However, even under the American Convention, States Parties have not accepted such an obligation to prevent criminal conduct by private or non-State actors. Nor would States Parties have been willing to create an obligation on themselves that would be so open-ended and impossible to implement. Then as now, despite the best efforts of hard working law enforcement officials, private individuals commit hundreds of thousands of crimes every year in this hemisphere. Although the United States is not a party to the American Convention, it has ratified the International Covenant on Civil and Political Rights, which in Article 2(1) contains a similar language regarding a State Party's obligation to respect and to ensure the protected rights, and, like the American Convention, does not impose such a categorical obligation to prevent criminal conduct by private or non-State actors.

The absence of such language in the American Declaration imposing a duty or a commitment on the part of the State to prevent crimes by private parties or non-State actors is all the more notable when contrasted with other international instruments which specifically do impose obligations upon States Parties to prevent, in certain limited circumstances, certain types of misconduct by private parties or non-State actors. Both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) contain provisions which do impose obligations upon State Parties, in the specific context of preventing discrimination, to prevent discrimination by any person, organization or group/enterprise.[76] Importantly, even in the case of CEDAW and CERD, where a State obligation is spelled out regarding prevention of discrimination by non-state actors or private parties, the obligation is not as far-reaching as asserted by Petitioner. State Parties are not required to actually successfully prevent the prohibited discrimination, but are bound only to take "all appropriate measures" in this regard. Additionally, it should be noted that the United States has not ratified CEDAW and it has taken a reservation to the CERD precisely because of the broad reach of the afore-mentioned provision and the possibility that it could require the United States to prohibit purely private conduct.[77]

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[76] *See* Article 2(1) of CERD and Article 2(e) of CEDAW.

[77] *See The Convention on the Elimination of All Forms of Racial Discrimination: Initial Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination*, at pg. 55. Available at: http://www.state.gov/www/global/human_rights/cerd_report/cerd_report.pdf

Although Petitioner cites no actual provision of the American Declaration that expressly imposes a duty on the United States to have prevented the murder of the Gonzales daughters, she does cite the finding of the Inter-American Court of Human Rights in the case of *Velasquez-Rodriguez*[78] for the proposition that in certain circumstances a State's obligation under the American Convention to prevent human rights violations extends to actions perpetrated by private actors.[79] The United States has assumed no treaty obligation that imposes such an affirmative duty, and in any event believes that the Court's decision in *Velasquez* is inapplicable to this case.

Petitioner wrongly asserts that the Inter-American Court's findings in *Velasquez* apply to the circumstances of the present case. In that case, the Inter-American Court found that there was a systematic "practice of disappearances carried out or tolerated by [government] officials," that "Manfredo Velasquez disappeared at the hands of or with the acquiescence of those officials within the framework of that practice" and that the government "failed to guarantee the human rights affected by that practice."[80] In light of those egregious facts, the Court held that in certain circumstances, "An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of *the lack of due diligence* to prevent the violation or to respond to it as required by the Convention."[81] (Emphasis added) However, the Court did not state that such international responsibility arose any time the State had failed to prevent a crime committed by a private party. Rather, the Court emphasized, "What is decisive is whether a violation of the rights recognized by the Convention has occurred with the *support* or *acquiescence of the government*, or whether the *State has allowed the act to take place without taking measures to prevent it or to punish those responsible.*"[82]

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[78] Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am. Ct. H.R. (Ser.C) No. 4 (1988). The *Velasquez* case concerned interpretation of various provisions of the American Convention, including the scope of the obligation under Article 1(1) to respect the rights and freedoms recognized by the Convention. The Court's decision did not interpret the text of the American Declaration, nor the commitments of States thereunder.

[79] Petition, at 47.

[80] Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am. Ct. H.R. (Ser.C) No. 4 (1988)., at para. 148.

[81] *Id.*, at Para. 172.

[82] *Id.*, at Para. 173

(Emphasis added) The Court then articulated a standard of reasonableness to govern a State's obligation to prevent human rights abuses and to investigate such abuses, prosecute the perpetrators and provide compensation to the victims.[83]

In applying this interpretation to the egregious facts of that case, the Court found a violation of the American Convention, namely that the State of Honduras was responsible for the involuntary disappearance of Angel Manfredo Velasquez Rodriguez and therefore violated Articles 7, 5, and 4 of the Convention. In reaching its conclusion, the Court found that the "evidence shows a complete inability of the procedures of the State of Honduras, which were theoretically adequate, to carry out an investigation into the disappearance of Manfredo Velasquez, and of the fulfillment of its duties to pay compensation and punish those responsible." The Court then noted the failure of the judicial system to act upon any of the writs to habeas corpus,[84] and the failure of the Executive Branch to carry out a serious investigation to establish the fate of Mr. Velasquez.[85] The Court noted that the "duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared."[86] The Court found that the disappearance of Mr. Velasquez was carried out by "agents who acted under cover of public authority" but that even if that had not been proven, "the failure of the State apparatus to act, which is clearly proven" amounted to a violation by the State of Honduras under the Convention.[87]

Petitioner also cites the Inter-American Commission's decision in *Fernandes v. Brazil*[88] as an example of where the Commission has recognized the affirmative obligations of a state to protect the right to life, both from violations by State and non-State actors. In *Fernandes*, Mrs. Fernandes claimed that she was the victim of attempted murder by her then-husband and that the prosecution of her husband "languished" in the Brazilian criminal justice system for 8 years before a jury handed down a verdict, that justice was further delayed while the Appeals Court considered the appeal and while other decisions were appealed, which were pending at the time that Mrs. Fernandes filed her claim with the Inter-American

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[83] *Id.*, at Para. 174.
[84] *Id.*, at Para. 179.
[85] *Id.*, at Para. 180.
[86] *Id.*, at Para. 181.
[87] *Id.*, at Para. 182.
[88] *Maria da Penha Fernandes v. Brazil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (2000)

Commission. Petitioners claimed that "as of the date of the petition, the Brazilian justice system had dragged its feet for more than 15 years without handing down a final ruling against the ex-husband of Mrs. Fernandes, who has been freed during that entire period, despite the serious nature of the charges, the mountain of evidence against him, and the serious nature of the crime committed against Mrs. Fernandes."[89] The petitioners also contended that the facts alleged were representative of a "pattern of impunity in domestic violence cases,..." The Commission, applying both the American Convention and Declaration, found a violation where the Brazilian courts failed to hand down a final ruling after seventeen years. The Commission found that the failure of the Brazilian courts to hand down a final ruling after seventeen years revealed "inefficiency, negligence, and failure to act on the part of the Brazilian judicial authorities and unjustified delay in the proseeution of the accused" which stood "in the way of punishment of the accused and ...rais[ed] the specter of impunity and failure to compensate the victim as a result of barring of the offense by the statute of limitations." The Commission concluded that such failures demonstrated that the "State has not been capable of organizing its entities in a manner that guarantees the rights of the victims.[90]

As elaborated more fully below, the facts of the present case are distinguishable in fundamental respects from those in *Velasquez Rodriguez* and in *Fernandes*. Accordingly, the Inter-American Court's decision in *Velasquez* and the Commission's findings in *Fernandes* do not support a finding of a breach by the United States of a duty under the American Declaration in the present case. Notably, unlike the widespread and systematic abuses carried out or tolerated by government officials or their agents in *Velasquez*, the harms perpetrated in the instant case were committed by a private person, Mr. Gonzales, acting completely at his own initiative and not under "cover of public authority." There is no evidence to indicate that CRPD officers or other U.S. authorities at any level of government supported or acquiesced in Mr. Gonzales' murders of his three daughters, nor that the public authorities even had knowledge that Mr. Gonzales posed a threat to his children. Moreover, unlike in *Velasquez*, there is no evidence to suggest that the CRPD allowed the murders to take place by failing to take measures to prevent harm to the Gonzales daughters or that the appropriate authorities would have failed to prosecute Mr.

[89] *Id.*, at Para. 19.

[90] *Id.*, at Para. 44. The Commission also found violations of the Convention of Belem do Para. As the United States has not ratified that Convention, we will not address the Commission's findings thereunder.

Gonzales for any unlawful acts had he not been killed in the police shoot-out. Rather, as described in great detail in Section I(a) above, the CRPD acted professionally, took numerous actions to establish the whereabouts of the three Gonzales daughters, despite no indication from Petitioner that they were in danger nor that Mr. Gonzales lacked rights to see them and despite numerous other competing law enforcement priorities that evening. These measures by the CRPD constituted reasonable and diligent actions in light of the information available to the police officers at the time.

Furthermore, despite Petitioner's assertions to the contrary, the United States' judicial system, at both the state and federal level, were available to Petitioner and the judicial process was efficient and seriously considered Ms. Gonzales's claims at every stage of the litigation. Moreover, unlike the *Fernandes* case, in the present case the judicial system did not raise the "specter of impunity" by delaying accountability for an individual alleged to have committed murder. Rather, in the present case, it is the fact that Mr. Gonzales was killed following the murders of his three children that accounts for why he was not criminally prosecuted. That Petitioner did not ultimately prevail in the particular suit she filed in federal court does not mean that that there were no available remedies to her or other victims of domestic violence in the United States. Again, the numerous remedies provided by the U.S. legal system and the considerable efforts to ensure an effective law enforcement response to domestic violence in the United States is described in great detail above in Section II.

Petitioner also cites to decisions of the European Court of Human Rights to support her proposition that the duty of a State to prevent human rights violations extends to preventing crimes committed by private actors, such as those involved in the present case. Because the caselaw of the European Court relates to the European Convention on Human Rights which the United States has not ratified, the United States will not address such cases in detail. However, as a general matter those cases, like the Inter-American cases discussed above, do not stand for the proposition that a State's obligation with respect to preventing human rights violations includes preventing all acts of violence, including domestic violence by private parties. As in the Inter-American cases, the European Court was careful to assert that such an affirmative duty to prevent violence by non-State actors only arises in limited circumstances.

In *Osman v. United Kingdom*,[91] the Court acknowledged that the responsibility of a State "to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual" exists in "certain well-defined circumstances."[92] In determining those circumstances, the Court acknowledged that:

> bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.[93]

The Court then articulated the standard by which allegations of the failure of authorities to affirmatively prevent offenses against individuals should be evaluated under the European Convention – whether "authorities [know] or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual" and fail to take reasonable measures that might have been expected to avoid that risk. Unlike in *Osman,* in the present case, the evidentiary record demonstrates that Petitioner failed to communicate to the CRPD that her husband posed a risk to her three daughters. Nevertheless, the CRPD acted diligently and responsibly to assist Ms. Gonzales in searching for her children. The evidentiary record demonstrates that there was no information available to the CRPD relating to any risk of danger posed by Mr. Gonzales to his children, let alone a "real or immediate" one, as required by the European Court in *Osman.* Rather, the CRPD officers acted reasonably in light of the perceived risk.

In another example cited by Petitioner, *M.C. v. Bulgaria*[94] the European Court found a violation of a positive obligation under the European Convention when Bulgaria failed to fully and effectively investigate and prosecute rape allegations. In that case the applicant claimed that Bulgarian law and practice did not provide effective protection against

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[91] 1998-VIII Eur. Ct. H.R. (1998)

[92] *Id.*, at Para. 115.

[93] *Id.*, at Para. 116.

[94] M.C. v. BULGARIA - 39272/98 [2003] ECHR 651 (4 December 2003)

rape and sexual abuse as Bulgaria only prosecuted cases where there was evidence of use of physical force and physical resistance were prosecuted, rather than employing a more context-sensitive approach (which would take into account other evidence and whether the victim had been subject to duress or coercion, for example). Citing its judgment in *Osman,* the Court found that States have a "positive obligation" to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.[95] The Court compared Bulgaria's rape statute with those of other European countries and found that the deficiencies of the national legislation, when combined with inadequacies in the investigation by prosecutors resulted in a violation of the victims rights under Articles 3 and 8 of the European Convention.[96]

The facts of *M.C. v. Bulgaria* are distinguishable in important respects from the present case. In this case, as described in Section II above, the United States has adopted numerous and comprehensive measures, including through legislation at the federal and state level, as well as devoted incomparable resources and programs designed to prevent and prosecute acts of domestic violence. When compared with measures in this area adopted by countries worldwide, or even in the hemisphere, the commitment of the United States can not be questioned. Additionally, as noted previously, in the present case, there is no evidence that the authorities would have declined to prosecute Mr. Gonzales, the perpetrator of the crimes, had he lived, nor any evidence that Ms. Gonzales even filed a complaint with the local authorities for mishandling of her case by the CRPD.

b. The "due diligence standard" as employed by non-binding U.N. human rights instruments in the violence against women context.

In the specific context of violence against women, the due diligence standard has also found expression in various U.N. human rights instruments, including the 1993 Declaration on the Elimination of Violence Against Women adopted by the General Assembly[97] and the 1995 Beijing

[95] *Id.*, at 153.
[96] *Id.*, at Para. 187.
[97] Declaration on the Elimination of Violence Against Women, A/RES/48/104. (December 20, 1993).

Declaration and Platform for Action.[98] For example, Article 4(c) of the 1993 General Assembly declaration provides that:

> States should pursue by all appropriate means and without delay a policy of eliminating violence against women and to this end should, ... [e]xercise 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 by private persons.[99]

In addition, the 1993 declaration and other instruments aimed at preventing violence against women call on States to take other measures, such as developing penal, civil and other sanctions in domestic legislation to punish and redress violence against women, to provide women with access to the judicial system and effective remedies, to develop preventive approaches that promote the protection of women, and to train and sensitize law enforcement personnel on issues relating to violence against women.[100]

U.N. human rights bodies such as the CEDAW Committee or experts such as the U.N. Special Rapporteur on Violence Against Women have also reiterated the application of the due diligence standard in the context of violence against women. While the views of such bodies and experts are entitled to respect, it should be noted that they have not been granted authority to issue authoritative interpretations of international law that are binding upon States. In this regard, the Commission should recall that to date, Member States of the U.N. have not undertaken to negotiate or assume international treaty obligations in this regard. Within the hemisphere, some States have chosen to assume an obligation to apply the due diligence standard in their efforts to prevent, punish and eradicate violence against

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[98] Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

[99] Declaration on the Elimination of Violence Against Women, A/RES/48/104. (December 20, 1993). The language was reiterated in Para. 125 (b) of the Beijing Platform for Action. *See id.* (A strategic objective of governments was to "Refrain from engaging in violence against women and exercise 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 by private persons.")

[100] *See* Declaration on the Elimination of Violence Against Women, A/RES/48/104. (December 20, 1993, at para. 4; *see also* Beijing Declaration and Platform for Action, Fourth World Conference on Women, 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), at para. 125 of the Platform of Action.; *see also* Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para) at Art. 7.

women by ratifying the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para).[101] Although the United States is committed to the goal of eliminating violence against women, it has not ratified this Convention, and thus has assumed no legal obligations thereunder.

Although the due diligence standard has been articulated in these various areas, noted experts in the field acknowledge that the meaning of that standard in the context of domestic violence is subject to debate. In fact, in a recent report, the U.N. Special Rapporteur on Violence Against Women, Yakin Erturk wrote that "there remains a lack of clarity concerning its scope and content."[102] More generally, experts on domestic violence routinely acknowledge that there is no single solution to the problem of domestic violence, nor is arriving even at a set of "best practices" a straightforward matter. For example the report of a recent meeting of "experts" convened to discuss "Good practices in combating and eliminating violence against women" organized under U.N. auspices acknowledged that:

> While States have undertaken many types of initiatives to address violence against women, the classification of any such initiative as a 'good practice' is far from clear...[R]esearchers on the topic have found that the knowledge base on effective initiatives is relatively limited, that few approaches have been rigorously evaluated and, as a result, the most that can be said about certain approaches is that they appear more or less promising in tackling violence against women.[103]

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[101] Under Article 7(b) States Parties "condemn[ed] all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to ... apply due diligence to prevent, investigate and impose penalties for violence against women"

[102] Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Yakin Erturk, "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women – The Due Diligence Standard as a Tool for the Elimination of Violence Against Women," E/CN.4/2006/61, January 20, 2006, at Para. 14.

[103] Report of the Expert Group Meeting, Meeting on "Violence Against Women: Good practices in combating and eliminating violence against women," Organized by: UN Division for the Advancement of Women in collaboration with UN Office on Drugs and Crime, 17 to 20 May 2005, Vienna Austria. Available at http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/index.html (Visited August 14, 2006)

Additionally, as the U.N. Special Rapporteur on Violence Against Women has noted, there are significant differences throughout the world in terms of access to support and remedies for victims of domestic violence. For example, in her 2003 report, Special Rapporteur Radhika Coomaraswamy noted that "where women currently suffering abuse or attempting to deal with its legacies live in the world determines the kinds of support – if any – that are available to them, and the sanctions – if any – their abusers receive. In this context, the basic parameters of 'good practice' remain to ensure that all women have access to basic protections, support and redress,...The right not to be abused must be absolute."[104]

In light of this reality of the differing levels of support, protection and remedies that are available to victims of domestic violence, any attempt to interpret the scope of the due diligence standard in the context of domestic violence must take into account that any such interpretation must be capable of being applied worldwide, regardless of cultural, ideological or level of economic development. In light of the multi-faceted nature of the problem of domestic violence and the absence of any clear international standard, let alone one that is clearly articulated by the American Declaration, the Commission itself should not seek to articulate or impose upon States a new standard in this area that has not benefited from the careful review and acceptance by States inherent in the treaty-making process.

However, should the Commission decide to enter this complex domain, the evidentiary record in this case demonstrates unequivocally that the United States has satisfied even the broadest interpretation of the due diligence standard, as discussed more fully below.

c. Petitioner's inability to prevail in her complaint filed in U.S. federal court and her failure to pursue all available forms of domestic relief do not mean that she lacked access to the courts or that victims of domestic violence lack effective remedies or access to the courts to pursue them.

Petitioner's allegations that the United States failed to investigate her complaint and provide her with a remedy in violation of Articles XVIII and XXIV of the American Declaration are equally without merit.[105] As

[104] Report of the Special Rapporteur on Violence Against Women, Executive Summary, E/CN.4/2003/75, 6 January 2003.
[105] Petition, at 65.

indicated above, Petitioner never filed a complaint with the Castle Rock Police Department or with the Town of Castle Rock, which would have prompted an investigation of her complaint by the CRPD or the Town of Castle Rock. To our knowledge, the only complaint she filed was in the federal district court, which after several stages of review, was ultimately dismissed by the U.S. Supreme Court in *Town of Castle Rock, Colorado, v. Gonzales*.[106]

Although Petitioner alleges that U.S. courts "refused to examine the merits of her case and thus refused to consider whether her fundamental rights had been violated"[107] she fails to point out that the reason why U.S. courts did not address the substantive merits of her case was quite simply that the U.S. Supreme Court found that, even assuming the facts as alleged by the Petitioner, she failed to establish a violation of the 14th Amendment of the U.S. Constitution. This did not mean that she was not entitled to any relief under the U.S. judicial system. As noted in Section II(c)(i) above, had Petitioner been able to establish that the police officers acted "willfully and wantonly" outside the scope of their employment, she could have prevailed in a civil suit in state court. Additionally, as discussed above also in Section II (a)(i), had the facts supported such a complaint, there were also other theories that she could have asserted in the federal courts to allege a deprivation of rights under the 14th Amendment of the U.S. Constitution.

Accordingly, Ms. Gonzales' failure to prevail in her federal court case does not mean that the U.S. authorities failed to properly investigate her claim nor that she was denied access to proper remedies in the U.S. court system. Nor does it mean that such remedies do not exist for individuals in the United States who have legitimate claims. Additionally, the Commission should not lose sight of the fact that had Petitioner's husband not been killed in the shoot-out with police officers, additional remedies would have been available, such as for murder, assault, kidnapping, etc. Had Ms. Gonzales been able to establish that there was an actual violation of the restraining order, there would have been an additional basis for a civil suit or criminal prosecution. Finally, the Commission should take note that the failure of Ms. Gonzales to obtain judicial relief in her particular case does not mean that victims of domestic violence in the United States lack available remedies, including investigations of their claims and enforcement

[106] 125 S.Ct. 2796 (2005).
[107] Petition, at 68.

of their rights in U.S. Courts. As discussed above, there are a range of statutes specifically directed at domestic violence, and there are a range of enhanced laws specifically designed to improve the investigation of domestic violence crimes and enforcement of laws in this area.[108]

d. Even under the most expansive interpretations of the duty of the United States under the American Declaration, the actions of the U.S., the State of Colorado, and the Castle Rock Police Department have satisfied such a duty in this case.

The evidentiary record of this case clearly demonstrates that Petitioner has been unable to establish facts that amount to a breach of a duty by the United States under the American Declaration. Instead, the transcripts of Petitioner's communications with the Castle Rock Police Department and the CRPD's contemporaneous reports demonstrate unequivocally that the CRPD acted reasonably based on information available to them at the time.

Accordingly, the evidentiary record does not support Petitioner's assertions that the United States has failed in a "widespread and systematic" manner to adequately investigate and prosecute domestic violence cases, and Petitioner is but "one of many victims of this ... failure".[109] Instead, the record demonstrates that the CRPD did not, as alleged by Petitioner, fail to enforce a restraining order. Rather, the evidence demonstrates that Petitioner repeatedly acknowledged to police officers that Mr. Gonzales had a right to see his children and that she had consented to the mid-week dinner visit. It further demonstrates that the CRPD was sensitive to Ms. Gonzales's fears and concerns, including about the relevance of the restraining order, and on the basis of investigation, determined that there was no violation of the restraining order and thus that there was no criminal misconduct and little that the CRPD could do. Despite that determination and Ms. Gonzales' own acknowledgement that there was no violation of the restraining order, the CRPD continued to monitor the situation, encouraged Ms. Gonzales to keep it informed of any developments and attempted to locate Mr. Gonzales, including by visiting his house, searching for his truck, and, later, seeking to alert other jurisdictions of the concern over the whereabouts of the children. In short, based on the information and

[108] Section II (a)(ii), (iii).
[109] Petition, at 46

resources available to them at the time, the efforts of the CRPD to assist Ms. Gonzales and to locate her children were responsible and diligent.

Moreover, as explained in greater detail above, the United States' judicial system provided Petitioner with available remedies and access to justice. That Petitioner was unable to ultimately obtain judicial relief in her particular lawsuit in federal court does not mean that no remedies were available to her, including a civil suit if the evidentiary record actually supported her claims. Furthermore, the Commission should not lose sight of the fact that had Mr. Gonzales, the actual perpetrator of the crimes against Ms. Gonzales's daughters, not been killed in the shoot-out with CRPD officers, a whole range of more straightforward remedies, including his criminal prosecution, would have been available.

Finally, as evidenced by the available statistics and the considerable resources directed to preventing acts of domestic violence, and investigating and prosecuting such crimes at the federal, state, and local level in the United States, demonstrate that there is no merit to Petitioner's allegations that the United States "systematically fail[s] to provide for judicial investigation, prosecution and punishment, or compensation" in domestic violence cases.[110] Instead, the available statistics make clear that the United States, at both the state and federal level is a model in the hemisphere for establishing as a high priority the investigation and prosecution of these crimes and ensuring that severe penalties are imposed on perpetrators of such crimes. Moreover, as described in greater detail above in Section II, these measures to improve the efficacy of law enforcement efforts to prevent and prosecute acts of domestic violence in the United States at the federal, state and local level include, *inter alia*, numerous initiatives targeted directly at improving the issuance and enforcement of protection orders. Standing on their own, U.S. legislation and the considerable resources devoted to investigating and prosecuting acts of domestic violence, including through training of police officers on enforcement of protection orders demonstrate the unequivocal commitment of the United States in this area. However, when compared with efforts in this area by governments worldwide, or even in the hemisphere, there can be no question that the United States has not only satisfied, but exceeded even the broadest interpretations of the standard of "due diligence."

[110] Petition, at 46.

IV. Conclusion – Petition should be determined to be inadmissible and the request for relief should be denied.

The United States has demonstrated that Petitioner's allegations about the conduct of the Castle Rock Police Department during the evening of June 22, 1999 and the early hours of June 23, 1999 are not supported by the evidentiary record of the tragic events that resulted in the horrific murders of Leslie, Katheryn and Rebecca Gonzales. On the contrary, the facts, as outlined above, demonstrate that the police officers acted reasonably on the basis of the information available to them at the time. For the reasons set forth above, the petition itself is inadmissible for failure to state a breach of a duty by the United States under the American Declaration. Accordingly, the United States respectfully requests that the petition be determined inadmissible and that Petitioner's numerous requests for relief should be denied.