

Gonzales Update:

On July 21, 2011, the Inter-American Commission on Human Rights (IACHR) issued a merits report in the case, finding that:

[E]ven though the State recognized the necessity to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, it failed to meet this duty with due diligence. The state apparatus was not duly organized, coordinated, and ready to protect these victims from domestic violence by adequately and effectively implementing the restraining order at issue; failures to protect which constituted a form of discrimination in violation of Article II of the American Declaration.

These systemic failures are particularly serious since they took place in a context where there has been a historical problem with the enforcement of protection orders; a problem that has disproportionately affected women - especially those pertaining to ethnic and racial minorities and to low-income groups - since they constitute the majority of the restraining order holders. Within this context, there is also a high correlation between the problem of wife battering and child abuse, exacerbated when the parties in a marriage separate. Even though the Commission recognizes the legislation and programmatic efforts of the United States to address the problem of domestic violence, these measures had not been sufficiently put into practice in the present case.

The Commission underscores that all States have a legal obligation to protect women from domestic violence: a problem widely recognized by the international community as a serious human rights violation and an extreme form of discrimination. This is part of their legal obligation to respect and ensure the right not to discriminate and to equal protection of the law. This due diligence obligation in principle applies to all OAS Member States.

Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11 (2011), available at <http://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc>.

Of what significance is the commission finding that the failure of due diligence by law enforcement constituted a form of discrimination? Has the commission established a right to protection from harm? Is rights language the most useful to establish protection?

Sharon Hom and Eric Yamamoto suggested “rights” as points for mobilization of collective memory and claims about justice:

In light of the importance of power and culture, it is never enough for societal outsiders only to frame the injustice narrowly to satisfy legal norms. Conversely, it is always important for those outsiders to conceive of law and legal process as contributors to - rather than as the essence of - larger social justice strategies. [Social justice advocates should work with legal process and rights claims] with dual goals: to achieve the specific legal result and to contribute to construction of social memory as a political tool.

Sharon Hom & Eric Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L.

Rev. 1747 (2000).

Does the *Castle Rock* case in the United States Supreme Court show the limited usefulness of strategies that ‘fram[e] injustice narrowly to satisfy legal norms’? Had *DeShaney* left room for broader claims of injustice?

The IACHR report concluded with seven recommendations to the United States:

1. To undertake a serious, impartial and exhaustive investigation with the objective of ascertaining the cause, time and place of the deaths of Leslie, Kathryn and Rebecca Gonzales, and to duly inform their next-of-kin of the course of the investigation.
2. To conduct a serious, impartial and exhaustive investigation into systemic failures that took place related to the enforcement of Jessica Lenahan’s protection order as a guarantee of their non-repetition, including performing an inquiry to determine the responsibilities of public officials for violating state and/or federal laws, and holding those responsible accountable.
3. To offer full reparations to Jessica Lenahan and her next-of-kin considering their perspective and specific needs.
4. To adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.
5. To adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country.
6. To continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs.

7. To design protocols at the federal and state levels specifying the proper components of the investigation by law enforcement officials of a report of missing children in the context of a report of a restraining order violation.

Can you identify some strategies by which advocates could use these recommendations to address the injustices that faced Jessica Lenahan and her children? Could advocates take these recommendations to state and local governments as well as Congress? Do the specific recommendations for investigation increase the likelihood that some authority will be willing to do an investigation that will identify key problems and support demands for solutions? Might legislators pay more attention to these demands now that advocates can point to the gap between this country's aspirations and these findings about its practices?

The American Civil Liberties Union, which helped Lenahan file her petition with the Inter-American Commission on Human Rights, has established a website for those wishing to keep abreast of the case at <http://www.aclu.org/human-rights-womens-rights/jessica-gonzales-v-usa>.