

## **United States Supreme Court Delivers Blow to Victims of Domestic Violence**

On 27 June 2005, the United States' Supreme Court issued its opinion in [Town of Castle Rock v. Gonzales](#). Jessica Gonzales sued the town of Castle Rock alleging that she had a property right to have a restraining order enforced and that Castle Rock's failure to enforce it was an actionable deprivation. The Fourteenth Amendment to the United States Constitution provides that a State shall not "deprive any person of life, liberty, or property, without due process of law." "The deprivation of any rights, privileges, or immunities secured by the Constitution and laws" is a basis for a cause of action in United States Federal Court. 14 U.S.C. §1983. The Court held, in a 7-2 opinion, that there is no property right to enforcement of a restraining order under the United States Constitution.

In May 1999, in the course of divorce proceedings, a Colorado state trial court issued a temporary restraining order to Jessica Gonzales. The restraining order barred her ex-husband, Simon Gonzales, from contacting her, her children, or coming within 100 feet of her house, due to domestic violence. In June 1999 the order was made permanent. The order was modified to allow Simon Gonzales contact with the children on a limited schedule. On 22 June 1999, at around 5:30PM, Simon Gonzales kidnapped the three children from their front yard, in violation of the visitation schedule. Jessica Gonzales called the police. When the police arrived at her house, Ms Gonzales showed them a copy of the restraining order and asked that they retrieve her children. The restraining order included the following language: "IMPORTANT NOTICES FOR RESTRAINED PARTIES AND LAW ENFORCEMENT OFFICIALS."

The preprinted text on the back of the form included the following "WARNING":

A KNOWING VIOLATION OF A RESTRAINING ORDER IS A CRIME . . . . A VIOLATION WILL ALSO CONSTITUTE CONTEMPT OF COURT. YOU MAY BE ARRESTED WITHOUT NOTICE IF A LAW ENFORCEMENT OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT YOU HAVE KNOWINGLY VIOLATED THIS ORDER.

The preprinted text on the back of the form also included a "NOTICE TO LAW ENFORCEMENT OFFICIALS," which read in part:

YOU SHALL USE EVERY REASONABLE MEANS TO ENFORCE THIS RESTRAINING ORDER. YOU SHALL ARREST, OR, IF AN ARREST WOULD BE IMPRACTICAL UNDER THE CIRCUMSTANCES, SEEK A WARRANT FOR THE ARREST OF THE RESTRAINED PERSON WHEN YOU HAVE INFORMATION AMOUNTING TO PROBABLE CAUSE THAT THE RESTRAINED PERSON HAS VIOLATED OR ATTEMPTED TO VIOLATE ANY PROVISION OF THIS ORDER AND THE RESTRAINED PERSON HAS BEEN

PROPERLY SERVED WITH A COPY OF THIS ORDER OR  
HAS RECEIVED ACTUAL NOTICE OF THE EXISTENCE OF  
THIS ORDER.

The officers refused to enforce the order, telling Ms. Gonzales that there was nothing they could do and that she should call the police again at 10PM if the children had not been returned. At approximately 8:30PM, Ms. Gonzales spoke to her ex-husband and learned that he and the children were at a local amusement park. Ms. Gonzales called the police with the location of her children and asked again that the order be enforced. The officer refused and told her to call back at 10PM. At 10PM, Ms. Gonzales was instructed by police to wait until midnight. At midnight she called again and went to her ex-husband's apartment. She was told to wait there for an officer to arrive. When no officer arrived, Ms. Gonzales went to the police department and filed a report. The officer on duty made no efforts to assist Ms. Gonzales and went to dinner. At 3:20AM, Simon Gonzales arrived at the police station. He fired a gun at the police station and was killed in an exchange with officers. After his death, police found the bodies of the three murdered children in his truck.

Ms. Gonzales sued the town of Castle Rock for failure to enforce the restraining order. The district court dismissed the matter. On appeal, The 10th Circuit Court of Appeals reversed the district court's dismissal and held that Ms. Gonzales had a claim of a violation of her procedural due process rights and that the case should be decided on the merits. The Court of Appeals held that the Colorado law under which the restraining order was issued mandated police enforcement and that Ms. Gonzales had a protected property interest in the enforcement of her restraining order. The town appealed to the United States Supreme Court.

The United States Supreme Court found that Ms. Gonzales' claim failed on two counts. First that, although the restraining order conferred a benefit on Ms. Gonzales, not all benefits are property interests. In order to have a property interest in a benefit, a person must have a legitimate claim to enforcement of it. The Court of Appeals had found that the "Colorado Legislature [had a] clear intent 'to alter the fact that the police were not enforcing domestic abuse restraining orders,' and thus [intended] 'that the recipient of a domestic abuse restraining order have an entitlement to its enforcement.'" 545 U.S. \_\_\_\_ (2005). Despite a history of deferring to courts in the state when interpreting state law, the Supreme Court overruled the Court of Appeals and found that there was no entitlement to enforcement. The Supreme Court found that although the statute set forth a mandatory arrest policy, the provision did not truly make enforcement of the restraining orders mandatory. The Court noted that "[a] well established tradition of police discretion has long coexisted with apparently mandatory arrest statutes." 545 U.S. \_\_\_\_ (2005). Secondly, the Court held that even if Colorado law created an entitlement to enforcement, Ms. Gonzales would still not have had a property interest. The Court found that the right to enforcement is not a property right under the Due Process Clause of the Constitution because it does not have an

ascertainable monetary value. The Court found that monetary value is a required element of an enforceable property right.

Justice Stevens, writing for the dissent, argued that the restraining order did grant Ms Gonzales an “entitlement to mandatory individual protection by the local police force” and that the entitlement qualified as an enforceable property right. Justice Stevens compared a court ordered restraining order to a contract with a private security firm. Had Ms. Gonzales contracted with a private firm for personal security she would have had a clear property interest.

Justice Stevens found that the Court gave “short shrift to the unique case of ‘mandatory arrest’ statutes in the domestic violence context.” Justice Stevens addressed the issue that mandatory arrest policies and restraining orders in domestic violence cases have been a part of a national movement on addressing domestic violence and on countering “the perception by police departments and police officers that domestic violence was a private, ‘family’ matter and that arrest was to be used as a last resort.” “The purpose of these statutes was precisely to ‘counter police resistance to arrests in domestic violence cases by removing or restricting police officer discretion; mandatory arrest policies would increase police response and reduce batterer recidivism.’” Justice Stevens argued that even if the mandatory language in the restraining order left the police some discretion on how to proceed, “the police were *required* to provide enforcement; *they lacked the discretion to do nothing.*”

The Court did not address the issue in terms of international standards or the Government’s obligations under international law, despite having received an amici brief on the issue. The Court did not make any attempt to reconcile its ruling with the fact that the United States has signed and ratified the International Covenant on Civil and Political rights which provides that victims of Human Rights violations, including domestic violence, have the right to have effective and adequate remedy determined and to enforcement of any remedy granted.

The Court’s decision was met by disappointment by domestic violence advocates. "Jessica Gonzales did everything right. She divorced her violent ex-husband. She recognized the threat and sought help from courts and police. When her children were in danger, she begged for help, even going to the police station to plead her case. But the police let her down and her three daughters died as a result. This is a sad day and a giant step backward for a nation that had been making progress in stopping domestic violence and helping victims," said Esta Soler, Family Violence Prevention Fund President.

Ms Gonzales also expressed disappointment in the Court’s ruling and stated: "I will continue to raise awareness around this issue so that my daughters will not have died in vain. We need to put pressure on our elected officials to pass laws that offer real protection to women and their families."

Justice Scalia, writing for the Court, indicated that although Federal law did not create liability for failure to enforce restraining orders, states are free to do so in their own statutory schemes. "The Supreme Court’s ruling makes it clear that state legislatures must take the lead in protecting victims of domestic violence and pass laws that will hold police accountable for taking protection orders seriously," said Lenora Lapidus, Director of the ACLU Women’s Rights Project.

Montana and Tennessee are two examples of states that hold police accountable. In Montana, the state Supreme Court has found that state laws enacted to protect victims of domestic violence create a special duty of police officers to enforce the laws or be liable for failure to do so. [\*Massee v. Thompson\*](#), 90 P.3d 394, 403 (Mont. 2004) In Tennessee, the state Supreme Court has found that an order for protection creates a special duty of police officers to enforce the order. The Court found that if an officer negligently fails to enforce an order for protection and the victim suffers personal or property damage the officer, the police department and the local government are subject to liability. [\*Matthews v. Pickett County\*](#), 01S01-9801-FD-00005 (Tenn. 1999).

In light of the Court's ruling, mandatory arrest language is not enough to hold police officers liable for enforcement. As laws providing orders for protection for victims of domestic violence are drafted or amended, provisions explicitly creating a special duty of enforcement and liability for failure to enforce will need to be included.

*Compiled from: [\*Town of Castle Rock v. Gonzales\*](#) 545 U.S. \_\_\_\_\_ (2005); [\*Civil Liberties Group Calls on States to Take Lead in Protecting Victims of Domestic Violence\*](#) [ACLU](#) (27 June 2005) [\*Gonzales Ruling a "Serious Blow" to Victims of Violence Who Need Police Protection\*](#) [Family Violence Prevention Fund](#) (27 June 2005); [\*Massee v. Thompson\*](#), 90 P.3d 394 (Mont. 2004); [\*Matthews v. Pickett County\*](#) No. 01S01-9801-FD-00005 (Tenn. 1999).*