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Rights Panel to Hear U.S. Domestic Violence Case

By **Marcia Coyle, Staff reporter**



Jessica Gonzales poses with a portrait of her three daughters, from left, Katheryn, Rebecca and Leslie.
Image: Craig F. Walker / The Denver Post

WASHINGTON — The Inter-American Commission on Human Rights has agreed to decide whether the United States violated the rights of a domestic violence victim whose three children were killed when local police failed to enforce a restraining order against her former husband.

The complaint by Jessica Lenahan (formerly Jessica Gonzales) is the first brought by a domestic violence victim against the United States for international human rights violations.

On Oct. 4, the commission ruled her complaint “admissible,” which is akin to finding jurisdiction, after rejecting arguments by the U.S. Department of State, including that Lenahan had not exhausted available remedies, and, significantly, that the American Declaration on the Rights and Duties of Man imposes no affirmative duty on states to actually prevent the crimes committed by Lenahan’s former husband.

Officials at the State Department were unavailable to comment because of the Oct. 8 federal holiday.

Lenahan’s legal odyssey began in 1999 when she filed a lawsuit against the Castle Rock, Colo., police department seeking to hold it liable for failing to respond to her repeated calls and appearances for help after her husband abducted her children. Her daughters were found dead in their father’s pickup truck after he was killed in a shootout with police at police headquarters hours after their mother sought police assistance.

A landmark case

Her lawsuit attracted national and international attention when it was reviewed by the U.S. Supreme Court, which held in June 2005 that she had no constitutional right to police enforcement of her restraining order. That December, Lenahan filed her petition with the Inter-American Commission, charging that police inaction and the Supreme Court decision violated her human rights.

“This case is not just about Jessica Gonzales, although it clearly is very important for her,” said Caroline Bettinger-Lopez of Columbia Law School’s Human Rights Clinic, who, along with the American Civil Liberties Union, represents Lenahan.

It is important for victims of domestic violence and intimate-partner violence in the United States and throughout the world, she said, adding, “We’ve gotten calls from the United Nations and organizations around world who see this case as a landmark one on the duty of states to protect victims of domestic violence.”

The admissibility decision itself has “immediate importance,” according to Bettinger-Lopez, because it is the first time the commission has recognized that the American Declaration on the Rights and Duties of Man imposes affirmative obligations by countries in the Americas to protect individuals from private acts of violence.

The commission was created in 1959 and is expressly authorized to investigate allegations of human rights violations by members of the Organization of American States (OAS), which includes the United States.

‘Compulsory jurisdiction’

The commission has jurisdiction to receive complaints against any OAS member state where it is upholding the rights set forth in the 1948 American declaration, said international law scholar Robert Goldman of American University Washington College of Law.

“The commission is the only organization in the world that has compulsory jurisdiction over the United States,” he said. “The only way to escape jurisdiction is to denounce the OAS charter.”

Having survived the “admissibility” phase, Lenahan’s case moves into the merits phase, in which there will be additional briefing and possibly another hearing. The commission may attempt a “friendly settlement,” noted Goldman, a former commission member.

The United States does not have a good record of compliance with commission recommendations, said Goldman. But if Lenahan prevails, he added, it will not be a Pyrrhic victory.

“The commission articulates standards with respect to very important rights,” Goldman said. “What you’ll find is a state that can’t comply for a variety of reasons now might comply in the future.”

It also puts the United States, he added, in a very uncomfortable position. Congress mandates an annual human rights report that often points the finger at other countries' practices.

“To the extent an authoritative body finds violations by the United States and it does not comply, it resonates,” Goldman said.

But for now, Bettinger-Lopez said, a “new legal avenue” has been established. “It opens a door for domestic violence victims in search of vindication, whose legal options have recently been limited by harsh court rulings in the United States.”

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