The U.S. Supreme Court, in the first ever domestic violence case heard by the U.S. Supreme Court; has ruled 7-2 against Jessica Gonzales, the Colorado woman whose three children were murdered by their estranged father, on her federal claim that the Castle Rock Police Department violated her right to due process by refusing to act on her distressed calls with any urgency. The majority opinion, authored by Justice Scalia, declares that there is no federal constitutional right to police protection, leaving to state governments the responsibility for enforcing restraining orders and protecting potential victims of domestic violence.

For the Court, Justice Scalia wrote, "the benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections under the Due Process Clause." He continued, "Although the framers of the Fourteenth Amendment and the Civil Rights Act of 1871 ... did not create a system by which police departments are generally held financially accountable for crimes that better policing might have prevented, the people of Colorado are free to craft such a system under state law."

"The Court's opinion is an open invitation for states to start taking domestic violence protection more seriously. If women and children cannot rely on federal constitutional protections to keep them safe, then we must make sure they can rely on state law," said Richard Smith, partner at the law firm McDermott Will & Emery, who in pro bono representation filed an amicus brief in support of Ms. Gonzales on behalf of a number of law enforcement associations. "Our hearts go out to Ms. Gonzales. This is a disappointing day, but today's decision does not end our continuing fight to stop domestic violence."

Smith added: "The Court confirmed today that state and local governments must stand up and take responsibility for protecting their most vulnerable citizens, especially women and children who are victimized by domestic abuse."

The facts of Town of Castle Rock, Colorado v. Gonzales (No. 04-278) are distressing. Early in the evening on June 22, 1999, the plaintiff, Ms. Jessica Gonzales, discovered that her three young daughters had been abducted by her estranged husband in violation of a restraining order. Ms. Gonzales contacted the local police department several times during the night by telephone and in person, but each time, the police allegedly refused to help. Later, around 3 a.m., Mr. Gonzales appeared at the police station and began firing a handgun; officers shot and killed Mr. Gonzales, only to discover that he had murdered his three daughters.

Mr. Smith filed the amicus brief arguing that the police department's failure to consider Ms. Gonzales" requests for enforcement of her restraining order violated her constitutional right to procedural due process under the 14th Amendment. The brief was filed by the Firm pro bono on behalf of police advocacy and educational associations, including the National Black Police Association, National Association of Black Law Enforcement Officers, the National Center for Women & Policing, Women in Federal Law Enforcement and Americans for Effective Law Enforcement, Inc.

Mr. Smith worked closely with Professor Joan Meier of The George Washington University Law School's Domestic Violence Legal Empowerment and Appeals Project (DV LEAP) to prepare the Gonzales amicus brief. They received assistance from McDermott associates, Francine Hochberg and Richard Sloane.

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