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Dr. Santiago Canton
Executive Secretary
Inter-American Commission on Human Rights
Washington, D.C. 20006

Via U.S. Mail and E-mail: cidhoea@oas.org

February 19, 2010

RE: **Jessica Gonzales**
Case No. 12.626
United States

Dear Dr. Canton:

We would like to bring two developments to your attention regarding the above matter. As you are no doubt aware, on December 10, 2009, the Inter-American Court of Human Rights issued its decision in the case of *González & Others (Campo Algodonero) v. Mexico*. In that landmark case, the Court articulated principles of state responsibility in the context of violence against women that are relevant to the Inter-American Commission's consideration of Jessica Gonzales' case before the Commission. Additionally, in April 2009, the United States Department of Homeland Security articulated a new position, recognizing the eligibility of foreign domestic violence victims for asylum in certain circumstances, and thereby recognizing state responsibility to protect such victims.

We submit to you a brief description of each of these developments that may prove useful for the Commission's consideration of the above matter. We also reiterate our request that the Commission issue its decision in Ms. Gonzales' case during the March 2010 period of sessions.

I. Campo Algodonero: State Responsibility in Cases of Violence against Women

On December 10, 2009, the Inter-American Court issued its opinion in the case of *Campo Algodonero*.¹ The decision is important because for the first time, the Court considered States' affirmative obligations to respond to violence against women committed by private actors and held that gender-based violence could constitute gender discrimination, in violation of the fundamental principle of equality.

¹ *González & Others (Campo Algodonero) v. Mexico*, Case Nos. 12.496, 12.497, and 12.498, Inter-Am. Ct.H.R. (2009)

In *Campo Algodonero*, the Inter-American Court reiterated the elements of due diligence originally articulated in the case of *Velázquez Rodríguez v. Honduras*,² with regard to state responsibility for human rights violations committed by private actors: the duty to prevent, investigate (serious, impartial, and effective investigation oriented toward uncovering truth and punishment of those responsible), punish, and compensate victims for human rights violations. The Court also applied important human rights standards established in the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning effective investigation, standards that were reflected in the European Court of Human Rights' decisions in *Opuz v Turkey*³ and *Osman v United Kingdom*.⁴

In *Campo Algodonero*, the Inter-American Court ultimately found that Mexico, in failing to discharge its State responsibilities, violated the American Convention on Human Rights, the Convention Belém do Pará, and the American Declaration of the Rights and Duties of Man. In so doing, the Court adopted an approach to violence against women in accordance with widely-accepted international human rights standards. The Court's explicit recognition of States' affirmative obligations in cases of violence against women committed by private actors to both prevent and protect on the one hand and to investigate, punish the perpetrator and compensate the victim on the other hand, is directly relevant and applicable in Jessica Gonzales' case.

II. Matter of LR: State Responsibility to Protect Victims of Domestic Violence

In April 2009, the United States Department of Homeland Security (DHS) submitted a supplemental brief to the U.S. Board of Immigration Appeals in the *Matter of LR* where it addressed how a "particular social group" is to be defined in asylum claims. DHS recognized that victims of domestic violence may constitute a particular social group and thus might be eligible for asylum on that basis.⁵ The government explained in its brief that if a domestic violence victim met all of the evidentiary requirements relevant to her social group membership, she would qualify for asylum protection if she could also demonstrate that her government—including local officials, law enforcement officers, and government instrumentalities—was unable or unwilling to protect her. In taking this position, the U.S. government implicitly recognized state responsibility to protect its citizens in cases involving domestic violence; after all, the government acknowledged that in the absence of such protection, asylum is merited. Importantly, this obligation counters the constitutional law standard established by the U.S. Supreme Court in *DeShaney v. Winnebago County* and reinforced in *Town of Castle Rock v.*

² *Velasquez Rodriguez v. Honduras*, Judgment dated July 29, 1988, Inter-Am.Ct.H.R. (Scr. C) No. 4 (1988).

³ Application no. 33401/02 dated 9 June 2009, European Court of Human Rights.

⁴ Application No. 87/1997/871/1083 dated 28 October 1988, European Court of Human Rights

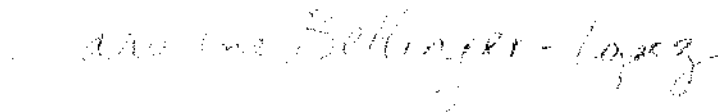
⁵ See Dep't of Homeland Security, Supplemental Brief submitted to BIA in *Matter of LR*, April 19, 2009, at 14 (copy attached as annex). In order to establish a claim for asylum, an applicant must demonstrate that he or she is "unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, [his or her] country [of origin] because of persecution or a well-founded fear of persecution." 8 U.S.C. § 1101(a)(42)(A). It is well-established that asylum protection is only merited where the asylum seeker's government either persecutes her, or fails in its obligation to protect (i.e. is unwilling or unable to protect). Accordingly, a victim of domestic violence would only be eligible for asylum if her government is unwilling or unable to protect her.

*Gonzales*⁶ that police only have an affirmative obligation to protect individuals from private acts of violence in cases where there is a state-created danger or if an individual is in state custody.

The United States' recognition in asylum law of state responsibility to protect victims of domestic violence mirrors the international law obligation that requires States to exercise due diligence in protecting victims of domestic violence from the private violent acts perpetuated by their abusers. Not only does the American Declaration impose a general obligation on States to protect rights from violation by the State and private actors, Article VII imposes a *specific* obligation on States to take additional measures to affirmatively protect the rights of battered women and children.⁷ In Ms. Gonzales' case, the United States failed to act with due diligence to ensure the rights of Ms. Gonzales and her children, and thus breached its obligation to protect them (i.e. it was "unwilling or unable to protect," in the language of asylum law). Therefore, under its own understanding—articulated in *Matter of LR*—of what constitutes State duty and responsibility towards domestic violence victims, the United States has breached international law with respect to Ms. Gonzales and her children.

Should you require any clarification or additional information, please do not hesitate to contact me.

Sincerely,



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For and on behalf of attorneys for the Petitioner

⁶ *DeShaney v. Winnebago Dep't of Soc. Servs.*, 489 U.S. 189 (1989); *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

⁷ Article VII establishes the right of "[a]ll women, during pregnancy and the nursing period, and all children . . . to special protection, care and aid." A contemporary interpretation of Article VII requires the State to provide special protections for vulnerable groups—not only women during the nursing period. See *Final Observations Regarding the Merits of the Case, Ms. Jessica Gonzales*, March 24, 2008, Case No. 12.626, §IV.D.2 (pp. 100–05).