TOWN OF CASTLE ROCK, COLORADO v. GONZALES
SUPREME COURT OF THE UNITED STATES
June 27, 2005

OPINION: JUSTICE SCALIA…We decide in this case whether an individual who has obtained a state-law restraining order has a constitutionally protected property interest in having the police enforce the restraining order when they have probable cause to believe it has been violated…

If the answer is '**yes**,' **then** Ms. Gonzalez may pursue monetary damages from Castle Rock. We shall see. These facts are very depressing.

Respondent alleges that…the town of Castle Rock, Colorado, violated the Due Process Clause of the Fourteenth Amendment…when its police officers, acting pursuant to official policy or custom, failed to respond properly to her repeated reports that her estranged husband was violating the terms of a restraining order.

The restraining order had been issued by a state trial court several weeks earlier in conjunction with respondent's divorce proceedings. The original form order, issued on May 21, 1999, and served on respondent's husband on June 4, 1999, commanded him not to "molest or disturb the peace of respondent or of any child" and to remain at least 100 yards from the family home at all times. The bottom of the pre-printed form noted that the reverse side contained "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."

On June 4, 1999, the state trial court modified the terms of the restraining order and made it permanent. **The modified order gave respondent's husband the right to spend time with his three daughters (ages 10, 9, and 7) on alternate weekends, for two weeks during the summer, and, "upon reasonable notice," for a mid-week dinner visit "arranged by the parties"; the modified order also allowed him to visit the home to collect the children for such "parenting time."**

According to the complaint, at about 5 or 5:30 p.m. on Tuesday, June 22, 1999, respondent's husband took the three daughters while they were playing outside the family home. No advance arrangements had been made for him to see the daughters that evening. When respondent noticed the children were missing, she suspected her husband had taken them. At about 7:30 p.m., she called the Castle Rock Police Department, which dispatched two officers. The complaint continues: "When the officers arrived…, she showed them a copy of the TRO and requested that it be enforced and the three children be returned to her immediately. The officers stated that there was nothing they could do about the TRO and suggested that respondent call the Police Department again if the three children did not return home by 10:00 p.m."

At approximately 8:30 p.m., respondent talked to her husband on his cellular telephone. He told her "he had the three children at an amusement park in Denver." She called the police again and asked them to "have someone check for" her husband or his vehicle at the amusement park and "put out an all points bulletin" for her husband, but the officer with whom she spoke "refused to do so," again telling her to wait until 10:00 p.m. and see if her husband returned the girls.

At approximately 10:10 p.m., respondent called the police and said her children were still missing, but she was now told to wait until midnight. She called at midnight and told the dispatcher her children were still missing. She went to her husband's apartment and, finding nobody there, called the police at 12:10 a.m.; she was told to wait for an officer to arrive. When none came, she went to the police station at 12:50 a.m. and submitted an incident report. The officer who took the report "made no reasonable effort to enforce the TRO or locate the three children. Instead, he went to dinner."

At approximately 3:20 a.m., respondent's husband arrived at the police station and opened fire with a semi-automatic handgun he had purchased earlier that evening. Police shot

back, killing him. Inside the cab of his pickup truck, they found the bodies of all three daughters, whom he had already murdered.

On the basis of the foregoing factual allegations, respondent brought…[a §1983 action], claiming that the town violated the Due Process Clause because its police department had "an official policy or custom of failing to respond properly to complaints of restraining order violations" and "tolerated the non-enforcement of restraining orders by its police officers." The complaint also alleged that the town's actions "were taken either willfully, recklessly or with such gross negligence as to indicate wanton disregard and deliberate indifference to" respondent's civil rights.

Before answering the complaint, the defendants filed a motion to dismiss…The District Court granted the motion, concluding that, whether construed as making a substantive due process or procedural due process claim, respondent's complaint failed to state a claim upon which relief could be granted.

In other words, the case was dismissed because the judge ruled that even if all of the allegations were true, the law would not recognize a remedy against the police or the town of Castle Rock.

A panel of the Court of Appeals affirmed the rejection of a substantive due process claim, but found that respondent had alleged a cognizable procedural due process claim. On rehearing…, a divided court reached the same disposition, concluding that respondent had a "protected property interest in the enforcement of the terms of her restraining order" and that the town had deprived her of due process because "the police never 'heard' nor seriously entertained her request to enforce and protect her interests in the restraining order." We granted certiorari.

The Fourteenth Amendment…provides that a State shall not "deprive any person of life, liberty, or property, without due process of law." In 42 U.S.C. §1983, Congress has created a federal cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." **Respondent claims the benefit of this provision on the ground that she had a property interest in police enforcement of the restraining order against her husband; and that the town deprived her of this property without due process by having a policy that tolerated non-enforcement of restraining orders.**

As the Court of Appeals recognized, we left a similar question unanswered in *DeShaney v. Winnebago County Dept. of Social Servs.* (1989), another case with "undeniably tragic" facts: Local child-protection officials had failed to protect a young boy from beatings by his father that left him severely brain damaged. We held that the so-called "substantive" component of the Due Process Clause does not "require the State to protect the life, liberty, and property of its citizens against invasion by **private** actors." We noted, however, that the petitioner had not properly preserved the argument — and we thus "declined to consider" whether state "child protection statutes gave him an 'entitlement' to receive protective services in accordance with the terms of the statute, an entitlement which would enjoy due process protection."

In other words, if the police (government) harms you directly, there is a remedy, but if private individuals harm you, there is no remedy for the failure of the police to intervene.

The procedural component of the Due Process Clause does not protect everything that might be described as a "benefit": "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire" and "more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Such entitlements are "…not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Paul v. Davis* (1976).

Our cases recognize that a benefit is not a protected entitlement if government officials may grant or deny it in their **discretion**. The Court of Appeals in this case determined that Colorado law created an entitlement to enforcement of the restraining order because the "court-issued restraining order…specifically dictated that its terms must be enforced" and a "state statute commanded" enforcement of the order when certain objective conditions were met (probable cause to believe that the order had been violated and that the object of the order had received notice of its existence). Respondent contends that we are obliged to give deference to the Tenth Circuit's analysis of Colorado law on whether she had an entitlement to enforcement of the restraining order.

We will not, of course, defer to the Tenth Circuit on the ultimate issue: whether what Colorado law has given respondent constitutes a property interest for purposes of the Fourteenth Amendment. That determination, despite its state-law underpinnings, is ultimately one of federal constitutional law. "Although the underlying substantive interest is created by an independent source such as state law, federal constitutional law determines whether that interest rises to the level of a legitimate claim of entitlement protected by the Due Process Clause." **Resolution of the federal issue begins, however, with a determination of what it is that state law provides. In the context of the present case, the central state-law question is whether Colorado law gave respondent a right to police enforcement of the restraining order.** It is on this point that respondent's call for deference to the Tenth Circuit is relevant…We proceed, then, to our own analysis of whether Colorado law gave respondent a right to enforcement of the restraining order.

The critical language in the restraining order came not from any part of the order itself (which was signed by the state-court trial judge and directed to the restrained party, respondent's husband), but from the preprinted notice to law-enforcement personnel that appeared on the back of the order. That notice effectively restated the statutory provision describing "peace officers' duties" related to the crime of violation of a restraining order. At the time of the conduct at issue in this case, that provision read as follows:

> "(a) Whenever a restraining order is issued, the protected person shall be provided with a copy of such order. A peace officer shall use every reasonable means to enforce a restraining order.
>
> "(b) A peace officer shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of a restrained person when the peace officer has information amounting to probable cause that:
>
> "(I) The restrained person has violated or attempted to violate any provision of a restraining order; and

"(II) The restrained person has been properly served with a copy of the restraining order or the restrained person has received actual notice of the existence and substance of such order.

"(c) In making the probable cause determination described in paragraph (b) of this subsection (3), a peace officer shall assume that the information received from the registry is accurate. A peace officer shall enforce a valid restraining order whether or not there is a record of the restraining order in the registry." Colo. Rev. Stat. §18-6-803.5.

The Court of Appeals concluded that this statutory provision — especially taken in conjunction with a statement from its legislative history, and with another statute restricting criminal and civil liability for officers making arrests — established the Colorado Legislature's clear intent "to alter the fact that the police were not enforcing domestic abuse retraining orders," and thus its intent "that the recipient of a domestic abuse restraining order have an entitlement to its enforcement." Any other result, it said, "would render domestic abuse restraining orders utterly valueless."

This last statement is sheer hyperbole. Whether or not respondent had a right to enforce the restraining order, it rendered certain otherwise lawful conduct by her husband both criminal and in contempt of court. The creation of grounds on which he could be arrested, criminally prosecuted, and held in contempt was hardly "valueless" — even if the prospect of those sanctions ultimately failed to prevent him from committing three murders and a suicide.

When I practiced in the area of family law (where most restraining orders are obtained), I rarely advised a wife to get one. Why? Well, I always thought the more dangerous an irate husband is likely to be, the greater the likelihood a restraining order would trigger violence in him in spite of that very order and maybe because of it. Yes, the wife would be right – i.e., she could show a violation of a restraining order – but, she might just be "dead right" for having obtained one. The less prone a husband is to violence, of course, the less the need for a restraining order.

We do not believe that these provisions of Colorado law truly made enforcement of restraining orders mandatory. A well established tradition of police discretion has long coexisted with apparently mandatory arrest statutes.

I am afraid I have to disagree with Justice Scalia on this one. What? How much further do you have to go to mandate enforcement? What else could the legislature have done?

"In each and every state there are long-standing statutes that, by their terms, seem to preclude non-enforcement by the police…However, **for a number of reasons, including their legislative history, insufficient resources, and sheer physical impossibility, it has been recognized that such statutes cannot be interpreted literally…They clearly do not mean that a police officer may not lawfully decline to make an arrest. As to third parties in these states, the full-enforcement statutes simply have no effect, and their significance is further diminished.**"

The deep-rooted nature of law-enforcement discretion, even in the presence of seemingly mandatory legislative commands, is illustrated by *Chicago v. Morales* (1999), which involved an ordinance that said a police officer "shall order" persons to disperse in certain circumstances. This Court rejected out of hand the possibility that "the mandatory language of the ordinance…afforded the police no discretion." It is, the Court proclaimed, simply "common sense that all police officers must use some discretion in deciding when and where to enforce city ordinances."

Against that backdrop, a true mandate of police action would require some **stronger indication** from the Colorado Legislature than "shall use every reasonable means to enforce a restraining order" (or even "shall arrest…or…seek a warrant"). That language is not perceptibly more mandatory than the Colorado statute which has long told municipal chiefs of police that they "shall pursue and arrest any person fleeing from justice in any part of the state" and that they "shall apprehend any person in the act of committing any offense…and, forthwith and without any warrant, bring such person before a…competent authority for examination and trial." It is hard to imagine that a Colorado peace officer would not have some discretion to determine that—despite probable cause to believe a restraining order has been violated—the circumstances of the violation or the competing duties of that officer or his agency counsel decisively against enforcement in a particular instance. The practical necessity for discretion is particularly apparent in a case such as this one, where the suspected violator is not actually present and his whereabouts are unknown. *Donaldson v. Seattle* (1992) ("There is a vast difference between a mandatory duty to arrest [a violator who is on the scene] and a mandatory duty to conduct a follow up investigation to locate an absent violator…A mandatory duty to investigate would be completely open-ended as to priority, duration and intensity").

The dissent correctly points out that, in the specific context of domestic violence, mandatory-arrest statutes have been found in some States to be more mandatory than traditional mandatory-arrest statutes. The Colorado statute mandating arrest for a domestic-violence offense is different from but related to the one at issue here, and it includes similar though not identical phrasing. ("When a peace officer determines that there is probable cause to believe that a crime or offense involving domestic violence…has been committed, the officer shall, without undue delay, arrest the person suspected of its commission…"). Even in the domestic-violence context, however, it is unclear how the mandatory-arrest paradigm applies to cases in which the offender is not present to be arrested. As the dissent explains, much of the impetus for mandatory-arrest statutes and policies derived from the idea that it is better for police officers to arrest the aggressor in a domestic-violence incident than to attempt to mediate the dispute or merely to ask the offender to leave the scene. Those other options are only available, of course, when the offender is present at the scene.

As one of the cases cited by the dissent recognized, "there will be situations when no arrest is possible, such as when the alleged abuser is not in the home." That case held that Washington's mandatory-arrest statute required an arrest only in "cases where the offender is on the scene," and that it "did not create an on-going mandatory duty to conduct an investigation" to locate the offender. Colorado's restraining-order statute appears to contemplate a similar distinction, providing that when arrest is "impractical" — which was likely the case when the whereabouts of respondent's husband were unknown — the officers' statutory duty is to "seek a warrant" rather than "arrest."

Respondent does not specify the precise means of enforcement that the Colorado restraining-order statute assertedly mandated — whether her interest lay in having police arrest her husband, having them seek a warrant for his arrest, or having them "use every reasonable means, up to and including arrest, to enforce the order's terms." Such indeterminacy is not the hallmark of a duty that is mandatory. Nor can someone be safely deemed "entitled" to something when the identity of the alleged entitlement is vague…The dissent, after suggesting various formulations of the entitlement in question, ultimately contends that the obligations under the statute were quite precise: either make an arrest or (if that is impractical) seek an arrest warrant. The problem with this is that the seeking of an arrest warrant would be an entitlement to nothing but procedure — which we have held inadequate…[as a] basis for a property interest. After the warrant is sought, it remains within the discretion of a judge whether to grant it, and after it is granted, it remains within the discretion of the police whether and when to execute it. Respondent would have been assured nothing but the seeking of a warrant. This is not the sort of "entitlement" out of which a property interest is created.

Even if the statute could be said to have made enforcement of restraining orders "mandatory" because of the domestic-violence context of the underlying statute, that would not necessarily mean that state law gave respondent an entitlement to enforcement of the mandate. Making the actions of government employees obligatory can serve various legitimate ends other than the conferral of a benefit on a specific class of people…The serving of public rather than private ends is the normal course of the criminal law because criminal acts, "besides the injury they do to individuals,…strike at the very being of society; which cannot possibly subsist, where actions of this sort are suffered to escape with impunity." This principle underlies, for example, a Colorado district attorney's discretion to prosecute a domestic assault, even though the victim withdraws her charge.

Respondent's alleged interest stems only from a State's statutory scheme — from a restraining order that was authorized by and tracked precisely the statute on which the Court of Appeals relied. She does not assert that she has any common-law or contractual entitlement to enforcement. If she was given a statutory entitlement, we would expect to see some indication of that in the statute itself. Although Colorado's statute spoke of "protected persons" such as respondent, it did so in connection with matters other than a right to enforcement. It said that a "protected person shall be provided with a copy of a restraining order" when it is issued; that a law enforcement agency "shall make all reasonable efforts to contact the protected party upon the arrest of the restrained person"; and that the agency "shall give to the protected person a copy" of the report it submits to the court that issued the order. Perhaps most importantly, the statute spoke directly to the protected person's power to "initiate contempt proceedings against the restrained person if the order was issued in a civil action or request the prosecuting attorney to initiate contempt proceedings if the order was issued in a criminal action." The protected person's express power to "initiate" civil contempt proceedings contrasts tellingly with the mere ability to "request" initiation of criminal contempt proceedings — and even more dramatically with the complete silence about any power to "request" (much less demand) that an arrest be made.

If Colorado had specifically made mention of a damage remedy in its statute, the result would have been against Castle Rock.

The creation of a personal entitlement to something as vague and novel as enforcement of restraining orders cannot "simply go without saying." We conclude that Colorado has not created such an entitlement.

Even if we were to think otherwise concerning the creation of an entitlement by Colorado, it is by no means clear that an individual entitlement to enforcement of a restraining order could constitute a "property" interest for purposes of the Due Process Clause. Such a right would not, of course, resemble any traditional conception of property. Although that alone does not disqualify it from due process protection,…the right to have a restraining order enforced does not "have some ascertainable monetary value."…Perhaps most radically, the alleged property interest here arises incidentally, not out of some new species of government benefit or service, but out of a function that government actors have always performed — to wit, arresting people who they have probable cause to believe have committed a criminal offense…

We conclude, therefore, that respondent did not, for purposes of the Due Process Clause, have a property interest in police enforcement of the restraining order against her husband. It is accordingly unnecessary to address the Court of Appeals' determination that the town's custom or policy prevented the police from giving her due process when they deprived her of that alleged interest.

In light of today's decision and that in *DeShaney*, 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, neither in its procedural nor in its "substantive" manifestations. This result reflects our continuing reluctance to treat the Fourteenth Amendment as "a font of tort law," but it does not mean States are powerless to provide victims with personally enforceable remedies. 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 judgment of the Court of Appeals is Reversed.

CONCURRENCE: JUSTICE SOUTER/BREYER…[Not Provided.]

DISSENT: JUSTICE STEVENS/GINSBURG…[Not Provided.]

No one discussed what I perceive to be the main problem. How is the mother going to prove that the failure of the police to arrest the father resulted in the deaths of the children? Would she have to show they were murdered **after** she first called the police? How much after? After a reasonable time to have (1) found the father somewhere in the universe and (2) to then have arrested him before the murders? How long is that? And, the most difficult issue is that the restraining order did not prohibit the father's involvement with the children altogether. He had rights at certain times to pick them up. If he did this on "her" time, wouldn't he have done it on "his" time when the police would not have even had the right to arrest him barring some new threat? Should it matter that he had access to his children at certain times?