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INFORMANT

The Law Enforcement and Public Entity newsletter of Phelps Dunbar

Mark Fijman, Editor-in-Chief

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SUPREME COURT RULES POLICE CANNOT BE SUED OVER ENFORCEMENT OF RESTRAINING ORDERS

The United States Supreme Court ruled 7-to-2 this morning that police can't be sued for how they enforce restraining orders, ending a lawsuit by a Colorado woman who claimed police did not do enough to prevent her estranged husband from killing her three young daughters. *Town of Castle Rock, Colorado v. Gonzales*. The case had been closely followed, because a decision the other way could have opened up the door to thousands of lawsuits against local governments across the country.

In June 1999, Simon Gonzales took his three daughters, ages 7, 9 and 10, from their mother's front yard, in violation of a restraining order. The man later killed the girls and police found their bodies inside Gonzales' truck after he died in a shootout with officers in front of the police station. Jessica Gonzales sued, claiming the Town's failure to properly enforce the restraining order had violated her Fourteenth Amendment rights to due process.

The District Court granted the Town's motion to dismiss, but the Court of Appeals for the Tenth Circuit reversed, ruling that Jessica Gonzales had a protected property interest in the enforcement of her restraining order, and the case could go to trial. The Town appealed to the United States Supreme Court, which agreed to hear the case.

In today's Opinion, the majority ruled that for Due Process Clause purposes, Jessica Gonzales did not have a property interest in police enforcement of the restraining order against her husband. The Court stressed that the Due Process Clause does not protect everything that might be described as a government benefit, and a benefit is not protected if officials have discretion to grant or deny it. The Court noted that under Colorado law, police discretion to arrest co-existed with apparently mandatory arrest statutes, such as the one that dealt with enforcement of restraining orders. The Supreme Court has previously ruled in other cases that there is no individual right to law enforcement protection.

A MESSAGE TO ALL *INFORMANT* SUBSCRIBERS

Phelps Dunbar will be holding its 28th Annual Employment Law Seminar on August 18-19, 2005 at the Pearl River Resort in Philadelphia, Mississippi. In light of the interest shown by our government and law enforcement clients and *Informant* subscribers, this year we will feature a workshop on Law Enforcement Developments and Litigation Strategies. We will also offer a Public Employer's workshop to address special employment law issues faced by every Sheriff, Police Chief, Court Clerk, City Clerk and County Administrator. In addition, we will cover employment law issues affecting all employers, such as overtime issues under the Fair Labor Standards Act, the Family and Medical Leave Act, and employee benefits updates. Please be on the lookout for your invitation and be sure to register early. We look forward to seeing you there!

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MAIL TO: Phelps Dunbar LLP, 365 Canal Street, Suite 2000, New Orleans, Louisiana 70130-6534 Attn: Michelle Prentice
PHONE: (504) 584-9250 **FAX:** (504) 568-9130 **E-MAIL:** prenticm@phelps.com

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Inquiries concerning topics addressed in the *INFORMANT* may be directed to any of our Employment Law attorneys:

Mark Fijman, <i>Editor-in-Chief</i>	fijmanm@phelps.com	(601) 360-9716	Sandra G. Brown	browns@phelps.com	(601) 360-9729
Joseph L. Adams	adamsj@phelps.com	(601) 360-9708	Kenneth G. Fairly	fairlyk@phelps.com	(601) 360-9705
Gary E. Friedman	friedmag@phelps.com	(601) 360-9355	LaToya C. Merritt	merrittl@phelps.com	(601) 360-9749
Paul O. Miller, III	millerp@phelps.com	(601) 360-9350	Edward O. Watson	edward.watson@phelps.com	(601) 360-9721
W. Thomas Siler, Jr.	silert@phelps.com	(601) 360-9357	Tori L. Winfield	winfielt@phelps.com	(601) 360-9366

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