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**Before the Committee on the Judiciary
United States Senate**

Hearing on the Nomination of Brett Kavanaugh to the Supreme Court of the United States

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I. Introduction and Personal Background

Thank you for the opportunity to testify in this hearing on the nomination of Judge Brett Kavanaugh to the Supreme Court of the United States. Until recently, south Texas, specifically the Texas border cities to Mexico, have not garnered much national attention. Over the last year, however, that has changed dramatically. We saw the Trump administration deny a teen girl access to reproductive healthcare solely because she was an immigrant in a detention facility for children—the subject of my testimony today. We also saw the Trump administration take babies, toddlers, and young children away from their mothers and fathers, never knowing if and when they'd ever see each other again. We've seen the Trump administration deny asylum-seekers fleeing extreme violence entry at our international bridges. And we've seen U.S. born citizens being denied their passports or having them taken from them altogether. All of this has occurred in my community, in the Rio Grande Valley, in Brownsville, Texas.

There is no other way to describe the borderlands than a place where absolutely everything converges, and everything coexists. The reality is that our communities sit at the intersection of local, state, national and international policy, and as a result, our communities are complex. Our families are complex. It's perfectly normal to find a U.S. Border Patrol Agent with a non-citizen grandmother that he or she visits over the weekend in Matamoros, our sister-city in Mexico, or even siblings that aren't all U.S. citizens and fear being separated from each other should an immigration official happen to learn about their status. But we are a community, regardless of immigration status or political ideologies, and we believe in the United States as a place where every single one of us has the opportunity to be who we are meant to be. The justices who sit on the Supreme Court will have an enormous impact on the rights of those in our community, determining the course of policies that have the potential to harm, divide and violate the constitutional rights of our community members.

I was born and raised in south Texas and it has shaped who I am as an American and the practice that I have developed as an attorney. I became licensed to practice law in the state of Texas in December 2013, and was admitted into the United States District Court of the Southern District of Texas in August 2014. I am fluent in two languages, English and Spanish. I am currently in private practice at Garza & Garza Law, PLLC in Brownsville, Texas with my brother and law partner, Myles R. Garza. I have chosen to focus my practice on working with some of the most vulnerable members of our community – children, immigrants, and victims of violence – through the areas of immigration, family and criminal law.

Prior to entering private practice, I worked exclusively with unaccompanied minors (or Unaccompanied Alien Minors or “UACs”) at a legal services provider that assisted nearly 2,000 children in immigration facilities at any given point in time throughout the Rio Grande Valley. I worked with hundreds of children fleeing violence and persecution in their home countries, children that had been brutalized, raped, tortured, and abandoned. I have represented numerous children in state court proceedings, immigration removal proceedings, and before U.S. Citizenship and Immigration Services. I am well versed in various forms of legal relief available to immigrant children, including T Nonimmigrant Status for victims of human trafficking, U Nonimmigrant Status for victims of crimes, Special Immigrant Juvenile Status for children that have been abused, abandoned or neglected by their parents, and Asylum. I am also very knowledgeable of the experience UACs go through in trying to find a sponsor and navigating their detention in the federally-funded facilities contracted by the Office of Refugee Resettlement (ORR), a division of the Department of Health and Human Services (HHS).

Since entering private practice, I have expanded my work into other areas of Texas family law, including Ad Litem work. In this work, I am appointed by state court judges to represent children in state court proceedings, either as an attorney ad litem to represent their *express interests* or as a guardian ad litem to represent their *best interests*, and work entirely at the discretion of the court, or until the appointing court releases me of these duties. Ad Litem work can revolve around a variety of situations, such as divorce, custody, personal injury, and judicial bypass, but all involve providing representation to children because our state legal system recognizes their vulnerability. This is in sharp contrast to how children are treated in immigration proceedings, where often the stakes are higher for children seeking protection from extreme, violent situations, and is where Jane Doe’s story begins.

II. Jane Doe

Jane said it best: “My name is not Jane Doe, but I am a Jane Doe.”

Jane was 17 when she left her home in Central America, where she was physically abused by her parents, and traveled thousands of miles to seek safety in the United States. She crossed through Mexico, a dangerous journey for anyone but particularly for a young woman, given the high rates of sexual assault women and girls commonly face during this journey. She did not speak English. In early September 2017, she arrived in the United States, with the hope of a better life. As she later said in her own words, “[m]y journey wasn’t easy, but I came here with hope in my heart to build a life I can be proud of.” She came to this country with the dream that it would give her the opportunity to be who she was meant to be.

Because she was a minor arriving in the United States without a parent or legal guardian, she was designated a UAC and transferred into the custody of ORR pursuant to the regulations under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). It was when she was placed at a facility for immigrant children in the Rio Grande Valley that she learned she was pregnant. Jane immediately knew she did not wish to proceed with the pregnancy and expressed her wish to terminate her pregnancy to the facility staff.

ORR and its grantees are legally required to provide UACs with access to the full range of medical care. While facilities are responsible for day-to-day needs, they do so under the direction of ORR and must report to ORR when a UAC seeks certain types of health care, such as an abortion. While ORR had legal custody of Jane, the facility had physical custody of her and was responsible for transporting her to court and health care services. Because Jane expressed a desire to terminate her pregnancy, her request was elevated up the chain at ORR, and Jane was singled out for different treatment.

Under a new policy developed by ORR Director Scott Lloyd, ORR directed the facility to force Jane to undergo so-called “life affirming” pregnancy counseling at a “crisis pregnancy center,” in direct opposition to her expressed wishes. Crisis pregnancy centers are religiously-affiliated, oppose abortion and often provide inaccurate medical information to patients seeking abortion. The center Jane was forced to go to at ORR’s direction not only conducted a medically unnecessary sonogram that she was forced to look at, but also imposed their own religious beliefs on her, as she described “they prayed for me” at the clinic. As Jane later said, “People I don’t even know are trying to make me change my mind. I made my decision and that is between me and God.”

In Texas, minors seeking to terminate their pregnancies must obtain parental consent or a “judicial bypass,” which is an order from a state court allowing the minor to consent to the procedure on her own. When a judicial bypass case is filed, the court appoints the minor a guardian ad litem to investigate and report whether it is in the minor’s best interest to consent to the procedure on their own and without the involvement of their parent or legal guardian, and an attorney ad litem to represent the minor’s express interests in seeking the bypass order. Courts tend to appoint attorneys that have a family law background and are well-versed in working with children because Ad Litem work is so specialized. That is why I was appointed Jane’s guardian ad litem and, a fellow local attorney, Christine Cortez was appointed Jane’s attorney ad litem.

After I was appointed, I was contacted by Susan Hays, the legal counsel for Jane’s Due Process, a nonprofit organization that works with a state-wide network of attorneys to ensure that pregnant minors in Texas have legal representation to help exercise their decisions. Ms. Hays informed me that Jane’s Due Process had been assisting this Jane with gaining access to the Texas courts to pursue a judicial bypass. What followed over the next month was a surprising twist of events that I would never have imagined.

I will never forget meeting Jane for the first time. It was a Saturday. I was with Christine Cortez, Jane’s attorney ad litem. We had been notified of our appointments late the day before, but had just enough time to arrange a visit with Jane to prepare for her judicial bypass hearing the following Monday, September 25. Ms. Cortez and I checked in with the security guard at the facility. When we walked into the main office I saw a teen girl sitting and waiting. She looked younger than 17, in part because she was so very tiny. It didn’t even enter my mind that she was our client, Jane, but she was. I soon learned that her real name was not Jane, and neither her voice nor resolve were tiny. She was very clear about her decision to terminate her pregnancy and in spite of the coercion tactics used against her that morning at the crisis pregnancy center. We explained the law around judicial bypass, our roles, and the process for enacting her choice in Texas.

I saw Jane again on the morning of September 25 at her judicial bypass hearing. She looked well. While escorting her, I was shocked to be confronted by an ORR representative who attempted to disrupt and enter the proceedings. The ORR representative explained that she was Jane's legal guardian and insisted she had a right to be present during the hearing. This was untrue—judicial bypass proceedings are completely confidential and *ex parte* by nature. They are initiated by a minor with the express purpose of not involving their parents or legal guardian in their abortion decision. I told the ORR representative that she absolutely did not have a right to be present for this hearing. This interaction would foreshadow what was to come and how Jane was to be treated in the facility at ORR's direction.

Jane received her bypass order that same day, allowing her to proceed with enacting her abortion decision confidentially, without the involvement of her parents or ORR. Because Texas also requires anyone seeking an abortion to receive counseling and a mandatory ultrasound at least 24 hours before the procedure, we then needed to schedule two appointments: one for the counseling and the other for the abortion. So, we arranged her appointments for September 28 and 29 and, because Jane was indigent and in detention, we confirmed the medical costs would be paid for through a private, non-governmental source. At this point, Jane was about 11-12 weeks pregnant. When I tried to arrange for the facility to transport Jane to the clinic, however, I was surprised to find that the Department of Justice had stepped in, taking over communications for ORR and the facility. The DOJ made it clear: their client, ORR, would not allow the facility to transport Jane for her medical appointments or allow Christine and I, as Jane's Ad Litem, to transport her. The facility staff confirmed this on the morning of September 28, when Christine and I met with them to see if this Texas-licensed child-care facility would comply with Texas state court orders. To my surprise, at ORR's direction, their answer was no.

Jane was a *Jane*—a pseudonym used for a pregnant minor in need of an abortion who cannot obtain parental consent. She had all the rights and deserved all the protections of any Jane in the state of Texas—but what followed was treatment that would be considered child abuse under any other circumstance. Completely at the mercy of the facility and ORR, Jane was explicitly prevented from accessing abortion. Against Jane's objections and in violation of the Texas court's judicial bypass order, workers at the facility told Jane's mother that she was pregnant and wanted an abortion. They harassed Jane daily, sometimes multiple times per day, pressuring her to call her mother and tell her what was happening. This was despite Jane's disclosure that when her older sister had become pregnant, her parents had beaten her with firewood and cables to the point that her sister miscarried, and Jane was also beaten when she tried to intervene. The staff also forced her to undergo and view additional unnecessary sonograms in order to shame her and pressure her to change her mind. They asked what she was going to name her child, knowing she didn't want to carry the pregnancy to term. The facility placed Jane on one-to-one constant surveillance, following her at all times. She was no longer allowed to exercise or to leave the facility on outings with her peers.

III. Fighting Back in Court

Despite this unbearable treatment, Jane was strong. She wanted to stand up for her rights, and she was determined not to be forced to carry the pregnancy to term against her will. And we were not going to allow a young woman to be abused this way.

So we fought back on her behalf. The American Civil Liberties Union (“ACLU”) and Jane’s Ad Litem filed separate suits to end the abuse inflicted on Jane. The ACLU pursued a lawsuit in the federal court in D.C. on my behalf as Jane’s guardian ad litem, and myself, Ms. Cortez, and later my law partner, Myles R. Garza, filed and pursued relief in Texas through the Texas Family Code. While I am represented by the ACLU in the litigation on Jane’s behalf, including those similarly situated, I submit this testimony on my own behalf and it should not be construed as ACLU endorsing or opposing Judge Kavanaugh as a Supreme Court nominee.

The ACLU raised the constitutional issues in federal district court, and sought an emergency temporary restraining order to allow Jane to have the abortion. The ACLU also sought a class action, and a preliminary injunction to prevent ORR from banning abortion for all other pregnant minors like Jane. The district court granted the temporary restraining order, and the government appealed. Judge Kavanaugh was on the three-judge panel on the U.S. Court of Appeals for the D.C. Circuit that considered the appeal.

Despite the fact that the Supreme Court has been clear for 45 years, since *Roe v. Wade*, that banning abortion is blatantly unconstitutional, Judge Kavanaugh did not affirm the district court’s order. Instead, he issued an order that would have allowed the government 11 more days to find a sponsor for Jane. However, the government had already tried and failed to find a sponsor for Jane for the previous six weeks, so there was no reason to think they could find one in the next 11 days. A sponsor, usually a family member, is someone in the United States who agrees to take care of a minor. The vetting process is strict, and includes a background check, fingerprints, and often a home visit to assess the sponsor’s suitability. And the process, including the length of time and whether the sponsor is approved, is entirely controlled by ORR. Short of filing a federal lawsuit, there isn’t even an appeals process for sponsors who are denied by ORR. Several sponsors had already been identified for Jane by the time the case reached Judge Kavanaugh, and each of those sponsors were denied or determined to be unsuitable by ORR.

Further, at the end of those 11 days, Judge Kavanaugh’s order wouldn’t guarantee that Jane could access abortion. Rather, it said that Jane would have to start her case all over again, and that the government could appeal. This could have taken weeks, and would have pushed Jane even further into her pregnancy. And because Texas bans abortion at 20 weeks, it presented a real danger that Jane may be forced to carry the pregnancy to term against her will.

The pain that this caused Jane is something I can’t even describe – knowing that her life’s path, whether she would be forced to carry a pregnancy to term, was completely in the hands of people she would never know made her feel desperate, hopeless, and alone. But we were still going to fight for her, and we still had legal options. Following Judge Kavanaugh’s order, the

ACLU asked the full appeals court to overturn Judge Kavanaugh's decision, and it did. Jane obtained the abortion on October 25 when she was 15 weeks pregnant.

Because of ORR's policy, Jane was forced to remain pregnant against her will for a full month from the time she obtained the judicial bypass required under Texas law. If the full appeals court had not overturned Judge Kavanaugh's decision, Jane would have been forced to delay her abortion even longer. In dissenting from the full court's decision, Judge Kavanaugh justified the delay that his order would have caused by claiming that Jane needed a "support network" in order to make "a major life decision." But Jane had already made her decision long before. She had already satisfied all of the requirements for any minor in Texas and a state court judge in Texas had issued an order that made clear that she could consent to the abortion on her own. Judge Kavanaugh also wrote that the full court majority would allow "immediate abortion on demand" for "unlawful immigrant minors." He ignored the many hurdles Jane had already overcome and the many weeks she had already waited to exercise her constitutional right—a right that does not depend on her immigration status. There were so many barriers placed in front of Jane; the additional hurdle Judge Kavanaugh placed in front of her was unjustifiable. If being completely at the mercy of the federal government and being denied the ability to access abortion isn't an undue burden, then I'd be hard pressed to imagine what might pass for one.

I was with Jane when she had the abortion. I saw the agony she went through while waiting to have the procedure, and the relief she experienced when she finally got the care she needed. As she said later, "[i]t has been very difficult to wait in the shelter for news that the judges in Washington, D.C. have given me permission to proceed with my decision." The relief I saw in her was anything but political or controversial; rather, it was a young woman relieved to have been able to make a decision that she knew was right for her at that moment in her life. Jane knew that this decision would enable her to be the person she wants to be and live the life she hopes to live. And she believed that no other girl in her situation should have to go through what she went through. As she said, "[n]o one should be shamed for making the right decision for themselves. I would not tell any other girl in my situation what they should do. That decision is hers and hers alone." In March 2018, because of Jane's perseverance and strength, the district court preliminarily enjoined ORR from engaging in the same tactics they used against her and protecting all young women in her position.

IV. Conclusion

Jane endured what no human being should have to, much less a young woman in detention. She was alone and completely under the physical control of the federal government and at the mercy of decision-makers that knew nothing of what it was like to be her. They did not see her face, as I did, every time I had to tell her that her care was being delayed again. They did not see her suffering and desperation. This suffering was only compounded by Judge Kavanaugh's decision to delay her abortion decision even further—a decision that could have resulted in her being forced to carry her pregnancy to term. It showed no real consideration for Jane or her circumstances.

I am and will always be in awe of Jane. She was put through an unimaginably difficult situation and one that would have broken almost any other person. But she possessed a profound

strength of character that saw her through it all. It was an honor to represent her, to be by her side, to be able to witness true perseverance, and to share that today with the Senate Judiciary Committee. I can think of nothing more human or more American than what I saw in Jane. Jane was ultimately released to a family member in January 2018, shortly before turning 18 years old. Knowing that she is living in the United States and pursuing the life she hoped for makes me feel a great sense of pride and hope, not only for her as an individual but also because of the impact her resolve is having and will have on young women in her situation. She was tiny but she ignited change, and just like she said: “This is my life, my decision. I want a better future. I want justice.”