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HOW OUR STORIES SHAPE OUR WORK: Fighting for the Heart of Texas

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Commission on Civil Rights



ABOUT THE AUTHOR

Rochelle Garza currently serves as President of the Texas Civil Rights Project, one of the most influential legal organizations dedicated to empowering Texas communities and creating policy changes in the state. Garza also serves as the youngest chair of the United States Commission on Civil Rights—the oldest independent and bipartisan commission in the U.S. created by the Civil Rights Act of 1957. She has fought for reproductive rights for immigrant teens in detention, including the *Garza v. Hargan* case, in which she was the guardian for Jane Doe, a pregnant 17-year-old denied the right to choose. Garza’s work on that case resulted in the “Garza Notice,” a federal requirement that ensures teens in immigration detention control their reproductive health care choices, which is still in effect today. Garza was selected to speak at the 2024 Latina Futures symposium to share her expertise on how abortion bans impact Latinas.

Garza graduated from the University of Houston Law Center and from Brown University with honors. She lives with her husband, Adam, their toddler daughter, and their dog, Ramses, in Brownsville, Texas.

INTRODUCTION:

ROBBY, MY BROTHER, IS WHY I BECAME AN ATTORNEY

As a child growing up on the Texas-Mexico border in Brownsville, my family's Sunday errands involved a trip across the international bridge into Matamoros, Mexico. I vividly remember looking out of the car window during one of these trips to see someone crossing the river. Once I got older, I realized the reality of how different someone's life can look based on which side of the river they were born on. Coming from a mixed-generational Mexican-American family, I take to heart the humanity in all of us, regardless of when or how we arrived in this country.

Overcoming adversity and relying on resilience were consistent threads woven through the fabric of my family's foundation. My parents met while they were both public school teachers. My father picked cotton and okra, before he ultimately became a lawyer and later served south Texas as an elected state district judge for 21 years. My mother stepped away from teaching to care for my oldest brother Robby, who suffered a brain injury during childbirth that resulted in lifelong disabilities. Robby couldn't walk, talk or speak, but he knew our voices and felt our love.

At a young age, I learned firsthand how our healthcare system is broken. I grew up watching my parents tirelessly advocate for Robby to receive the care he needed. One day, my mom brought Robby back from a doctor's appointment. My brother had a dislocated hip, the result of a physical therapist's refusal to believe that Robby was capable of feeling pain.

My mom and Robby sat with the doctor under the fluorescent lights of the hospital room, and he told her that, because of Robby's disabilities, it wasn't worth spending the money on the surgery he needed. The doctor said this in front of my brother, as if he didn't exist. Robby was 9 years old. In the doctor's eyes, my brother was not deserving of dignity, comfort, and care.

Our family heard the same thing from the insurance company when they told us they wouldn't pay for the wheelchair lift Robby needed to get to school. And we heard this from our Texas legislature every time

they took up a bill that made it harder for people in towns like ours to get health care.

I learned that there are people in positions of power who will look at someone like my brother and decide that it was just not worth the time to treat them like a person. I also learned that for every one of those people, there are people like my parents, like me, and families like ours, who will refuse to let anyone be denied their humanity.

Robby passed away right before I left for college, but his life will always remain with me. His passing was a pivotal moment in my life—one in which I reflected on the innumerable sacrifices my family made so I could be where I was at that moment. He is why I became an attorney and have spent my life fighting for people that those in power don't believe matter.

**MY LITIGATION WIN: THE “GARZA NOTICE” —
EVEN POST-*DOBBS*, TEENS IN IMMIGRATION DETENTION
CONTINUE TO HAVE ACCESS TO ABORTION CARE TODAY**

In 2017, as a private attorney, I represented Jane Doe, a 17-year-old detained immigrant who was denied her right to abortion by the Trump Administration.¹ This is what led me to take on, now U.S. Supreme Court Justice Brett Kavanaugh, in the only abortion case he heard as an appellate judge. Through this work, I not only took on Kavanaugh and the Trump Administration, but also Texas Attorney General, Ken Paxton—and WON!

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 who did not speak English. In early September 2017, she arrived in the United States. 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.”²

Because she entered the U. S. as a minor without a parent or legal guardian, she was placed into the custody of the Office of Refugee

¹ See Complaint for Injunctive Relief & Damages at 1, *Garza v. Hargan*, No. 17-cv-02122-TSC (D.D.C. Oct. 13, 2017), ECF No. 1.

² *Undocumented Teen has Abortion Amid Legal Battle*, CBS NEWS (Oct. 25, 2017, 4:01 PM), <https://www.cbsnews.com/news/undocumented-teen-has-abortion-amid-legal-battle/> [<https://perma.cc/5UHJ-4MTE>].

Resettlement (“ORR”) and transferred to a detention facility in south Texas. At her initial health screening, Jane learned she was pregnant and immediately requested termination. At the time, minors seeking to terminate their pregnancies in Texas were required to obtain parental consent or a “judicial bypass,” which is an order from a state court allowing them to consent to the procedure on their own.³ As part of this legal process, minors were appointed ad litem.⁴ It was through that legal process that I came to represent Jane as her guardian ad litem.

Little did I know that Jane would face unprecedented interference by the Trump Administration, or that now Supreme Court Justice Brett Kavanaugh would issue a decision while on the D.C. Circuit Court⁵ putting Jane at risk of carrying her pregnancy to term.⁶ In addition, Attorney General Ken Paxton not only revealed her location in a press release,⁷ but also led a coalition of 11 states in an amicus brief arguing that immigrants did not have a constitutional right to abortion.⁸

On September 25, 2017, Jane received a bypass order allowing her to proceed with her abortion decision confidentially. At the time, Texas required anyone seeking an abortion to receive counseling and

³ See *Bellotti v. Baird*, 443 U.S. 622, 643 (1979) (holding that the Fourteenth Amendment voids a state law requiring an unmarried minor to get the consent of both parents before proceeding with an abortion without also offering an alternative procedure through a court order); Tex. Fam. Code Ann. § 33.003 (West, Westlaw through 2023 4th Called Sess.).

⁴ Texas’ state court system recognizes the special vulnerabilities of children that must appear before them and use an ad litem system to have attorneys and other qualified individuals represent the interests of children in proceedings before them. 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. Attorney ad litem are licensed attorneys appointed to represent the *express* interests of the child and owe “undivided loyalty, confidentiality, and competent representation,” while guardian ad litem represent the “*best interests* of a child.” Tex. Fam. Code Ann. §§ 107001(2), (5) (West, Westlaw through 2023 4th Called Sess.).

⁵ See Recent Case, *Garza v. Hargan*, 874 F.3d 735 (D.C. Cir. 2017) (*en banc*) (*per curiam*), 131 HARV. L. REV. 1812, 1813–14 (2018).

⁶ See *Testimony of Rochelle M. Garza Managing Attorney, Garza & Garza Law, PLLC: Hearing on the Nomination of Brett Kavanaugh to the Supreme Court of the United States Before the Comm. On the Judiciary*, 115th Cong. 1063–1069 (2018).

⁷ *AG Paxton: Texas Must Not Become a Sanctuary State for Abortions*, KEN PAXTON ATT’Y GEN. OF TEX. (Oct. 10, 2017), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-texas-must-not-become-sanctuary-state-abortions> [<https://perma.cc/QAL6-ZKEZ>].

⁸ See *AG Paxton Leads 11-State Coalition in Brief to Defend Federal Immigration Laws and Protect Unborn Children*, KEN PAXTON ATT’Y GEN. OF TEX. (Dec. 18, 2017), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-leads-11-state-coalition-brief-defend-federal-immigration-laws-and-protect-unborn-children> [<https://perma.cc/E33S-ESPV>].

a mandatory ultrasound at least 24 hours before the procedure to be performed by the same physician. Although Jane had complied with the rules and requirements, she was prevented from leaving the detention facility by the Trump Administration to attend counseling, and, later, her procedure.

While in custody, Jane was subject to coercion and harassment that would be considered child abuse under any other circumstance. She was given “life affirming” pregnancy counseling at a “crisis pregnancy center” and endured medically unnecessary sonograms that she was forced to look at as a means of shaming and pressuring her to change her mind. The detention facility staff asked what she was going to name her child, knowing she didn’t want to carry the pregnancy to term, and placed her on one-to-one constant surveillance, following her at all times. She was not allowed to exercise or leave the facility on outings with her peers. And 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. These workers harassed Jane daily, sometimes multiple times per day, pressuring her to speak with her mother. The workers did this despite Jane’s disclosure of severe abuse at home—Jane witnessed her parents beat her older sister into miscarriage when they learned of the pregnancy, and Jane was beaten for trying to stop them.

Despite this unbearable treatment at the facility, Jane wanted to stand up for her right to choose her own course in life, to not be forced to become a parent against her will. The American Civil Liberties Union (ACLU) and our Texas Ad Litem team 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, Christine Cortez, a family law attorney, and law partner at the time, Myles R. Garza, filed for relief in Texas under the Texas Family Code. 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.

Foreshadowing the *Dobbs* decision that he would later decide as a U.S. Supreme Court Justice, Judge Kavanaugh ignored 45 years of legal precedent set by *Roe v. Wade* and did not affirm the district court's order.⁹ Instead, he gave ORR and the Trump Administration 11 more days to find someone to sponsor her—a process entirely controlled by ORR.¹⁰ Further, at the end of those 11 days, Jane would have to start her case all over again, which the government could appeal.¹¹ This could have taken weeks and presented a real danger that she would be forced to carry the pregnancy to term against her will.

Following Judge Kavanaugh's order, the ACLU asked the full appeals court to overturn Judge Kavanaugh's decision, and it did.¹² Against all odds we won. Jane obtained the abortion on October 25, 2017, when she was 15 weeks pregnant, and I was there by her side.

Jane had won her right, but also secured that right for so many others in her situation. The case resulted in the "Garza Notice," which requires the federal government to notify teens in immigration detention of their right to control their reproductive health care choices.¹³ The impact still holds today. In our post-*Dobbs* country, teens in immigration detention still have access to abortion care today, even if they find themselves in Texas where abortion has been banned since September 2021.¹⁴

⁹ See Order at 1, *Garza v. Hargan*, No. 17-cv-02122-TSC (D.D.C. Oct. 20, 2017), Doc. No. 1700704; *Dobbs v. Jackson Women's Health Org.*, 597 U. S. 215, 336–47 (2022) (Kavanaugh, J., concurring).

¹⁰ See Order, *supra* note 9, at 1–2.

¹¹ See *id.*

¹² See *Garza v. Hargan*, 874 F.3d 735, 736 (D.C. Cir. 2017) (per curiam), *cert. granted*, and *vacated sub nom. Azar v. Garza*, 138 S. Ct. 1790 (2018).

¹³ Also referred to as the "Garza Requirements." See Joint Stipulation of Dismissal Without Prejudice, *J. D. v. Azar*, No. 1:17-cv-02122-TSC (D.D.C. Sep. 29, 2020), ECF No. 168; ADMIN. FOR CHILD. & FAMS., OFF. OF REFUGEE RESETTLEMENT, FIELD GUIDANCE #21 – COMPLIANCE WITH *Garza* REQUIREMENTS FOR PREGNANT UNACCOMPANIED CHILDREN IN TEXAS 2–3 (2021), <https://www.acf.hhs.gov/sites/default/files/documents/orr/FG-21-SB-8-and-Garza.pdf> [<https://perma.cc/UBV6-XRRC>].

¹⁴ See ADMIN. FOR CHILD. & FAMS., *supra* note 13, at 2–3.

**“MIJITA, NO ONE IS GOING TO GIVE YOU ANYTHING IN THIS LIFE.
YOU HAVE TO GO OUT AND TAKE IT.”**

In September 2018, I testified before the U.S. Senate Judiciary Committee on the nomination of then-Judge Brett Kavanaugh’s appointment to the U.S. Supreme Court. I described how his refusal to adhere to Supreme Court precedent on the constitutional right to abortion could have forced Jane to become a parent against her will and the reality that he would likely support overturning *Roe*, which he did.

I continued to fight for civil rights along the border following the Jane Doe case, including representing families that were separated by the Trump Administration and forced into the “Remain in Mexico”¹⁵ program. Through my work, I realized that nothing will change until we elect new leadership. Latinos represent 40.2 percent of the Texas population compared to the non-Latino white population who make up 39.8 percent,¹⁶ yet don’t have the representation in state and federal elected office to facilitate the changes communities are seeking to have addressed.¹⁷ Currently in the Texas Legislature, there are 46 Hispanic-identifying individuals out of 181 seats.¹⁸ That is 27 seats less than a proportional share.

¹⁵ The “Remain in Mexico” program was a Trump era policy that forced nearly 70,000 immigrants, including pregnant women, children, and families to live in Mexico while their asylum cases proceeded in the United States. It was unprecedented and resulted in shanty, makeshift tents on the Mexican side of the U.S.-Mexico border, as well as family separation and the disappearance, extortion and murder of numerous asylum seekers. See AM. IMMIGR. COUNCIL, THE “MIGRANT PROTECTION PROTOCOLS”: AN EXPLANATION OF THE REMAIN IN MEXICO PROGRAM 1 (2024), https://www.americanimmigrationcouncil.org/sites/default/files/research/migrant_protection_protocols_2024.pdf [<https://perma.cc/8K5M-BVDH>]; Sofia Ahmed, *Explainer: What is the Trump-era ‘Remain in Mexico’ Program the Supreme Court Said Biden Could End?*, REUTERS (June 30, 2022, 1:10 PM), <https://www.reuters.com/world/us/what-is-trump-era-remain-mexico-program-supreme-court-said-biden-can-end-2022-06-30/> [<https://perma.cc/H6CV-933U>]; HUM. RTS. FIRST, FATALLY FLAWED: “REMAIN IN MEXICO” POLICY SHOULD NEVER BE REVIVED 7–10 (2022), <https://humanrightsfirst.org/wp-content/uploads/2022/10/FatallyFlawed.pdf> [<https://perma.cc/6DZR-4D37>].

¹⁶ See *Quick Facts, Texas*, U. S. CENSUS BUREAU (Apr. 1, 2010), <https://www.census.gov/quickfacts/fact/table/TX/POP010210> [<https://perma.cc/LDF9-G6UY>].

¹⁷ See Ashley Lopez, *Latinos are Texas’ Largest Ethnic Group, but That Doesn’t Equate to Political Power*, NPR (Aug. 11, 2023, 5:07 PM), <https://www.npr.org/2023/08/11/1193534599/latinos-are-texas-largest-ethnic-group-but-that-doesnt-equate-to-political-power> [<https://perma.cc/AY8A-E75Y>].

¹⁸ See Alexa Ura & Carla Astudillo, *In 2021, White Men Are Still Overrepresented in the Texas Legislature*, THE TEXAS TRIB. (Jan. 11, 2021), <https://apps.texastribune.org/features/2020/2021-texas-legislature-representation/> [<https://perma.cc/55GX-3QRV>].

So, I decided it was time for a change. Growing up, my father often told me, “Mijita, no one is going to give you anything in this life. You have to go out and take it.” That’s exactly what I aimed to do when I ran for Attorney General of Texas in 2022, while becoming a mother for the first time in the middle of a runoff election. I was the only person of color on the statewide ballot in Texas and the first Latina to ever be nominated to run for Attorney General in Texas’ history.

Even though our campaign didn’t win, we received the highest percentage of the vote on the entire Democratic statewide ticket and helped elect women down the ballot in Harris and Collin counties. Which goes to show—representation matters and more women of color across the country should be encouraged to run at all levels of government.

I am now the President of Texas Civil Rights Project (“TCRP”), one of the largest legal nonprofit organizations in Texas. We are committed to empowering Texas communities and driving policy changes in the state across three key areas: voting rights, criminal injustice, and immigration/border issues.

In 2023, the TCRP team secured much needed wins for democracy in Texas. One example is our Galveston County Redistricting case.¹⁹ A Trump-appointed judge found that the 2021 Galveston County precinct map violated the Voting Rights Act and unconstitutionally denied “Black and Latino voters the equal opportunity to participate in the political process and the opportunity to elect a representative of their choice.”²⁰ The proposed map had eliminated the *only* Black and Latino majority district, and the Court ordered the county to redraw the map.²¹ While it was appealed and is pending rehearing before the Fifth Circuit,²² we remain steadfast in our fight for fair representation. In the past, TCRP has had a huge impact in the state by winning cases that have led to access to online voting registration and blowing the whistle on Trump’s family separation policies at the border.

¹⁹ See Caroline Wilburn, *Federal Judge Rules Galveston County Commissioner Maps Violate Voting Rights Act*, THE TEXAS TRIB. (Oct. 13, 2023), <https://www.texastribune.org/2023/10/13/galveston-county-redistricting-case/> [<https://perma.cc/V99M-S9QK>].

²⁰ *Id.*

²¹ See *id.*

²² See Amy Howe, *Supreme Court Won't Block New Maps for Galveston County*, SCOTUSBLOG (Dec. 12, 2023, 6:24 PM), <https://www.scotusblog.com/2023/12/supreme-court-wont-block-new-maps-for-galveston-county/> [<https://perma.cc/2NVN-CTSM>]; Petteway v. Galveston Cnty., 87 F.4th 721, 723 (5th Cir. 2023).

I also have the honor of being appointed by President Biden as Chair of the U.S. Commission on Civil Rights (USCCR). I'm the youngest Chair in the history of one of the oldest commissions and only the second Latina to serve as Chair. The USCCR was created in 1957 and is the nation's oldest bipartisan commission. USCCR's mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws.

My work has always been and will continue to be guided by my brother Robby's life and influence on my understanding that the fight for civil rights and liberties is, at its core, a fight for human dignity. It is about each of us deserving the right to be recognized as an individual, and the vehicle for that recognition is through the law. After all, the law is only a tool—it can build, or it can destroy—and I want to use it to build a state and country that is big enough for all of us.



FIGURE 1: CLLR Chief Articles Editor, Luz Murillo, and Rochelle Garza at the 2024 Latina Futures symposium.



FIGURE 2: Rochelle Garza standing in the middle of the Murguía sisters— Chief Judge of the Ninth Circuit, Mary Murguía, and UnidosUS President, Janet Murguía—at the 2024 Latina Futures symposium.