



napawf **voice**
NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM
IN OUR OWN
National Black
Women's
Reproductive Justice
Agenda



**NATIONAL LATINA
INSTITUTE FOR
REPRODUCTIVE HEALTH**
Salud | Dignidad | Justicia

Senator Chuck Grassley, Chairman
Senate Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Senator Dianne Feinstein, Ranking Member
Senate Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of Brett Kavanaugh
Associate Justice of the Supreme Court Hearing

August 31, 2018

Dear Chairman Grassley, Ranking Member Feinstein and Members of the Senate Committee on the Judiciary:

The National Latina Institute for Reproductive Health, In Our Own Voice: National Black Women's Reproductive Justice Agenda, the National Asian Pacific American Women's Forum and over 30 reproductive justice organizations and allies who joined an amicus brief in *Azar v. Garza*, appeal to you to oppose the confirmation of Judge Kavanaugh to the United States Supreme Court.

Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-determination.

Many of us joined an amicus brief in *Azar v. Garza*, a D.C. Circuit Court case concerning an immigrant minor whom the federal government blocked from accessing abortion care. As reproductive justice organizations and allies of reproductive justice, we demand people of all ages and immigration statuses have access to the comprehensive health services they need and desire, including abortion care. We are horrified by the facts in the *Garza* case and the positions Judge Kavanaugh took when the case reached his court. Therefore, we cannot remain silent as Judge Kavanaugh is considered for a seat on the highest court in our country.

Judge Kavanaugh's order and dissenting opinion in *Garza v. Hargan* show he is willing to strip power from immigrants by taking away their control over their personal autonomy and that of their families.¹ Under

¹ *Garza v. Hargan*, No. 17-5236, 2017 WL 9854552, at *1 (D.C. Cir. Oct. 20, 2017); *Garza v. Hargan*, 874 F.3d 735 (D.C. Cir. 2017) (en banc) (Kavanaugh, J. dissenting).



the current President, thousands of children and pregnant people are detained under dangerous and unlawful conditions.² Confirming Judge Kavanaugh would further this administration's complete disregard for the health, safety, and humanity of immigrants.

Garza involved an unaccompanied immigrant minor, Jane Doe, who discovered she was pregnant while she was detained in a federally-funded Office of Refugee Resettlement shelter in Texas.³ Jane requested an abortion and, as required for minors under Texas law, applied for a judicial bypass with the help of an attorney and appointed guardian.⁴ A judge granted her application, determining that Jane could consent to the abortion herself.⁵ The federal government nonetheless refused to allow Jane to travel to a clinic.⁶

Jane filed a constitutional challenge, and Judge Kavanaugh had the opportunity to weigh in when it was appealed to a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit. Judge Kavanaugh voted to block Jane's abortion for at least 11 more days. He argued that the government could block her abortion if it could find a sponsor who would remove her from custody "expeditiously,"⁷ despite the fact that the government had already failed to find a sponsor for six weeks. His decision would have forced Jane to continue an unwanted pregnancy for nearly two additional weeks, after the government had already forced her to continue the pregnancy for four weeks. Thus, Judge Kavanaugh's decision was cruel and inhumane. It was a violation of Jane's constitutional and human rights, and demonstrates his willingness to allow the government to callously exploit its power to control immigrant's bodies.

Jane immediately appealed to the full D.C. Circuit Court. The full Court of Appeals reversed the panel and ordered that she be permitted to obtain the abortion without additional delay.⁸ However, Judge Kavanaugh's dissent insisted that the government's policies and actions did not violate Jane's constitutional right to an abortion. He ignored that Jane had already been blocked from obtaining an abortion for almost four weeks; that finding a sponsor was often a lengthy process and that two possible sponsors had fallen through; that Jane had already successfully gone through the judicial bypass process; and that the government would play no role in facilitating the abortion. All the government needed to do was simply allow Jane to use private funds and logistical support that she already arranged for herself to receive abortion care. Judge Kavanaugh's decisions demonstrate that his confirmation would gravely endanger both reproductive rights and the constitutional rights of immigrants.

In coming years, the Supreme Court will address an array of immigration cases with long-term effects. Judge Kavanaugh's extensive judicial record shows anti-immigrant bias and has the potential of penetrating far-reaching aspects of our lives—specifically the lives of communities of color and immigrant families.⁹

² See Devlin Barret, Trump admin. May seek to detain migrant families longer than previously allowed, Washington Post (Jun. 29, 2018), available https://www.washingtonpost.com/world/national-security/trump-administration-plans-to-detain-migrant-families-for-months/2018/06/29/f9ffecb6-7bf7-11e8-93cc-6d3becdd7a3_story.html?utm_term=.b6d59e84863f; see also Amy Taxin, *Immigrant children describe treatment in detention ctr.*, AP News (Jul. 18, 2018) available <https://apnews.com/1a8db84a88a940049558b4c450dccc8a>.

³ *Garza*, 874 F.3d at 753.

⁴ *Id.* at 737.

⁵ *Id.*

⁶ *Id.*

⁷ *Garza v. Hargan*, No. 17-5236, 2017 WL 9854552, at *1 (D.C. Cir. Oct. 20, 2017), vacated in part on reh'g en banc, 874 F.3d 735 (D.C. Cir. 2017).

⁸ See supra note 3.

⁹ See e.g., *Fogo de Chao Inc. v. Dep't of Homeland Sec.*, 769 F.3d 1127 (D.C. Cir. 2014) (Kavanaugh, J., dissenting); *Agri Processor Co. v. N.L.R.B.*, 514 F.3d 1 (D.C. Cir. 2008).



In addition to his decision in *Azar v. Garza*, Judge Kavanaugh's dissents in other cases regarding immigrants concern us. In his dissent in *Fogo De Chao Inc. v. Department of Homeland Security*, Judge Kavanaugh opposed granting special visas for Brazilian workers with specific culinary skills, claiming they had no specialized knowledge for the purpose of the visa program and that immigrant workers displace U.S. workers.¹⁰ His argument wrongfully framed hiring practices that are inclusive of immigrants as being at the expense of U.S. citizens.¹¹ In *Agri Processor Company v. National Labor Relations Board*, Judge Kavanaugh argued a union election was void because undocumented immigrant workers who voted in the election "tainted" the election with their vote.¹² Contending that undocumented immigrant workers are not "employees" protected under the National Labor Relations Act, Kavanaugh's opinion reflects a disregard for the rights of immigrant workers. We are concerned that he will soon unfavorably weigh in on the future of the Deferred Action of Childhood Arrivals program, the indefinite detention and separation of immigrant children and families, and raids on immigrant communities. These issues are extremely important to our communities and would tremendously impact our ability to live with dignity and without fear of violence or family separation.

Our communities already face extreme disparities, including high rates of uninsurance and poverty, barriers to linguistically and culturally competent care, and other inequities.¹³ Additionally, our communities experience bias and discrimination due to language, religion, immigration status, race, ethnicity, gender identity, sexual orientation, as well as other forms of discrimination.

The government should value the lives of all people, including people of all ages, immigrants, and people living with low-incomes. The government should not have the power to intimidate or coerce anyone seeking abortion care. Yet, the current administration has grossly exploited its power and has interfered with the rights of immigrants and young people to make decisions about their health, families, and futures with dignity. Judge Kavanaugh has condoned these assaults on fundamental rights and must be held responsible for his record in this area.

The stakes keep growing for people of color, immigrants, and people living with low-incomes. We hope you share our deep concerns regarding the harmful impact his confirmation will have on our communities, and we request that you oppose the nomination of Judge Kavanaugh.

Sincerely,

¹⁰ *Fogo de Chao Inc. v. Dep't of Homeland Sec.*, 769 F.3d 1127, 1152 (D.C. Cir. 2014) (Kavanaugh, J., dissenting).

¹¹ *Id.*

¹² *Agri Processor Co. v. N.L.R.B.*, 514 F.3d 1, 11 (D.C. Cir. 2008) (Kavanaugh, J., dissenting).

¹³ See e.g., National Women's Law Center, *Despite Job Growth, Black and Latina Women are Still being Left Behind* (Mar., 10, 2017) available <https://nwlcc.org/blog/despite-job-growth-black-and-latina-women-are-still-being-left-behind/>; See also, Nat'l Asian Pacific Am. Women's Forum, *Achieving Pay Equity for Asian Am. & Pacific Islanders* (Mar. 2017) available https://www.napawf.org/uploads/1/1/4/9/114909119/epd_fact-sheet_final.pdf; See, Nat'l Asian Pacific Am. Women's Forum, *Ensuring Health Access and Equity for Immigrant Asian. Am. & Pacific Islander Women* (Mar. 2015) available https://www.napawf.org/uploads/1/1/4/9/114909119/aapiwomenhealthaccessequity_issuebrief2015.pdf; See also, Henry J Kaiser Family Foundation, *Uninsured Rates for the Nonelderly by Race/Ethnicity* (2016) available <https://www.kff.org/uninsured/state-indicator/rate-by-raceethnicity/?currentTimeframe=0&selectedDistributions=black&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.



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Advocates for Youth
American Association of University Women (AAUW)
Black Women for Wellness Action Project
Black Women's Health Imperative
California Latinas for Reproductive Justice
Colorado Organization for Latina Opportunity and Reproductive Rights
Center for Reproductive Rights
Desiree Alliance
Forward Together
Hispanic Federation
If/When/How: Lawyering for Reproductive Justice
In Our Own Voice: National Black Women's Reproductive Justice Agenda
LatinoJustice PRLDEF
Legal Voice
NARAL Pro-Choice America
National Abortion Federation
National Asian Pacific American Women's Forum
National Institute for Reproductive Health (NIRH)
National Latina Institute for Reproductive Health
National Network of Abortion Funds
National Partnership for Women & Families
National Women's Law Center
New Voices for Reproductive Justice
Oklahoma Call for Reproductive Justice
Positive Women's Network - USA
SIA Legal Team
SisterReach
SisterSong Women of Color Reproductive Justice Collective
Southwest Women's Law Center
Tewa Women United
URGE: Unite for Reproductive & Gender Equity
Women With A Vision, Inc
Women's Law Project
Young Women United