



[Garza v. Hargan](#)

United States Court of Appeals for the District of Columbia Circuit

October 20, 2017, Filed

No. 17-5236

Reporter

2017 U.S. App. LEXIS 20711 *

Rochelle Garza, as guardian ad litem to unaccompanied minor J.D., on behalf of herself and others similarly situated, Appellee v. Eric D. Hargan, Acting Secretary, Health and Human Services, et al., Appellants

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Subsequent History: Vacated by, Rehearing, en banc, granted by, Stay denied by, Remanded by [Garza v. Hargan, 874 F.3d 735, 2017 U.S. App. LEXIS 20911 \(D.C. Cir., Oct. 24, 2017\)](#)

Prior History: [*1] 1:17-cv-02122-TSC.

[Garza v. Hargan, 2017 U.S. Dist. LEXIS 175415 \(D.D.C., Oct. 18, 2017\)](#)

Counsel: For Rochelle Garza, as guardian ad litem to unaccompanied minor J.D., on behalf of herself and others similarly situated, Plaintiff - Appellee: Brigitte Amiri, American Civil Liberties Union, New York, NY; Arthur B. Spitzer, American Civil Liberties Union of the National Capital Area, Washington, DC; Daniel Mach, American Civil Liberties Union National Legislative Office, Washington, DC.

For Eric D. Hargan, Acting Secretary, Health and Human Services, Stephen Wagner, Acting Assistant Secretary, Administration for Children and Families, Scott Lloyd, Director, Office of Refugee Resettlement, Defendant - Appellants: Catherine H. Dorsey, Attorney, U.S. Department of Justice, Office of the Attorney General, Washington, DC; Alexander Haas, U.S. Attorney's Office, (USA) Civil Division, Washington, DC; Benjamin M. Shultz, Attorney, U.S. Department of Justice, Civil Division, Appellate Staff, Washington, DC.

For State of Arkansas, State of Louisiana, State of Michigan, State of Missouri, State of Nebraska, State of Ohio, State of Oklahoma, State of South Carolina, State of Texas, Amicus Curiae for Appellants: Scott Allen Keller, Solicitor, Office of the Attorney General, State [*2] of Texas, Austin, TX.

For Joshua David Hawley, Amicus Curiae for Appellant: Office of the Attorney General, State of Missouri, Jefferson City, MO; Scott Allen Keller, Solicitor, Office of the Attorney General, State of Texas, Austin, TX.

Judges: BEFORE: Henderson,* Kavanaugh, and Millett,** Circuit Judges.

* Although Circuit Judge Henderson concurs in this order, her reasoning therefor will follow in a separate statement to be filed within five days of the date of this order.

** Circuit Judge Millett would deny the emergency motion for stay. A statement by Judge Millett, dissenting from the disposition of this case, will issue shortly.

Opinion

ORDER

Upon consideration of the emergency motion for stay pending appeal, the opposition, the supplement thereto, and the reply; the brief of amici curiae; the administrative stay entered on October 19, 2017; and the oral argument of the parties, it is

ORDERED that the administrative stay be dissolved. It is

FURTHER ORDERED that the District Court's temporary restraining order entered on October 18, 2017, be vacated as to paragraphs 1 and 2 of the order and that the case be remanded to the District Court.¹

The Government argues that, pursuant to standard HHS policy, a sponsor may be secured for a minor unlawful immigrant in HHS custody, including for a minor who is seeking an abortion. The Government argues that this process B by which a minor is released from HHS custody to a sponsor B does not unduly burden the minor's right under Supreme Court precedent to an abortion. We agree, so long as the [*3] process of securing a sponsor to whom the minor is released occurs expeditiously. Cf. [Planned Parenthood v. Casey](#), 505 U.S. 833, 899, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992); [Ohio v. Akron Center for Reproductive Health](#), 497 U.S. 502, 513, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990). The District Court is directed to allow HHS until Tuesday, October 31, 2017, at 5:00 p.m. Eastern Time for a sponsor to be secured for J.D. and for J.D. to be released to the sponsor. If a sponsor is secured and J.D. is released from HHS custody to the sponsor, HHS agrees that J.D. then will be lawfully able, if she chooses, to obtain an abortion on her own pursuant to the relevant state law. If a sponsor is not secured and J.D. is not released to the sponsor by that time, the District Court may re-enter a temporary restraining order, preliminary injunction, or other appropriate order, and the Government or J.D. may, if they choose, immediately appeal. We note that the Government has assumed, for purposes of this case, that J.D. B an unlawful immigrant who apparently was detained shortly after unlawfully crossing the border into the United States B possesses a constitutional right to obtain an abortion in the United States. It is

FURTHER ORDERED that the emergency motion for stay pending appeal be dismissed as moot.

Pursuant to [D.C. Circuit Rule 36](#), this disposition will not be published. The Clerk is directed to issue [*4] the mandate forthwith to the District Court.

Per Curiam

End of Document

¹ As both parties agree, we have jurisdiction over this appeal because the District Court's temporary restraining order was more akin to preliminary injunctive relief and is therefore appealable under [28 U.S.C. § 1292\(a\)\(1\)](#). See [Sampson v. Murray](#), 415 U.S. 61, 86 n.58, 94 S. Ct. 937, 39 L. Ed. 2d 166 (1974).