



July 21, 2022

United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way enthusiastically supports the nomination of Brad Garcia to be a judge on the Court of Appeals for the District of Columbia Circuit. He is a highly respected appellate litigator with a commitment to protecting the rights of all people, not just the wealthy and powerful. When confirmed, he will be the first Latino judge on the D.C. Circuit.

After receiving a B.A. from Johns Hopkins University in 2008, Garcia graduated from Harvard Law School with honors in 2011. He then clerked for D.C. Circuit Judge Thomas Griffith and Supreme Court Justice Elena Kagan. In 2013, he joined the Supreme Court and Appellate Litigation practice group at the firm of O'Melveny & Myers, eventually becoming a partner. He represented companies and nonprofit organizations. Over the years, Garcia worked extensively in areas such as administrative law, class actions, constitutional law, criminal law, ERISA, federal jurisdiction, insurance law, immigration law, and patent law. He presented oral arguments before the Supreme Court and several U.S. Courts of Appeal.

In early 2022, Garcia joined the Office of Legal Counsel at the Department of Justice as a deputy assistant attorney general. In this capacity, he advises the president and federal agencies on a variety of complex constitutional, statutory, and regulatory matters.

During his years of private practice, Garcia ably represented large clients who are well known, such as Samsung, Google, and Fidelity. But he also devoted about a quarter of his time to pro bono representation, often representing disadvantaged individuals without the resources to effectively vindicate their legal rights on their own.

Stoney Lester would be in prison now, unjustly, were it not for Garcia. Lester had been convicted of possessing crack cocaine. Because the trial court deemed him a “career offender,” the judge sentenced him to 22 years in prison. But later caselaw held that the “career offender” designation did not apply in cases like Lester’s. In fact, his sentence was a decade longer than the maximum that should have been applied. Acting without a lawyer, he asked a court to reduce his sentence. Even though the court acknowledged that the “career offender” designation had been wrong, it held that federal law barred it from considering Lester’s petition. On appeal, Lester had Garcia representing him pro bono. This time he succeeded. The Fourth Circuit called the sentencing error “sufficiently grave to be deemed a fundamental defect.”<sup>i</sup>

Lester was freed in 2019, seven years earlier than if he had not had Garcia's help. Garcia noted the importance of providing legal help to those like Lester without the means to vindicate their rights:

It's incredibly hard for inmates to challenge their sentences even when everyone agrees that the sentence was improper. There are just so many procedural barriers to getting release, even when it seems so profoundly unfair.<sup>ii</sup>

Individuals denied their religious freedom have also turned to Garcia for help. He gave pro bono representation to four Muslim individuals in federal prisons who were seeking halal meals. Garcia argued that their rights under the Religious Freedom Restoration Act were being violated. The litigation lasted several years and eventually led to a settlement favorable to the plaintiffs.<sup>iii</sup>

In another case, Garcia provided needed legal assistance to a mentally ill individual who had tried without success to vindicate his legal rights without a lawyer. Casey Dooley was an inmate in Pennsylvania with a substantial mental health impairment that he believed prison officials were failing to address. He sought help from the courts but, without a lawyer, his petition did not meet certain legal standards and was dismissed. On appeal, Garcia gave him pro bono representation before the Third Circuit and successfully argued that the lower court had wrongfully dismissed Dooley's petition.<sup>iv</sup>

In 2021, Garcia served as lead Supreme Court counsel for Refugio Palomar-Santiago, a legal permanent resident of the United States who had been deported in the 1990s due to a DUI conviction. A few years after the deportation, in a case involving someone else, the Supreme Court ruled that a DUI conviction is not a justification for deportation under the immigration laws. Palomar-Santiago later came back to the U.S. without documentation and faced criminal charges for reentering the country after having been ordered to leave. But he argued the prosecution itself was illegal, because his deportation had been invalid. Garcia unsuccessfully urged the Supreme Court to let Palomar-Santiago challenge the prosecution on that basis.<sup>v</sup>

Garcia recognizes that the erosion of any individual's legal rights threatens the rights of all people. For instance, in the context of immigration, he has stated:

As a matter of principle, ensuring that noncitizens are treated justly and fairly is essential to the rule of law.<sup>vi</sup>

Garcia has also co-authored several *amicus* briefs in important Supreme Court cases in his capacity as pro bono counsel for nonprofit organizations working on behalf of civil rights. For instance, he argued for the NAACP Legal Defense Fund that the "one person one vote" doctrine requires the counting of the entire population, not just eligible voters.<sup>vii</sup> He also argued for the Brennan Center that federal courts should hear challenges to overly partisan gerrymandering.<sup>viii</sup>

Our nation's judges should be fair-minded individuals with a demonstrated commitment to civil and human rights. Brad Garcia is just such an individual. We look forward to seeing him become the first Latino judge on the D.C. Circuit.

Sincerely,



Marge Baker  
Executive Vice President

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<sup>i</sup> *Lester v. Flourney*, 909 F.3d 708 (4th Cir. 2018).

<sup>ii</sup> *O'Melveny & Myers 2018-2019 Pro Bono Program Review*, p. 21, [https://www.omm.com/omm\\_distribution/pro\\_bono\\_program\\_review/2018-2019/23](https://www.omm.com/omm_distribution/pro_bono_program_review/2018-2019/23).

<sup>iii</sup> *Carr v. Fed. Bureau of Prisons*, No. 2:14-cv-00001-JMS-MJD, 2021 U.S. Dist. LEXIS 166086 (S.D. Ind. Aug. 13, 2021).

<sup>iv</sup> *Dooley v. Wetzel*, 957 F.3d 366 (3d Cir. 2020).

<sup>v</sup> *United States v. Palomar-Santiago*, 141 S. Ct. 1615 (2021).

<sup>vi</sup> Notes from award ceremony, 50th Anniversary Event, National Immigration Project, December 8, 2021, printed in Bradley N. Garcia's Attachments to Senate Judiciary Committee Questionnaire, p. 68.

<sup>vii</sup> *Amicus* brief of NAACP Legal Defense & Educational Fund in *Evenwel v. Abbott*, <https://www.scotusblog.com/wp-content/uploads/2015/10/Evenwel-NAACPbrief092515.pdf>.

<sup>viii</sup> *Amicus* briefs of Brennan Center for Justice at N.Y.U. School of Law in *Rucho v. Common Cause*, [http://www.supremecourt.gov/DocketPDF/18/18-422/91435/20190308175147173\\_1%20-%20Brennan\\_Center\\_Amicus\\_Brief\\_-\\_FINAL.pdf](http://www.supremecourt.gov/DocketPDF/18/18-422/91435/20190308175147173_1%20-%20Brennan_Center_Amicus_Brief_-_FINAL.pdf) and in *Gill v. Whitford*, <https://www.scotusblog.com/wp-content/uploads/2017/09/16-1161-bsac-brennan-center.pdf>.