Statement of Lieutenant Ben Vargas

Senator Leahy, Senator Sessions, and members of this Committee. It was truly an honor to be invited here. Senators of both parties have noted the importance of this Committee's duty in this process precisely because decisions of the United States Supreme Court can greatly impact the everyday lives of ordinary Americans. I suppose that I and my fellow plaintiffs have shown how true that is.

I never envisioned being a plaintiff in a Supreme Court case, much less one that generated so much media and public interest. I am Hispanic, and proud of the Heritage and background that judge Sotomayor and I share, and I congratulate Judge Sotomayor on this nomination. But the focus should have been on what I did to earn a promotion to Captain and how my own government and some courts responded to that. In short, they didn't care. I think it important for you to know what I did, that I played by the rules, and then endured a long process of asking the courts to enforce those rules.

I am the proud father of three young sons. For them, I sought to better myself. And so I spent 3 months in daily study preparing for an exam that was unquestionably job-related. My wife, a special education teacher, took time off from work to see me and our children through this process.

I knew I would see little of my sons during these months when I studied every day at a desk in our basement. So I placed photographs of my boys in front of me. When I would get tired and want to stop, I would look at the pictures, realize that their own futures depended on mine, and I would keep going. At one point, I packed up and went to a hotel for days to avoid any distractions. I took my boys' pictures with me.

I was shocked when I was not rewarded for this hard work and sacrifice but actually penalized for it. I became not Ben Vargas, the fire lieutenant who proved himself qualified to be a Captain, but a racial statistic. I had to make a decision – whether to join those who wanted promotions to be based on race and ethnicity or join those who would insist on being judged solely on their qualifications and the content of their character. I'm proud of the decision I made and proud of the principle that our group vindicated together.

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I do not want my sons to think their father became a Captain because he was Hispanic and used his ethnicity to get ahead. Worse still is to jump the line ahead of others who are more qualified. There is no honor in that.
In our profession, do not have the luxury of being wrong or having long debates. We must be correct the first time and make quick decisions under the pressure of time and rapidly unfolding events. Those who make these decisions must have the knowledge necessary to get it right the first time. Unlike the judicial system, there are no continuances, motions or appeals. Errors and delays can cost people their lives.

In our profession, the racial and ethnic make-up of my crew is the least important thing to us and to the public we serve. I believe the countless Americans who had something to say about our case understand that now.

Firefighters and their leaders stand between their fellow citizens and catastrophe. They want those who are the most knowledgeable and qualified to do this task. I am willing to risk and even lay down my life for my fellow citizens. But I was not willing to go along with those who place racial identity over these more critical considerations.

I am not a lawyer but I quickly learned about the law as it applied to this case, studying it as much as I studied for my exam. I thought it clear that we were denied our fundamental civil rights. I expected Lady Justice with the blindfolds on and a reasoned opinion from a federal court of appeals, telling me, my fellow plaintiffs and the public what that court's view on the law was and do it in an open and transparent way. Instead, we were devastated to see a one-paragraph unpublished order summarily dismissing our case and indeed even the notion that we had presented important legal issues to that court of appeals.

I expected the judges who heard my case along the way to make the right decision, the one required by the rule of law.

Of all that has been written about our case, it was Justice Alito who best captured our own feelings. We did not ask for sympathy or empathy. We asked only for even-handed enforcement of the law. And prior to the majority justices' opinion in our case, we were denied that.

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