DEEPENING THE DIVIDE: ABORTION BANS FURTHER HARM IMMIGRANT COMMUNITIES

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INTRODUCTION

Due to enduring xenophobic and racist policies, the United States has a long history of limiting abortion access in im/migrant communities.[1] Im/migrants must overcome deeply embedded systemic barriers in order to access abortion care. The 2022 Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* exacerbated these barriers, striking down federal protections on the right to an abortion granted in *Roe v. Wade* and created unprecedented harm by allowing states to pass outright bans on abortion. The ruling had devastating consequences for bodily autonomy, economic mobility, and freedom for im/migrants, people in detention, pregnant people, transgender and gender-non-conforming people, and women of reproductive age. State abortion bans and restrictions disproportionately harm communities who already face significant barriers to accessing health care, including Black, Indigenous, Latina/x, Asian, and Pacific Islander communities; communities living with low incomes; individuals with disabilities; individuals with Limited English Proficiency (LEP); and people living in rural areas.

Im/migrants, especially those who are undocumented and those in mixed-status families, are particularly vulnerable to the harmful impacts of abortion bans due to the barriers they face in accessing health care and the increased risk of criminalization based on immigration status. These barriers and risks include arbitrary Customs and Border Protection (CBP) checkpoints, a five-year waiting period for legal permanent residents to enroll in public health insurance programs, agreements between local law enforcement and federal immigration authorities, and increasing anti-immigrant state policies. Individuals in immigration detention face additional threats to their reproductive health and overall well-being, including medically unnecessary gynecological procedures like forced hysterectomies and denial of abortion care. This fact sheet highlights how Dobbs compounded pre-existing barriers to abortion care for im/migrants. We propose a set of concrete recommendations for Congress and the administration to support im/migrant access to abortion.

The Impact of the *Dobbs* Decision On Immigrants

I. Abortion bans put the health and well-being of im/migrants at risk.

Since the *Dobbs* ruling, abortion access has been severely restricted in 22 states. Many of those states are also home to a high number of im/migrant and mixed status families, such as Texas, Arizona, and Florida. As of June 2024, at least 1.9 million undocumented female im/migrants live in a state that either bans abortion completely or by the 18th week of gestation.

Since 2022, at least 65 abortion clinics have closed, increasing the burden on those remaining; the number of women served per facility has grown 29 percent. Moreover, southern border communities, home to many mixed-status families, are already considered medically underserved areas, disproportionately impacting certain

1 Note: The use of the term "im/migrant" is to recognize all persons and communities that are living in the U.S. who come from different countries or have migrated from different territories, whether temporarily or permanently.

populations. For instance, more than one-third of Afro Latinas and 44 percent of multiracial Black women live in states that have banned or are likely to ban abortion after *Dobbs*. Additionally, nearly 6.7 million Latinas, 38 percent of whom were born outside of the United States, live in states that have banned or are likely to ban abortion. Barriers to access continue to cause widespread confusion among both patients and providers about abortion access and coverage due to variation in laws from one state to the next as well as vaguely written bans.

Abortion bans don't just restrict access to abortion care. They also threaten all types of pregnancy and reproductive care, including access to contraception. Patients are having a hard time getting important pregnancy care, or are being denied the care they need, including treatment for miscarriages and ectopic pregnancies. The majority of OBGYNs feel the Dobbs decision has worsened their ability to manage pregnancy-related emergencies, increased pregnancy-related mortality, furthered inequities, and damaged the prospects of attracting new providers to the field. A study of 54 OBGYNs in 13 states with abortion restrictions found that providers believed post Dobbs bans had negative impacts on their work, including clinically inappropriate delays in essential patient care, fears of legal ramifications, mental health effects, and planned or actual moves to practice in other states. In some places, the rising cost of providing care and the dearth of providers have forced maternity clinics and wards to close, contributing to "maternity-care deserts."

Dr. Jessica Rubino, Medical Director at Meadow Reproductive Health and Wellness, told the Latina Institute that interstate travel was often the only recourse she could suggest for patients who needed an abortion while she was practicing in Austin, Texas. But for many patients, that wasn't possible:

"I had one patient who looked at me like I had three heads when I suggested traveling out of state for an abortion. It turned out that she couldn't drive safely on the roads due to her immigration status. I've dedicated my life to helping people access care, and I cannot tell another patient to get in a car or on a plane to go to another state. It's unethical, and it's a form of violence."

— Dr. Jessica Rubino, Medical Director, Meadow Reproductive Health and Wellness

II. Abortion bans further criminalize immigrant communities.

Even before the *Dobbs* decision, im/migrants faced significant barriers to accessing an abortion. Policies like Texas' S.B. 8, which banned abortion care after six weeks and invited anti-abortion vigilantes to sue those "aiding and abetting" abortion, made seeking an abortion for im/migrants living along the southern border nearly impossible almost a year before *Dobbs* was decided. At the time S.B. 8 was implemented, Texas already had the largest number of U.S. cities classified as "abortion deserts," defined as areas where residents need to travel 100 miles or more to reach a provider, of any state. Texas currently has some of the most restrictive abortion policies in the country, including a complete abortion ban with very limited exceptions, meaning people living in the state must travel to obtain abortion care. In 2023, more than 35,000 Texans traveled to another state to get an abortion, compared to just 2,400 in 2019.

Due to increasing restrictions and facility closures, more people than ever must travel long distances to receive abortion care in the U.S. Nationally, the number of people who crossed state lines to obtain abortion care more than doubled, with 17 percent of abortions in 2023 obtained by patients traveling from out of state, as opposed to only 9 percent in 2020. But im/migrants who do not have the necessary documentation, such as a driver's license, often feel unsafe traveling due to fear of being pulled over, detained, or deported. This fear is only exacerbated by increasing state and local initiatives that attempt to restrict travel for abortion care. Additionally, im/migrants living in southern border states must often travel farther than others. For example, some Texans must travel 36 times farther than someone in Connecticut for abortion care. This can be prohibitively expensive, especially if they must miss work, arrange childcare, and/or do not have access to reliable transportation.

Immigration enforcement activity and the continued chilling effects of policies like public charge make it less likely that im/migrants will seek insurance coverage or health care altogether, and abortion restrictions exacerbate the fear of criminalization in immigrant communities. As of 2023, 50% of likely undocumented and 18% of lawfully present im/migrant adults reported being uninsured compared to 6% naturalized and 8% U.S. born citizens. Approximately 27%

of undocumented and 8% of lawfully present im/migrants reported avoiding applying for food, housing, or health care assistance in the past year due to immigration-related fears. Moreover, polling conducted in 2018 found one in four Latina/o voters (24 percent) had a close family member or friend delay or avoid health care because of fear related to discriminatory immigration policies, and one in five (19 percent) said the same about reproductive health care.

"The rise in criminalization of abortion care also affects immigrant communities who may also be facing criminalization around documentation status… I know that, for the handful of patients who are able to travel to see me, there are dozen[s] who are unable to."

— Dr. Gopika Krishna, OB-GYN, New York abortion provider, and Physicians for Reproductive Health Fellow

Im/migrants living in border states have a heightened fear of encountering enforcement because many state and local police in these states have official agreements with Immigration and Customs Enforcement (ICE) to arrest im/migrants. In 2022, CBP operated immigration checkpoints at 129 locations, generally located within 25 to 100 miles inland from the Southwest and Northern borders, which impede travel for im/migrants living within the 100 mile border zone. While abortion care is available in New Mexico and California, it is banned at 15 weeks in Arizona and completely banned in Texas with few exceptions.

In 2023, Texas passed S.B. 4, a bill aimed at dramatically increasing the surveillance, racial profiling, and policing of im/migrant communities. S.B. 4 and similar bills further limit the ability of im/migrants to travel for abortion care. Since then, nine more states have pursued copycat legislation to adopt similar policies.

On June 13, 2024, the U.S. Supreme Court unanimously ruled that a group of anti-abortion physicians did not have standing to challenge the FDA's actions related to the approval of mifepristone, which is used in medication abortions. Mifepristone will remain on the market and accessible in states where abortion is legal.

However, this attack on medication abortion could continue. The case will be sent back down to federal district court judge Matthew Kacsmaryk, who has already allowed the states of Kansas, Missouri, and Idaho to intervene in the case. Access to medication abortion is critical for im/migrant communities, with the procedure accounting for 63 percent of all abortions nationwide in 2023.

Mifepristone provides individuals seeking an abortion a safe, discrete, and accessible way to get the care that they need. The consequences of not being able to access medication abortion disproportionately impact people of color, individuals with low incomes, im/migrants, and LGBTQ+ communities. For im/migrants that live in states with restrictive abortion bans and for whom traveling across state lines is not an option, protecting mifepristone access is crucial.

III. Abortion bans make it more difficult for people in immigration detention to receive timely reproductive health care.

Additional restrictions make accessing an abortion even harder for people in detention. While the Biden-Harris Administration adopted a general policy to not detain pregnant people, some still are due to strict mandatory detention laws. Because of a lack of reported data, however, it is unclear how many pregnant people have been detained, have requested an abortion, or have been granted their request.

Im/migrants who make the journey to the U.S. face significant risks of sexual assault, and therefore are at increased risk of unwanted pregnancy as a result of rape. Underreporting due to stigma, fear, and lack of access to care makes measuring sexual violence among migrants difficult. In 2023, Doctors Without Borders reported treating nearly 400 sexual violence cases in the Darién Gap alone. Older reports estimate that between 60 percent and 80 percent of female migrants, including teenagers and children, are sexually assaulted on their journey through Mexico. Once in the United States, pregnant minors are often limited in their choices when they are placed in Office of Refugee Resettlement (ORR) custody. Although the Biden-Harris Administration reaffirmed a policy of noninterference with minors attempting to access care, without permanent legislative protections, this policy will always be at risk.

In 2020, more than half of ORR-funded shelters serving children were located in states that now have restrictive abortion policies. Following Texas' abortion ban and the *Dobbs* decision, the Biden-Harris Administration put forth

guidance that prioritizes placement of pregnant minors in states without abortion bans and outlines a transfer policy under which unaccompanied minors who request abortion care in a state where abortion is illegal are transferred to a facility in a state where they are able to receive care. Although this is an improvement on previous guidance, stronger, more permanent protections are still needed. Moving unaccompanied minors between facilities makes it more difficult for them to stay in touch with their family, legal advisors, and health care providers. In addition, the time it takes to transfer a young person between states often leads to delays in care, making it more expensive and burdensome to receive services. Finally, this transfer policy and other policies that aim to protect the rights and health of unaccompanied minors are at risk of being rescinded under a future administration, as previous administrations have attempted to limit access to abortion for unaccompanied minors.

Recommendations

Congress must pass legislation that supports a universal right to access abortion and protects the reproductive rights of all people residing within our borders.[2]

- The **HEAL for Immigrant Families (HEAL) Act** (H.R.5008/S.2646) expands coverage for sexual and reproductive health care by expanding access to federal programs such as Medicaid and the Affordable Care Act marketplaces. These programs provide crucial coverage of reproductive and sexual health services, including contraception and maternal health care.
- **Lifting Immigrant Families Through Benefits Access Restoration (LIFT the BAR) Act** (H.R.4170/S.2038) would remove the 5-year waiting period that im/migrants with lawful permanent resident (LPR) status currently face for federal social service programs including Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI).
- The **Equal Access to Abortion Coverage in Health Insurance (EACH) Act** (H.R.561/S.1031) would eliminate the Hyde Amendment's ban on the use of federal funds to cover abortion in Medicaid and other federal health programs.
- The **Women's Health Protection Act (WHPA)** (H.R.12/S.701) would create a statutory right to access abortion free from medically unnecessary restrictions, including mandatory waiting periods, biased counseling, two-appointment requirements, mandatory ultrasounds, and bans on abortion.
- The **Abortion Justice Act (AJA)** (H.R.4303) aims to remove barriers that make it more difficult for immigrant communities to access care.
- The **Reproductive Health Travel Fund Act** (H.R.4268/S.2152) will establish a grant program authorized at $350 million per year for fiscal year (FY)24 through FY28 and allow the Treasury Secretary to award grants to eligible entities to pay for travel-related expenses and logistical support for individuals to access reproductive health care.
- The **Stop Shackling and Detaining Pregnant Women Act** (H.R.6298/S.3247) requires the release of any pregnant individuals detained in ICE facilities and sets minimum standards of care for those who remain in ICE detention and are pregnant, birthing, or postpartum, including banning the use of restraints while giving birth and providing access to related care such as abortion care.
- The **Healthy Families Act** (S.1664) would establish a national paid sick days and safe leave standard and allow workers to earn up to seven paid, job-protected sick days each year. Workers who need an abortion, including a medication abortion, would not lose their financial stability while accessing the care they need.
- Policymakers should remove all language in annual appropriations legislation that restricts coverage for, or the provision of, abortion care in public health insurance programs that immigrant communities rely on, including the Hyde Amendment and all other policies that restrict funding for abortion care and coverage.

Building support for each of these measures is critical to ensure people seeking health care, including abortion, can get the care they need regardless of income, race, ethnicity, sexual orientation, gender identity, or im/migration status.

2 Not all organizations represented on this document have endorsed all of the recommended bills.

This administration must adopt policies that protect the privacy and bodily autonomy of people in federal and state custody, including those detained for immigration-related offenses, and remove mobility barriers to reproductive health care.

- CBP checkpoints in border communities make it all but impossible to *safely* reach health care facilities located hundreds of miles away. Consistent with the Department of Homeland Security's (DHS) protected areas guidance, DHS should ensure that people are able to *safely* reach those protected facilities, like clinics and hospitals, without CBP checkpoints impeding their travel or exposing them to potential detention and deportation. Any policies must protect patients from violations of privacy by federal immigration enforcement personnel and guarantee confidentiality of medical information. Instructing DHS to close all internal CBP checkpoints is essential in ensuring this access.
- DHS should expand CBP's November 2021 policy regarding the detention of pregnant, postpartum, and nursing people in CBP facilities to:
  - Expedite processing to minimize the time that people who are pregnant, postpartum, and/or nursing and their families are in CBP custody to only the time period necessary to process them for release from custody. In absolutely no case should custody exceed 12 hours from the time of initial apprehension.
  - Ensure that people who are pregnant, postpartum, and/or nursing and their families are released from CBP custody together, as soon as possible after any discharge from an off-site hospital, and are not transferred back to CBP detention for any purposes, including processing.
- Pregnant people should not be in detention. If pregnant persons must be detained for any amount of time, there should be no barrier to abortion. DHS should therefore issue guidance to ensure:
  - Any pregnant person in ICE/CBP custody who requests access to abortion and is in a state that bans or significantly restricts abortion shall be afforded an immediate transfer, with the option to be transferred back, to a state where they can receive abortion care. The only exception to this guidance should be if the individual affirmatively asserts a preference to stay in the current placement or state after receiving appropriate advisals.
  - Any pregnant person in ICE/CBP custody who requests access to abortion shall be afforded care as soon as they need it and shall be free to choose the abortion service that is best for them, including medication abortion.
  - Any pregnant person in ICE/CBP custody shall be promptly notified of the right to access abortion services that are best for them, regardless of state restrictions, in a language that the individual can understand and in a comfortable and private venue in which they feel free to ask questions (such as non-directive medical counseling), with appropriate interpretation as needed. Delivery of this information should be standardized and provided by an experienced medical professional or person with similar training.
  - In instances where it is possible, pregnant people in ICE/CBP custody should not be placed in a state that bans or significantly restricts abortion access (i.e., that bans abortion at fifteen weeks or earlier).
  - For people who are under Orders of Supervision that require ICE's permission to travel out of state, DHS must require ICE to permit interstate travel for people who need abortion care.
- DHS should make it absolutely clear that it will not take any enforcement action against people who may be arrested for or convicted of crimes related to their pregnancy outcomes. DHS must also clarify that it will not consider these arrests or convictions, or the disclosure of having obtained abortion care, as a reason to bar any form of immigration relief, including in discretionary determinations.
- Unaccompanied immigrant youth in the care of the Health and Human Services ORR must be able to access the health care that they need, including abortion, without delay, no matter what state they are held in. The administration should ensure that unaccompanied youth who request abortion care receive it promptly without unnecessary delays, and should adopt a policy that covers all agencies.
  - ORR should ensure that all contracted facilities (including out-of-network facilities) provide youth with timely, confidential access to family planning

services, including pregnancy testing, non-directive pregnancy counseling, abortion care, and contraception. ORR should place pregnant youth in ORR facilities in states that do not have significant restrictions on abortion access. If pregnant youth are placed in a state that requires either parental involvement or consent in order for the youth to access abortion services, or a state that has any ban on abortion services, the youth should have confidential access to courts to seek and obtain judicial authorization for abortion services. Neither ORR nor any shelter may reveal a child's pregnancy or abortion decision to anyone unless the child consents. ORR should also ensure that parenting youth in custody receive the services and care they need to develop as parents and to protect the best interests of their children while they are in ORR custody, including but not limited to regular communication with their child(ren).

- To ensure oversight and accountability, detaining agencies—CBP, ICE, ORR—should comply with data requests that illustrate the needs of detained immigrants seeking abortion care. However, the right to privacy is a human right, and DHS should establish comprehensive data protection policies for all persons in detention. When collecting data on the reproductive health care needs of detained immigrants, agencies must comply with existing civil rights, civil liberties, and privacy laws and ensure that any data collected is handled appropriately, limited in scope, and strictly used to ensure access to reproductive health care and counseling.
- HHS must collaborate with DHS to ensure that sensitive reproductive health information is not used for civil, criminal, or administrative investigation or any proceeding against any pregnant person; provider; or person, including an im/migrant person, that seeks, provides, receives, or helps with access to reproductive health care, including abortion.