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The New Abortion Borders for Immigrant Women

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Abstract

In the wake of the Supreme Court's decision in Dobbs v. Jackson Women's Health Organization*, the United States has become a fragmented patchwork of state laws imposing varying degrees of restrictions and penalties on abortion. This paper examines the profound implications of these developments for noncitizen women, whose rights and mobility are already constrained by federal immigration laws and policies. Employing reproductive justice and feminist geography frameworks, it argues that the intersection of state-level abortion restrictions and federal immigration enforcement creates de facto internal borders, uniquely curtailing the reproductive freedoms of noncitizens.*

This paper situates current U.S. policies within a historical context of reproductive control and interference with immigrant families, revealing how contemporary laws perpetuate a legacy of subjugation. It highlights the geographic mobility challenges faced by noncitizens, exacerbated by immigration detention, surveillance programs, and localized enforcement practices. These barriers not only limit access to abortion services but also subject noncitizens to heightened risks and punitive measures, further marginalizing an already vulnerable population.

Through the lenses of reproductive justice and feminist geography, the paper interrogates traditional conceptions of borders and mobility, emphasizing the need for a holistic understanding of reproductive oppression. It calls for an intersectional approach to advocacy, recognizing the compounded vulnerabilities of immigrants and seeking to dismantle systemic barriers impeding their reproductive autonomy. This paper contributes to the broader

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dialogue on reproductive justice, advocating for inclusive and equitable policies that respect and uphold the bodily and familial agency of all individuals, regardless of citizenship status.

Introduction

Since the Supreme Court of the United States eliminated the fundamental right to an abortion in *Dobbs v. Jackson Women's Health Organization*,[1] the ability to access an abortion has increasingly depended on where a person lives.[2] After the *Dobbs* decision, numerous states enacted legislation restricting abortion access and criminalized the provision of abortion care and the distribution and consumption of abortifacient medication,[3] resulting in a geographic patchwork of laws on reproductive healthcare and abortion deserts that span hundreds of square miles.[4] Because abortion access increasingly depends on a person's physical location, abortion travel has become a central focus of advocacy and fundraising, with the aim of transporting pregnant people in need of abortion care from states with abortion-restrictive laws to states, territories, and even countries where abortions are still lawfully accessible and available.[5]

While a large-scale mobilization effort may very well allow many women and pregnant people[6] to access abortion-related

1. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 302 (2022).

2. *See* David Cohen, Greer Donley & Rachel Rebouché, *The New Abortion Battleground*, 123 COLUM. L. REV 1, 9 (2022).

3. Jolynn Dellinger & Stephanie Pell, *Bodies of Evidence: The Criminalization of Abortion and Surveillance of Women in a Post-Dobbs World*, 19 DUKE J. CONST. L. & PUB. POL'Y 1, 11–12 (2024).

4. *See*, *Abortion Access Mapped by Congressional District*, CENTER FOR AMERICAN PROGRESS (Apr. 21, 2024), https://www.americanprogress.org/article/abortion-access-mapped-by-congressional-district/ [https://perma.cc/TG72-NJKT]; *New Data Show that Interstate Travel for Abortion Care in the United States Has Doubled Since 2020*, GUTTMACHER INSTITUTE (Dec. 7, 2023), https://www.guttmacher.org/news-release/2023/new-data-show-interstate-travel-abortion-care-united-states-has-doubled-2020 [https://perma.cc/2Q8Q-KYNB]; Cohen et al., *supra* note 2, at 11.

5. *See*, Laura Ungar, *After Roe, An "Underground" Network Helps Others Get Abortions*, AP NEWS (May 4, 2024), https://apnews.com/article/abortion-help-navigators-pills-roe-v-wade-f760b2817126d56e6cfa5144c9f7e547 [https://perma.cc/N9FB-M4XM].

6. The author recognizes that people of a variety of genders can menstruate, become pregnant, and need abortion and reproductive healthcare, including women, trans men, and nonbinary individuals. Because some of the concepts, studies, and historical events discussed in this paper rely centrally on the intersection of female identity with other identities, social factors, and laws, at times this paper will specifically refer to women. In recognition of the diversity of genders that abortion

services, reproductive justice[7] advocates must intentionally consider the ways that mobilization efforts fail to serve certain marginalized communities. Among these marginalized communities are noncitizen immigrants, particularly those present without authorization or with an uncertain immigration status, whose movements are surveilled, policed, restricted, obstructed, compelled, and criminalized by state and federal laws and policies in ways that make them uniquely vulnerable to suffering severe consequences for their attempts to access abortion care. Absent such intentional consideration, abortion-access mobilization efforts may further marginalize or even harm the very people they aim to serve.

This paper aims to build on the existing literature addressing the effects of abortion-restricting legislation on the freedom of immigrant women to make decisions about their reproductive health care and family structure. The paper focuses on how the new and expanding patchwork of state laws creates de facto internal borders that trap and uniquely limit the reproductive freedom of those present in the United States without citizenship status. In particular, this paper exposes a different angle of the injustices resulting from the *Dobbs* decision by detailing the unique geographic barriers to immigrant mobility resulting from federal and state laws and policies, including immigration detention policies, post-release surveillance programs, and other immigration enforcement practices that restrict, control, surveil, and punish noncitizens' movements within the United States. Using a reproductive justice and feminist geography lens, this paper will situate current U.S. law and policy within a tradition of historical policies aimed at interfering with immigrant women's ability to exercise agency in their family lives. Lastly, this paper will illustrate how the interplay of current federal and state laws on reproductive healthcare and immigration enforcement policy continues a legacy of subjugation through the policing of the bodies, families, and reproductive choices of immigrants.

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policy and access affects, this paper will nonetheless attempt to use a variety of terms to describe the pregnant-capable people affected by the post-*Dobbs* legal landscape. For further reading on legal interests, sex, gender, and pregnancy, *see* Jessica A. Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894, 954–57 (2019).

7. See *infra* Part I.A.

I. Background

A. Theoretical Frameworks

In its assessment and analysis of the ways that law and policy affect immigrants' reproductive lives, this paper draws on two theoretical frameworks: the reproductive justice framework and feminist geography framework. These frameworks allow us to recognize the harms of the *Dobbs* decision on noncitizens holistically, beyond the simple question of abortion access, and to interrogate traditional conceptions of borders and mobility.

The term reproductive justice was coined in the 1990s by Black women activists who recognized that the contemporary women's rights movement was largely led by middle class, wealthy white women that did not represent (and at times undermined) the needs of women of color and other marginalized women.[8] Grounded in critical race theory, reproductive justice advocates call for an intersectional and systemic assessment of reproductive oppression, highlighting how social positions and identities—such as race, gender, class, sexual orientation, gender identity, immigration status, and physical ability—combine to impact women's access to reproductive agency.[9] By centering the lived experiences of marginalized individuals, the reproductive justice framework allows us to recognize how traditional abortion "rights" advocacy, which focuses on the legal recognition of a right to terminate a pregnancy, does not account for the experiences of those who cannot exercise this right due to their vulnerability to state power or societal oppression.[10]

The reproductive justice framework goes beyond the traditional rights framework by treating the existence of a right to abortion as just one piece of the reproductive freedom puzzle. Reproductive justice requires that all women and pregnant-capable people have the ability to exercise "the right to not have children, the right to have children, the right to parent with dignity, and the means to achieve these rights," including the right to raise children in safe and healthy environments.[11] The reproductive justice framework allows us to recognize state practices involving forced

8. *Reproductive Justice*, SISTERSONG, https://www.sistersong.net/reproductive-justice [https://perma.cc/BU9W-F34Y]; Rachel Rebouché, *Reproducing Rights: The Intersection of Reproductive Justice and Human Rights Symposium Issue: Baby Markets*, 7 UC IRVINE L. REV. 579, 592–93 (2017).

9. SisterSong, *supra* note 8; Rebouché, *supra* note 8, at 593.

10. Rebouché, *supra* note 8, at 594.

11. Rebouché, *supra* note 8; SisterSong, *supra* note 8, at 594–95.

birth, sterilization, and familial intervention as different iterations of the same harm—a fundamental disregard for the bodily and familial agency of women, trans men, nonbinary people, and all others with the capacity to give birth.

Just as the reproductive justice framework facilitates a more comprehensive view of reproductive freedom and autonomy for marginalized communities, feminist geography interrogates traditional notions of space, boundaries, and hierarchies. Expanding the human geography concept of "scale," defined broadly in the field as "nested hierarchy, in terms of size or area, of different objects or zones."[12] Feminist geographers consider these hierarchies as interconnected, socially constructed, and contested.[13] Feminist geographers recognize that "even formal and higher-level policies are embodied in daily lives and personal experiences" and that examinations of more local scales, including the home and the body itself, reveal how "abstract political discourses and decisions shape actual experiences."[14] Feminist geographers view the body itself as a site where power dynamics, social norms, identities, and other processes are implemented and challenged.[15] Like the reproductive justice framework, the feminist geographic lens addresses how different social identities intersect and are experienced across different spatial hierarchies.[16]

Migration research rooted in feminist geography differs from traditional migration research by challenging the notion that borders are fixed, definite, or resolved. Rather, feminist migration scholars treat borders as "socially constructed, laden with power, and inflected by gender and difference."[17] As such, feminist migration scholars "make[] boundaries themselves the focus of

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12. Alisdair Rogers, Noel Castree & Rob Kitchin, *Scale*, *in* A DICTIONARY OF HUMAN GEOGRAPHY (2013), https://www.oxfordreference.com/display/10.1093/acref/9780199599868.001.0001/acref-9780199599868-e-1629 [https://perma.cc/9PJN-27PA].

13. Rachel Silvey, *Power, Difference and Mobility: Feminist Advances in Migration Studies*, 28 PROG. HUM. GEOGRAPHY 490, 492–94 (2004).

14. Nancy Hiemstra, *Mothers, Babies, and Abortion at the Border: Contradictory U.S. Policies, or Targeting Fertility?*, 39 ENV'T & PLAN. C: POL. & SPACE 1692, 1694 (2021).

15. *See* Rachel Silvey, *Borders, Embodiment, and Mobility: Feminist Migration Studies in Geography*, *in* A COMPANION TO FEMINIST GEOGRAPHY 138, 142 (Lise Nelson & Joni Seager eds., 2005); Pamela Moss, *A Bodily Notion of Research: Power, Difference, and Specificity in Feminist Methodology*, *in* A COMPANION TO FEMINIST GEOGRAPHY 41, 50 (Lise Nelson & Joni Seager eds., 2005).

16. *See* Hiemstra, *supra* note 13, at 1693–94.

17. Silvey, *supra* note 15, at 139.

inquiry," interrogating how political and gender-specific processes tie to the conception of a border.[18] This framework provides a lens through which to examine "how the individual, gendered, sexualized, racialized body can be viewed as a threat to the nation, as well as to the international order of bordered territories."[19] As feminist migration scholar Nancy Hiemstra has noted, this framework allows consideration of topics such as the ways that immigration policies define and reinforce sexual and gendered markers of national belonging, the effect of colonial legacies on modern norms and policies, and the role of the potentially fertile body on immigration law, policy, and enforcement.[20] A feminist geography lens is particularly well-suited for the study of how federal and state restrictions on immigrants' movements affect immigrants' reproductive health and autonomy; for, as geographer Sydney Calkin notes, "abortion is a spatial phenomenon."[21] This framework allows us to think more broadly about the types of "borders" that restrict the freedoms of noncitizen immigrants and to recognize that, when it comes to accessing comprehensive reproductive healthcare, the "border" that constrains immigrants is not just the United States's international borders. State borders, surveillance, and even the human body itself can confine a person and determine the extent to which immigrants can exercise reproductive agency.

The reproductive justice and feminist geography frameworks allow us make sense of the interrelated ways that governments and dominant groups have subjugated immigrant women and their families through law, policy, and practice. By recognizing these patterns, we can identify how today's immigration-related policies, including those that compel, restrict, surveil, and criminalize immigrant movement, constrain an immigrant's ability to exercise agency over their sexual and familial lives.

B. A History of U.S. Interference with Immigrant Families and Fertility

Political geographer Sydney Calkin has theorized reproduction as "a core component of nation and state-making processes, in which the alignment between population, territory,

18. *Id.*

19. Hiemstra, *supra* note 14, at 1694.

20. *Id.* at 1695.

21. Sydney Calkin, *Towards a Political Geography of Abortion*, 69 POL. GEOGRAPHY 22, 23 (2019).

and community is deliberately forged."[22] When a state engages in reproduction control through policies or practices that promote, force, discourage, or prohibit procreation and child-rearing, the state is necessarily expressing "political claims about the rightful occupants of a particular piece of territory or the categories of citizen entitled to protections by the state."[23] The United States is no exception to this pattern of state-making through reproductive control.

i. Federal Immigration Statutes Targeting Immigrant Women's Sexual and Familial Relationships

Throughout its history, the United States has demonstrated a preoccupation with the fertility and reproductive capacities of immigrant women. From laws that prohibited the admission and enfranchisement of certain immigrant women, to practices that have robbed certain women of their ability to procreate, the United States has espoused policies to control immigrant women's bodies and reproductive capabilities in attempts to assert control over the wielders of power and the makeup of its citizenry.[24]

To use the words of anthropologist Risa Cromer, "[i]mmigration, like all politics, is reproductive politics too."[25] From the outset, U.S. immigration and naturalization laws have revealed attempts to regulate sex and gender through federal law.[26] In her article on the Page Act,[27] the United States's first ever restrictive federal immigration statute, scholar Kerry Abrams describes how the United States used federal immigration law to control marriage and family creation in an effort to "shape the racial and cultural population of the United States . . . ."[28] On its face, the Page Act generally precluded the admission of any women who would enter the United States pursuant to contracts for "lewd and immoral purposes."[29] The statute's legislative history, historical context, and enforcement, however, reveal that legislators' intent in passing the

22. *Id.* at 22.

23. *Id.*

24. Claudia S. Pepe, Altaf Saadi & Rose L. Molina, *Reproductive Justice in the U.S. Immigration Detention System*, 142 OBSTETRICS & GYNECOLOGY 804, 804 (2023).

25. Risa Cromer, *Jane Doe*, 34 CULTURAL ANTHROPOLOGY 18, 18 (2019).

26. Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 674, 690, 697 (2005).

27. Page Act of 1875, ch. 141, 18 Stat. 477 (repealed 1974).

28. Abrams, *supra* note 26, at 647.

29. Page Act § 1.

statute was to specifically exclude Asian women from the United States.[30] Though the statute forbade the admission of any female sex worker,[31] ostensibly rendering the statute race-neutral, the statute singled out Asian women by requiring (only) Asian women to obtain an immigration certificate from a United States consul as a prerequisite for admission.[32] United States consuls refused to issue these certificates and precluded admission if they "ascertained" that a woman would have "entered into a contract or agreement for a term of service . . . for lewd and immoral purposes."[33] Because all but the wealthiest of Chinese women were assumed to be entering the U.S. with the intent of engaging in sex work,[34] the implementation of the statute effectively excluded almost all Chinese women from immigrating to the United States.[35]

One impetus behind the passage of the Page Act was the preservation of "traditional" U.S. conceptions of marriage and sexuality in the face of a perceived Chinese acceptance of polygamy and prostitution.[36] Crucially, however, the Page Act was also aimed at controlling the racial and cultural population of American citizenry by inhibiting the creation of Chinese families.[37] At the time the Page Act was enacted, the Naturalization Act's racial restrictions barred Chinese immigrants from becoming United States citizens.[38] But if Chinese women could enter the United States, they could essentially "create" Chinese-American citizens through procreation.[39] As Abrams poignantly explains, "[i]f women were allowed to immigrate, they would produce Chinese culture both literally and figuratively: by creating Chinese American children and by perpetuating Chinese culture."[40] Immigrant women, and the families they created and reared, were viewed as

30. Abrams, *supra* note 26, at 698.

31. Page Act § 3.

32. Specifically, the statute required immigration certificates from individuals embarking from "China, Japan, or any Oriental country." Page Act § 1.

33. Page Act § 1; *see* Abrams, *supra* note 26, at 695.

34. *See* Abrams, *supra* note 26, at 698 (quoting GEORGE ANTHONY PEFFER, IF THEY DON'T BRING THEIR WOMEN HERE: CHINESE FEMALE IMMIGRATION BEFORE EXCLUSION, at 9 (U. of Ill. Press, 1999)).

35. *See id.* at 701 (noting that in 1882 alone, of the 39,579 Chinese individuals who entered the United States, only 136 were women).

36. *Id.* at 647.

37. *Id.* at 662.

38. *See* Naturalization Act of 1870, Pub. L. 41-254, 16 Stat. 254 (1870) (extending naturalization rights to "aliens of African nativity and to persons of African descent" but maintaining racial restrictions denying naturalization rights to other non-white groups, including Chinese immigrants).

39. Abrams, *supra* note 26, at 664.

40. *Id.*

threats to the patriarchal, white, and heterosexual hegemony of the United States.

Throughout the twentieth century, Congress continued passing immigration statutes that prohibited the admission of women suspected of entering the United States to engage in sex work, or non-marital and non-monogamous sexual relationships.[41] When Congress passed comprehensive immigration legislation in 1907, for example, the United States continued targeting women (and exclusively women) who entered the United States to engage in sex work, or "for any other immoral purpose."[42] Immigration law scholar Pooja Dadhania notes the phrase "immoral purpose" was a catch-all intended to include any other sexual practices deemed to be unacceptable for women,[43] including concubinage.[44] The statute also punished female sex work by authorizing the deportation of women (but not men) found to be living at a house of prostitution or practicing prostitution within three of years of entry.[45] Three years later, Congress would amend the statute to remove its gendered language, but it would not include any corresponding penalties for the buyers of sex, who were generally presumed to be predominately male.[46] Other amendments "removed the temporal limitation of three years after entry from the 1907 Act" rendering the punishment of prostitution harsher than that of certain violent

41. *See* Pooja Dadhania, *Deporting Undesirable Women*, 9 UC IRVINE L. REV. 53, 62–63 (2018).

42. Act of Feb. 20, 1907, ch. 1134, § 2, 34 Stat. 898.

43. *Id.* at 62. Dadhania notes that the legislative history for the statute is largely silent on the meaning of the term "immoral purpose," with only one House of Representatives report noting that the term was used "in order effectively to prohibit undesirable practices alleged to have grown up." *Id.* at 62 n.50 (quoting H.R. REP. NO. 59-4558, at 19 (1906)). In 1934, the Supreme Court interpreted the term, deciding that the term did not include extramarital relations that did not amount to concubinage. Hansen v. Haff, 291 U.S. 559, 562 (1934). In a dissenting opinion, Justice Butler adopted the Secretary of Labor's understanding of the term "concubinage," defining a concubine as "a woman who cohabits with a man without being his wife," and argued that the statute did not require an immigration officer to specify which immoral purpose the woman would be excluded for. *See id.* at 565 (J. Butler, dissenting) ("Refinements in nomenclature adopted for the sake of decency in speech may not be used to conjure up doubts and distinctions that obscure the real substance of the statute. The meaning of the findings is that petitioner's doings and course of living constitute a kind of immorality that bars admission.").

44. *See* Act of Feb. 20, 1907, ch. 1134 § 2, 34 Stat. 898.

45. *Id.* at 3.

46. *See* Act of March 26, 1910, ch. 128, § 2, 36 Stat. 263; Dadhania, *supra* note 43, at 65.

crimes.[47] To this day, the Immigration and Nationality Act (the "INA" or the "Act") renders inadmissible any person who is coming to the United States with the intent to participate in sex work, or who has engaged in sex work in the past ten years.[48] The Act still lacks a comparable inadmissibility provision for the purchasers of sexual services.[49]

ii. Immigrant Sterilization Practices

The above immigration policies occurred within a context of a long history of reproductive abuses by governments in the United States toward people of color, immigrants, and others of marginalized identities deemed inferior by the dominant classes. As Professors Pepe, Saadi, and Molina have highlighted, the United States has executed the most egregious abuses in situations where nativist ideals produced and reinforced pronounced racial and economic inequality.[50] A notable way the United States has controlled noncitizen reproduction has been through the "negative eugenic" practice of sterilizing poor women of color without consent—people who the American hegemony has not historically considered to be deserving of full citizenship within the United States.[51] Notably, a determining factor in the rise of the eugenics movements in the United States was the belief that the United States' population and culture was becoming diluted by rising numbers of "degenerate" immigrants and the families they produced.[52] The United States's sordid history with both sterilization and coerced birth reveals a preoccupation with the perceived fertility of immigrants and a concerted effort to exert power over those regarded as undeserving of full inclusion in American society.[53]

A prime example of this reproductive abuse lies in the sterilization of hundreds of women of Mexican origin at the University of Southern California – Los Angeles County Medical

47. *See* Dadhania, *supra* note 43, at 64; Act of March 26, 1910, ch. 128, §§ 2, 3, 36 Stat. 263.

48. 8 U.S.C. § 1182(a)(2)(D).

49. *See id.*

50. Pepe et al., *supra* note 24, at 805.

51. *See generally* DOROTHY E. ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY (2d Vintage Edition ed. 2017) (discussing the intersecting racial and reproductive oppression of Black women in the United States).

52. PETER SCHRAG, NOT FIT FOR OUR SOCIETY: IMMIGRATION AND NATIVISM IN AMERICA 77–107 (U.C. Press 2010).

53. *See* Pepe et al., *supra* note 24, at 805; *see generally* SCHRAG, *supra* note 52 (discussing eugenics and sterilization policies).

Center ("USC-LAC Medical Center") during the late 1960s and early 1970s.[54] Against a backdrop of national discourse on overpopulation and resource distribution, the hospital pushed medical personnel to promote the sterilization of Spanish-speaking women of Mexican descent who came to the hospital for reproductive healthcare services like prenatal care and birth.[55] Doctors and nurses used coercive tactics to force these women to sign consent forms authorizing their sterilization, including by failing to provide interpretation or translated consent forms, pressuring women to sign consent forms during difficult labors and while under the influence of pain medication or partial anesthesia, threatening deportation for refusing to consent to sterilization, falsely stating that sterilization procedures could be reversed, isolating women patients from their family members, and, in some cases, using physical violence.[56]

In 1978, ten of these abused women brought a class-action lawsuit, *Madrigal v. Quilligan*,[57] in which they asserted that the sterilizations had been performed without informed consent and were violations of their civil rights and their rights to bear children.[58] In the hearing, the plaintiffs, expert witnesses, and other witnesses testified to the customary coercive practices of the USC-LAC Medical Center medical personnel, with a former medical student testifying that the head of the hospital's Obstetrics and Gynecology department had bragged that he used federal grant money to demonstrate "how low we can cut the birth rate of the Negro and Mexican populations in Los Angeles County."[59] Notwithstanding evidence that substantiated the USC-LAC

54. *See* Elena R. Gutierrez, *Policing "Pregnant Pilgrims": Situating Sterilization Abuse of Mexican-Origin Women in Los Angeles County*, *in* WOMEN, HEALTH, AND NATION: CANADA AND THE UNITED STATES SINCE 1945 239, 385–89 (Georgina Feldberg, Molly Ladd-Taylor, Alison Li & Kathryn McPherson eds., 2003).

55. Antonia Hernandez, *Chicanas and the Issue of Involuntary Sterilization: Reforms Needed to Protect Informed Consent*, 3 CHICANX LATINX L. REV. 3, 4–7 (1976)

56. *Id.*; Guitierrez, supra note 54, at 385–88.

57. Madrigal v. Quilligan, Civ. 75-2057 (C.D. Cal., June 30, 1978).

58. Gutierrez, *supra* note 54, at 392; Alexandra Minna Stern, *STERILIZED in the Name of Public Health*, 95 AM. J. PUB. HEALTH 1128, 1134 (2005). Many of the abused women could not join the lawsuit due to the statute of limitations or would not join due to a fear of deportation or other forms of immigration-related retaliation. Gutierrez, *supra* note 54, at 392.

59. Stern, *supra* note 58, at 1135.

Medical Center doctors' practices of coercion, a federal judge found in favor of the defendant doctors.[60]

While this reproductive abuse took place at a time of general concern over overpopulation, resource scarcity, and government benefits, racist and anti-immigrant assumptions rooted the push to focus sterilizations on Mexican and Mexican-origin women.[61] Mexican and Mexican-origin women were viewed as particularly dangerous to the United States, due to the unabating fears of the hyper-fertile immigrant, and particularly undeserving of social benefits like medical care, due to beliefs that women of Mexican origin were not "really 'American.'"[62] Of course, children born in the United States are citizens of the United States who, by virtue of their citizenship status, deserve the same services, protections, and health benefits as every other citizen.[63] But the USC-LAC Medical Center doctors, like many government officials, delegitimized American children born to immigrant women by using rhetoric much like that of the "anchor baby" rhetoric used today.[64]

This historical context of immigrant reproductive oppression illuminates the pervasiveness of state control over immigrant bodies but also sets the stage for understanding contemporary issues. One pressing concern today is the potential negative immigration consequences individuals may face for convictions related to abortion, a reality that continues to reflect the enduring legacy of nativist and discriminatory policies.

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60. Gutierrez, *supra* note 54, at 392. In ruling in favor of the doctors, the judge found that the doctors had operated in "good faith" and that "one [could] hardly blame the doctors for relying on these indicia of consent which appeared to be unequivocal on their face and are in constant use in the Medical Center." *Id*.

61. *Id.* at 389–91; Stern, *supra* note 58, at 1135.

62. *See* Gutierrez, *supra* note 54, at 389–91.

63. Supreme Court precedent has firmly established birthright citizenship as a right protected by the Fourteenth Amendment of the U.S. Constitution. *See* U.S. Const. amend. XIV, § 1; United States v. Wong Kim Ark, 169 U.S. 649 (1898). *But see* Alexander Bolton, *Donald Trump Girds to Battle Dems, Supreme Court over Birthright Citizenship*, THE HILL, Dec. 16, 2024, https://thehill.com/homenews/senate/5040111-trump-proposal-birthright-citizenship/ [https://perma.cc/Q46R-Y9P6] ("Republican lawmakers on Capitol Hill say the 14th Amendment's language, which grants all people born in the United States citizenship, is being exploited in a way the amendment's framers never anticipated.").

64. *See* Gutierrez, *supra* note 54, at 390–91; *see also* Carly Hayden Foster, *Anchor Babies and Welfare Queens: An Essay on Political Rhetoric, Gendered Racism, and Marginalization*, 5 WOMEN, GENDER, & FAMILIES OF COLOR 50 (2017); Priscilla Huang, *Anchor Babies, Over-Breeders, and the Population Bomb* 2 HARV. L. & POL'Y REV. 385 (2008).

II. Abortion Restriction as a Form of Immigrant Control: Potential Immigration Consequences Resulting from Abortion-Related Restrictions

While an in-depth analysis of every potential immigration consequence that could result from the criminalization of abortion goes beyond the scope of this paper, a general overview illustrates the unique ways that these state offenses can affect noncitizen immigrants. The potential ramifications of abortion-related statutes on immigrants are vast, given the breadth of laws that could be invoked to prosecute either a pregnant person or an assisting individual.[65] As such, identifying which criminal statutes may trigger immigration consequences for abortion-related care is a particularly challenging task. While many state statutes explicitly exempt the pregnant person from prosecution, some lack this exception[66] or are ambiguously worded regarding self-managed abortions[67] and the use of abortion-inducing substances.[68] Despite these ostensible prosecutorial exemptions, states have increasingly charged pregnant individuals with offenses such as homicide or child endangerment, often under the expansive scope of fetal personhood statutes.[69] The resulting legal framework creates a complex web of statutes capable of ensnaring pregnant persons.[70] Moreover, many criminal abortion statutes impose penalties on those who assist or facilitate abortions, including individuals who transport pregnant people across state lines to obtain care.[71] This implicates not only immigrant family members but also social

65. *See* Dellinger & Pell, *supra* note 3, at 27–72.

66. *See id.* at 44–51.

67. The term self-managed abortion "generally refers to abortions obtained outside of the formal health care system," such as when "a pregnant person buy[s] medication abortion online directly from an international pharmacy" or "interact[s] with an international or out-of-state provider via telemedicine," who then either ships the medication directly to the pregnant person or orders a prescription from an international pharmacy for them. *Id.* at 20–21 (quoting Greer Donley & Rachel Rebouché, *The Promise of Telehealth for Abortion*, *in* DIGITAL HEALTH CARE OUTSIDE OF TRADITIONAL CLINICAL SETTINGS: ETHICAL, LEGAL, AND REGULATORY CHALLENGES AND OPPORTUNITIES 79, 86 (I. Glenn Cohen et al. eds., 2024)).

68. Dellinger & Pell, *supra* note 3, at 51–64; WENDY BACH & MADALYN K. WASILCZUK, *Pregnancy as a Crime: A Preliminary Report on the First Year After Dobbs* (2024), https://www.pregnancyjusticeus.org/resources/pregnancy-as-a-crime-a-preliminary-report-on-the-first-year-after-dobbs/ [https://perma.cc/C6SP-NRFK].

69. BACH & WASILCZUK, *supra* note 68, at 5; Dellinger & Pell, *supra* note 3, at 38–44.

70. *See* Dellinger & Pell, *supra* note 3, at 28–29.

71. *See* B. Jessie Hill, *The Geography of Abortion Rights*, 109 GEO. L. J. 1081, 1093–94 (2020).

service providers and medical professionals, further exacerbating the disproportionate impact of these laws on immigrant communities.

Simply put, the stakes are different for noncitizens. For immigrants present without any form of authorization, any state law enforcement action can bring the individual to the attention of federal immigration authorities, placing the individual in serious risk of deportation, even if an arrest does not result in a prosecution or conviction.[72] Yet while risks resulting from state enforcement actions are greatest for unauthorized immigrants, even those with lawful permanent resident status may find themselves at risk of deportation or unable to naturalize following an abortion-related conviction.[73]

While the federal government treats abortion criminalization as largely a state law issue, federal immigration agencies' stances on abortion care will materially impact the extent to which state law enforcement measures on abortion can impact a noncitizen's immigration status and presence in the United States.[74] The salience of this dichotomy becomes more obvious given the second Trump Administration's extreme measures to deport non-citizens from the United States.[75] Some of the looming open questions on the interplay of state and federal law and the potential immigration consequences that could ensue from state laws criminalizing abortion-related acts are set forth below.

A. Potential Immigration Consequences Resulting from a Finding that Abortion-Related Offenses Constitute Crimes Involving Moral Turpitude

For those present in the United States without authorized status, a conviction for or admission to the commission of an abortion-related offense could permanently foreclose a person's ability to regularize status through a temporary visa, lawful permanent resident status, or even certain liminal statuses. Even for those present with some form of lawful immigration status, including those with lawful permanent resident status, a state abortion-related conviction could constitute a deportable offense. Whether a commission of or conviction for a state abortion-related offense could result in immigration consequences largely depends

72. *See infra* Part II.C.
73. *See infra* Part II.A.
74. *Id.*
75. *Id.*

on how the Attorney General, Board of Immigration Appeals, or federal courts define the term "crime involving moral turpitude," a term that is undefined in the INA and corresponding regulations, but which can nonetheless trigger substantial immigration-related consequences for a broad swath of noncitizens.[76]

Under the INA, before an individual without authorized status can regularize their legal status through the issuance of a temporary or permanent visa status they must be deemed "admissible" as defined by the statute.[77] Temporary Protected Status, which provides certain temporary benefits and protection from deportation for noncitizens from certain designated countries, also conditions eligibility on an individual's admissibility.[78]

To prove admissibility, a noncitizen must show that they do not trigger any of the grounds of inadmissibility enumerated in Section 212 of the INA.[79] The INA's list of inadmissibility grounds is extensive. In relevant part, a person who has been convicted of, admits to having committed, or admits to committing acts which constitute the essential elements of "a crime involving moral turpitude" is inadmissible to the United States.[80] The inadmissibility ground also encompasses attempts or conspiracies to commit crimes involving moral turpitude,[81] and has very few narrow exceptions.[82]

While the term "crime involving moral turpitude" is not defined in the INA or any corresponding federal regulations, the Board of Immigration Appeals (BIA), which has interpretive

76. 8 U.S.C. § 1182(a)(2)(A).

77. *See id.* § 1182(a) ("[A]liens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States."); 8 U.S.C. § 1255(a) (stating that a person who is inspected, admitted, or paroled into the United States can adjust their status to that of "alien lawfully admitted for permanent residence" if the person "is admissible to the United States for permanent residence"). Those seeking to be admitted into the United States from abroad are subjected to the same admissibility requirements. *Id.* § 1882(a).

78. *See id.* § 1254a.

79. *Id.* § 1182.

80. *Id.* § 1182(a)(2)(A)(i)(I).

81. *Id.*

82. The statute provides exceptions for individuals who have only committed one crime and who either (a) were under eighteen years old when they committed the crime, and committed and were confined for committing the crime more than five years before the date of application for visa status; or (b) committed a crime for which the maximum possible penalty did not exceed one year of incarceration and, if convicted, were not sentenced to a term of imprisonment of more than six months. *Id.* § 1182(a)(2)(A)(ii).

authority over the INA,[83] has stated that moral turpitude involves conduct that is "inherently base, vile, depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general."[84] Under BIA precedent, to constitute a crime involving moral turpitude, a crime must involve "reprehensible conduct" and be committed with a culpable mental state of specific intent, knowledge, willfulness, or recklessness.[85] This definition remains highly subjective, of course; the true meter for whether a criminalized conduct is "reprehensible" is essentially whether the BIA or Attorney General says it is.

Because state statutes vary widely in the ways they define state crimes, immigration authorities use a form of statutory analysis known as the "categorical approach" to determine whether a state offense constitutes a crime involving moral turpitude for immigration purposes.[86] For every crime stated in the INA, a federal "generic" definition is determined by federal courts, the BIA, or by reference to another federal statute; this federal generic definition sets forth the required elements for the INA crime.[87] In essence, the categorical approach requires that immigration adjudicators compare the elements of the crime for which an individual was convicted in state law to the elements of the generic federal crime. Depending on the criminal offense and conduct in question, the categorical approach can be an involved, multi-step statutory analysis. Generally speaking, however, if the minimum possible conduct that has a realistic probability of being prosecuted under the state criminal statute is equal to or narrower than the conduct that could be prosecuted under the generic federal definition, such that there would be no way to trigger a state conviction without triggering a conviction under the generic federal definition, the state law conviction is deemed a "categorical match" to the federal crime.[88] A conviction for a state crime that is a categorical match to a crime listed in the INA will trigger whatever immigration-related consequences the INA prescribes.[89]

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83. *See* 8 C.F.R. § 1003.1(d)(1) (2025).

84. Aguilar-Mendez, 28 I. & N. Dec. 262, 264 (B.I.A. 2021) (internal citations omitted).

85. *Id.*

86. Silva-Trevino, 26 I. & N. Dec. 826, 833 (B.I.A. 2016).

87. *Id.* at 831.

88. *Id.* at 833.

89. The explanation of the categorical approach analysis has been largely simplified to meet the aim of this paper. For a more detailed explanation of the categorical approach analysis for crimes listed in the INA, see MARY E. KRAMER, IMMIGRATION CONSEQUENCES OF CRIMINAL ACTIVITIES 159–214 (10th ed. 2024).

The risk resulting from a "crime involving moral turpitude" finding affects not only those who aspire to regularize an unauthorized immigration status; immigrants admitted with lawful immigration status, including lawful permanent resident status, could also face immigration consequences if abortion-related offenses are found to constitute crimes involving moral turpitude. The INA contains two provisions that can render a lawfully admitted noncitizen deportable. First, a single conviction for a crime involving moral turpitude can render a noncitizen deportable when the offense carries a maximum possible sentence of a year or more of imprisonment, if said offense was committed within five years after the person's date of admission to the United States.[90] As of August 2024, nineteen states have enacted laws that punish the provision or facilitation of abortions performed before fetal viability with sentences that could trigger this ground of deportability.[91] Second, a noncitizen is deportable if, at any time after admission, they are convicted of two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.[92] These multiple convictions for crimes involving moral turpitude do not have to result in confinement to result in deportability.[93]

For individuals facing deportation in removal proceedings, a conviction for a crime involving moral turpitude can foreclose several forms of relief from deportation. For example, cancellation of removal (a form of relief from removal that can lead to lawful

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90. *See* 8 U.S.C. § 1227(a)(2)(A)(i).

91. *See* ALA. CODE § 26-23H-6 (2019); ARIZ. REV. STAT. ANN. § 36-2322 (2022); ARK. CODE ANN. § 5-61-404 (2021); FLA. STAT. § 390.0111 (2023); GA. CODE ANN. § 16-12-141 (2024); IDAHO CODE § 18-622 (2023); IND. CODE § 16-34-2-7 (2022); KY. REV. STAT. § 311.772 (West 2019); LA. STAT. ANN. § 14:87.7 (2022); MISS. CODE ANN. § 97-3-3 (2025); MO. REV. STAT. § 188.17 (2022); N.D. CENT. CODE § 12.1-19.1-02 (2023); OKLA. STAT. TIT. 63, § 1-731.4 (2022); S.C. CODE ANN. § 44-41-80 (2023); TENN. CODE ANN. § 39-15-213 (2023); TEX. HEALTH & SAFETY CODE ANN. § 170A.002 (West 2022); UTAH CODE ANN. § 76-7A-201 (West 2024); W. VA. CODE § 61-2-8 (2022); WYO. STAT. ANN. § 35-6-125 (2023). Note, however, that the legal landscape related to abortion access is rapidly changing, and as such, this number is likely to change. On November 5, 2024, for example, Arizona and Missouri passed measures aimed at reversing abortion-restrictive statutes. On November 5, 2024, Arizona voters voted in favor of a constitutional amendment to establish a fundamental right to an abortion through fetal viability. *See Arizona Abortion Laws*, KRIS MAYES ARIZ. ATT'Y GEN., https://www.azag.gov/issues/reproductive-rights/laws [https://perma.cc/X73F-FBGN] (announcing passing of the amendment to Ariz. Const. art. II, § 8.1). On the same day, Missouri voters voted in favor of a constitutional amendment that would protect a person's right to obtain an abortion up through fetal viability. *See* Mo. Const. amend. 3 (approved Nov. 5, 2024).

92. 8 U.S.C. § 1227(a)(2)(A)(ii).

93. *Id.*

permanent resident status for certain unauthorized immigrants that have been present in the United States for ten or more years), is unavailable for individuals who have been convicted of a crime involving moral turpitude.[94] In certain cases, a conviction of a crime involving moral turpitude may preclude an otherwise eligible individual from applying for voluntary departure (a discretionary form of relief that allows otherwise deportable individuals to leave the country at their own expense to avoid the negative immigration consequences that result from a formal order of removal).[95] Additionally, convictions for crimes involving moral turpitude may result in an individual's mandatory immigration detention,[96] wherein the Department of Homeland Security will take custody of an individual and hold them in carceral immigration detention spaces until the resolution of the individual's removal proceedings or the effectuation of their removal from the country.[97]

Other forms of immigration benefits predicate eligibility on whether an applicant is a "person of good moral character."[98] Because the INA's definition of "a person of good moral character" excludes anyone who, during the statutory period in question, was convicted of or admitted to the commission of a crime involving moral turpitude,[99] an individual's conviction for or commission of a crime involving moral turpitude could preclude or delay their access to any immigration benefit that lists good moral character as an

94. 8 U.S.C. § 1229b(b)(1) ("The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States, if the alien . . . (C) has not been convicted of an offense under section 1182(a)(2).").

95. 8 U.S.C. § 1229c(b)(1) ("The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of [removal proceedings], the immigration judge enters an order granting voluntary departure in lieu of removal and finds that . . . (B) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien's application for voluntary departure.").

96. *See* 8 U.S.C. § 1226(c) ("The Attorney General shall take into custody any alien who (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title, (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii) . . . of this title; [or] (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[d] to a term of imprisonment of at least 1 year.").

97. For a more detailed description of immigration detention, see *infra* Part III.A.

98. *See* 8 U.S.C. §§ 1427(a)(3), 1229b(b), 1229c(b)(1)(B), 1154a(1)(A)(i) (establishing that immigration benefits that require a finding of "good moral character" include naturalization, cancellation of removal, voluntary departure, and self-petitions for battered spouses under the Violence Against Women Act (VAWA)).

99. 8 U.S.C. § 1101(f) (defining a person of good moral character).

eligibility requirement, such as naturalization.[100] Notably, then, even if an abortion-related offense did not lead to the potential deportation of a lawful permanent resident, its inclusion as an act that could exclude someone as someone with "good moral character" could nonetheless continue to disenfranchise those with lawful permanent resident status by blocking them from obtaining citizenship status, and thus keeping such individuals susceptible to deportation and marginalized in the democratic process.

Whether state abortion-related crimes will be found to constitute crimes involving moral turpitude remains unclear. In decisions issued before *Roe v. Wade*, the BIA held that abortion-related crimes did constitute crimes involving moral turpitude,[101] though the current viability of such precedent is unknown given modern societal attitudes towards abortion.[102] A detailed categorical-approach-based assessment of the extent to which convictions (for explicit abortion offenses or for other criminal offenses in fetal personhood states) for procuring an abortion, providing an abortive services or medication, or facilitating an abortion would constitute a crime involving moral turpitude is beyond the scope of this paper, though other legal commentators have thoroughly considered this question.[103]

The open question of whether an abortion constitutes a crime involving moral turpitude underscores the heightened significance of the federal government's stance on abortion, particularly in light of Donald Trump's second presidency. As explained above, abortion access and criminalization are not exclusively state law issues; the federal government plays a critical role in determining the immigration-related consequences of abortion-related offenses.

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100. *See* 8 U.S.C. § 1427 (requiring as a prerequisite to naturalization "good moral character").

101. *See* M-, 2 I. & N. Dec. 525 (B.I.A. 1946) (finding that performing an abortion was a crime involving moral turpitude regarding a male respondent convicted of the crime of "abortion" under New York law for providing an abortion to a woman); K-, 9 I. & N. Dec. 336 (B.I.A. 1961) (same); *see also* Lauren Murtagh, *Is Performing an Abortion a Removable Offense? Abortion Within the Crimes Involving Moral Turpitude Framework*, 109 VA. L. REV. 1807, 1818–19 (2023).

102. *See* Murtagh, *supra* note 101, at 1814–15.

103. *See, e.g.*, *id.* Following an exhaustive assessment of state statutes criminalizing abortion-related conduct, federal, state, and BIA precedent on abortion, and analogous implementation of the categorical approach on other crimes involving moral turpitude, Lauren Murtagh predicts that a modern BIA would not consider the provision of an abortion to be a crime involving moral turpitude in light of the variability in statutes, abortion support in much of the public opinion, and the previously recognized constitutional right to an abortion. *Id.* at 1841.

Under a Trump administration, which has promised to champion anti-abortion and anti-immigration policies,[104] there is an increased likelihood that federal authorities will take a punitive stance towards immigrants by way of abortion-related acts.[105]

B. Immigration Consequences Dictated by State Legislation

Although the federal government could avoid certain abortion-related immigration consequences by defining federal generic crimes in ways that exclude abortion-related conduct, other provisions of the INA trigger negative immigration consequences in ways that do not involve "crimes involving moral turpitude" or require a categorical match to a federal crime.[106] In such cases, absent a federal policy of prosecutorial discretion, the federal government would have no say in the immigration consequences resulting from certain state abortion-related offenses. In these situations, the material factor becomes the sentences that the state law sets forth as potential punishment for the violation of an abortion-related crime or the actual sentence imposed for a conviction. In essence, then, the power to trigger these immigration consequences lies entirely in the state legislatures and prosecutors.

Take as an example the inadmissibility grounds, the triggering of which could preclude individuals from acquiring a temporary or permanent visa status, preclude holders of temporary

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104. See, e.g., Exec. Order No. 14159, Protecting the American People Against Invasion, 90 Fed. Reg. 8443 (Jan. 20, 2025); Exec. Order No. 14160, Protecting the Meaning and Value of American Citizenship, 90 Fed. Reg. 8449 (Jan. 20, 2025); Exec. Order No. 14165, Securing Our Borders, 90 Fed. Reg. 8467 (Jan. 20, 2025); Exec. Order No. 14182, Enforcing the Hyde Amendment, 90 Fed. Reg. 8751 (Jan. 24, 2025); The Mexico City Policy: Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Secretary of Health and Human Services[, and] the Administrator of the United States Agency for International Development, 90 Fed. Reg. 8753 (Jan. 24, 2025).

105. As it relates to crimes involving moral turpitude, a Trump-appointed Attorney General or the Board of Immigration Appeals could define the generic crime of abortion in a manner that emphasizes its "moral reprehensibility," or could refuse to differentiate between abortion and murder, homicide, or abuse in fetal personhood states, thereby broadening the scope of immigration-related consequences for individuals involved in abortion-related actions.

106. For example, a state abortion-related crime could also be found to constitute the crime of "murder" under 8 U.S.C. § 1101(a)(43)(i), particularly in states that have adopted fetal personhood statutes. *See, e.g.*, ALA. CODE § 26-23H-2 (2019); ARK. CODE ANN. § 5-1-102(13) (2021); LA. STAT. § 40:1061.1 (2022); MISS. CODE ANN. § 97-3-37 (2025); MO. REV. STAT. § 188.026 (2019); N.D. CENT. CODE ANN. §14-02.1-02 (2023); OKLA. STAT. tit. 21, § 691 (2006); TEX. HEALTH & SAFETY CODE § 170A.002 (West 2022); W. VA. CODE § 61-2-30 (2023); WYO. STAT. ANN. § 6-1-104 (2025). Given that federal statutes have already explicitly excluded abortions from the federal definition of murder, however, the likelihood of this interpretation is unlikely. *See* 10 U.S.C. § 919a(a)–(b).

visa statuses from adjusting their status to that of lawful permanent resident, and trigger removal proceedings for immigrants present without authorization. The INA inadmissibility grounds include a provision that penalizes noncitizens with multiple convictions for certain offenses.[107] These convictions need not be categorical matches to any other federal crimes in the INA; the only requirement for inadmissibility is that the aggregate sentence resulting from these multiple convictions amounts to five or more years of confinement.[108] Given the harsh penalties provided for in state statutes criminalizing abortion care, this provision could easily be triggered by an immigrant who helps more than one person obtain an abortion or a person whose conduct during a single abortion could be charged under more than one criminal offense, such as criminal homicide, abuse of a corpse, child abuse, or an abortion-specific crime.[109]

Further, a myriad of immigration consequences could result from convictions that do not require categorical matches to federal generic crimes. For example, an individual cannot meet the definition of a person with good moral character if, at any time during the statutory period in question, the individual was confined to a penal institution as a result of a conviction for an aggregate period of one-hundred-and-eighty days or more.[110] For another example, for individuals whose presence in the United States is authorized through the Deferred Action for Childhood Arrivals program (commonly known as DACA), a state conviction can result in a loss of or inability to renew DACA status if the state conviction meets the federal regulations' definition of a felony or a significant misdemeanor.[111]

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107. *See* 8 U.S.C. § 1182(a)(2)(B) ("Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.").

108. *Id.*

109. *See* BACH & WASILCZUK, *supra* note 68, at 13–14 (reporting that between June 24, 2022, and June 23, 2023, prosecutors brought at least 210 criminal cases against pregnant people with crimes related to pregnancy, pregnancy loss, or birth. The majority of the charges asserted some form of child abuse, neglect, or endangerment, criminal homicide, drug charges, abuse of a corpse, abortion-specific crimes (one charge, charged under a repealed statute) and other miscellaneous crimes).

110. 8 U.S.C. § 1101(f)(7).

111. *See* 8 C.F.R. § 236.22(b)(6) (2025). For immigration purposes, a felony is a

C. Admissions, Plea Deals, and Other Minefields

Crucially, many of the immigration consequences outlined above do not require a formal state conviction, meaning that noncitizens are vulnerable to severe immigration consequences due to the mere existence of statutes that criminalize abortion-related conduct. Additionally, because of the INA's complicated definition of what constitutes a conviction for immigration purposes, individuals may agree to pretrial diversions, rehabilitative relief, and other forms of plea deals without realizing that these arrangements may still amount to a conviction under the INA. Because of this, immigrants in states that criminalize abortion-related conduct cannot take solace in the fact that prosecutors in their states may decline to prosecute abortion-related crimes or pursue plea deals that would allow defendants to avoid harsh sentences.[112]

First, as noted previously, some immigration consequences can be triggered by a mere admission to having committed relevant offenses. For example, the inadmissibility grounds addressing a crime involving moral turpitude are triggered when an individual is convicted of, admits to having committed, or admits committing acts which constitute the essential elements of a crime involving moral turpitude.[113] The admissions that can trigger this ground of inadmissibility can come about in several ways. For example, the

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crime committed in the United States that is punishable by imprisonment for a term of more than one year, regardless of the term actually served. *Id.* § 245a.1(p). The felony definition provides an exception for convictions of offenses that a state has categorized as a misdemeanor when the sentence actually imposed amounts to one year or less, regardless of the term actually served. *Id.* The definition of a significant misdemeanor includes a crime that is punishable by imprisonment for a term of five days to one year, regardless of the term actually served, where the individual was sentenced to imprisonment for more than ninety days. *Id.* § 236.22(b)(6)(ii). To qualify as an actual sentence for purposes of the significant misdemeanor definition, a sentence must actually involve time served in custody. For this reason, a suspended sentence would not lead to a significant misdemeanor finding if completely precluded time in custody). *Id.* §§ 236.22(b)(6), 245a.1(o).

112. As of May 9, 2023, over ninety local prosecutors pledged to not press charges against those providing or seeking abortions. *See* Fair and Just Prosecution, *Joint Statement from Elected Prosecutors* (2023), https://fairandjustprosecution.org/wp-content/uploads/2022/06/FJP-Post-Dobbs-Abortion-Joint-Statement.pdf [https://perma.cc/GU75-4JSL]. Certain other state executives have centralized authority to prosecute abortion-related crimes to state-level prosecutors and away from local and county-level prosecutors. *See* Ariz. Exec. Order No. 2023-11 (2023), available at https://azgovernor.gov/sites/default/files/executive_order_2023_11.pdf [https://perma.cc/9DTG-4U7N]. In response, several states have passed or proposed legislation to punish prosecutors who refuse to prosecute abortion offenses. *See*, *e.g.*, TEX. LOC. GOV'T CODE ANN. § 87.001(3)(b) (West 2023); S.B. 92, 2023 Leg., 2023 Reg. Sess. (Ga. 2023).

113. 8 U.S.C. § 1182(a)(2)(A)(i)(I).

immigration form an individual would file to adjust their status to that of a lawful permanent resident directly asks applicants, in a yes or no format, about any past criminal activity: "Have you **EVER** committed a crime of any kind (even if you were not arrested, cited, charged with, or tried for that crime)?"[114] Similarly, an individual may admit to criminal activity in response to an immigration officer's questioning during a hearing for immigration benefits or in other documents that might reach the hands of an immigration officer. Although BIA precedent decisions provide some limitations on the kinds of statements that can lead to an admission of a crime for purposes of the INA,[115] because an applicant faces severe consequences for materially misrepresenting information to obtain immigration benefits, the broad scope of this provision can ensnare even those individuals against whom a prosecutor might decline to press charges or pursue a prison sentence.

Secondly, because of the INA's broad definition of the term "conviction," prosecutorial arrangements such as pretrial diversions, rehabilitative sentences, and other plea deals can lead to a conviction for immigration purposes.[116] The INA defines a conviction as:

> a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.[117]

Pursuant to this definition, an individual can be found to have been convicted of a crime, even when the state withdraws an adjudication of guilt or expunges a conviction pursuant to the

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114. DEP'T OF HOMELAND SEC. & U.S. CITIZENSHIP & IMMIGR. SERVS., APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS, USCIS FORM 1-485 (Jan. 20, 2025) [hereinafter USCIS FORM 1-485], https://www.uscis.gov/sites/default/files/document/forms/i-485.pdf [https://perma.cc/4XDU-5WFT] (emphasis in original) (explaining that providing false answers to immigration forms can lead to the denial of the requested benefit and open the door to deportation); 8 U.S.C. §§ 1182(a)(9)(A), 1227(a)(1)(A).

115. *See* R-, 1 I. & N. Dec. 118 (B.I.A. 1941); M-, 1 I. & N. Dec. 229 (B.I.A. 1942); 22 C.F.R. § 40.21(a) (2025); B-M-, 6 I. & N. Dec. 806 (B.I.A. 1955); A-, 3 I. & N. Dec. 168 (B.I.A. 1948); Espinosa, 10 I. & N. Dec. 98 (B.I.A. 1962); K-, 9 I. & N. Dec. 715 (B.I.A. 1962).

116. *See* Roldan, 22 I. & N. Dec. 512, 516 (B.I.A. 1999) ("[W]hether or not a conviction exists for immigration purposes is a question of federal law and is not dependent on the vagaries of state law."); Mohamed, 27 I. & N. Dec. 92 (B.I.A. 2017).

117. 8 U.S.C. § 1101(a)(48)(A).

conditions of an agreement,[118] so long as there is an admission of guilt, of no contest, or of sufficient facts to warrant a finding of guilt. As such, pretrial diversions that predicate dismissal on a defendant's guilty plea or an admission of material facts will meet the definition of a conviction under the INA, even if the charge is later dismissed at the state court level. Because the INA only requires "some form" of punishment, penalty, or restraint on an individual's liberty, even nominal impositions of a diversionary program's costs and surcharges, orders for periods of community supervision and community service, and orders to attend rehabilitative classes can meet the definition of a conviction under the INA.[119] While criminal defense attorneys have a general obligation under the Sixth Amendment to inform noncitizen clients that immigration consequences could potentially result from taking a plea,[120] in practice, the advice that immigrant defendants receive is often cursory and does not fully apprise defendants of potential immigration consequences.[121] As a result, well-meaning prosecutors and criminal defense attorneys may inadvertently trigger severe immigration consequences in their attempts to work around harsh sentencing for abortion-related offenses.

III. Migrant Mobility and the Map of Abortion Access

Because of federal and state policies that regulate, control, surveil, and punish a noncitizen's movements within the United States, the geographic landscape of abortion access in the United States creates unique barriers for noncitizens seeking abortion-related healthcare. The proliferation of state laws that significantly restrict or completely ban abortion have produced expansive reproductive healthcare deserts that leave large regions of the United States without access to abortion care. Though the advent of abortifacient medication and telehealth can disaggregate abortion access from a person's physical presence at an abortion clinic,[122] states have nonetheless re-territorialized their power over pregnant people's bodies by criminalizing the mailing of abortion-

118. *See Roldan*, 22 I. & N. Dec. at 523.

119. *See Mohamed*, 27 I. & N. Dec.

120. *See* Padilla v. Kentucky, 559 U.S. 356, 367 (2010).

121. *See, e.g.*, U.S. v. Singh, 95 F.4th 1028, 1033 (6th Cir. 2024) (holding that courts are only required to provide a "generic warning" that pleading guilty "may" have immigration consequences and need not detail how, when, or under what circumstances such consequences could occur).

122. Calkin, *supra* note 21, at 27. Political geographer Sydney Calkin refers to this phenomenon as the "spatial transformation of abortion." *Id.*

inducing medication,[123] forbidding telehealth for abortion-related healthcare,[124] punishing or criminalizing the facilitation of travel to access an abortion out-of-state,[125] and by proposing legislation that would punish residents who access abortions outside the United States.[126] As a result, many immigrants seeking abortion care must still travel long distances, in some cases traversing several states, to reach a jurisdiction where abortion care is accessible.[127]

While this abortion-care desert significantly reduces abortion access to all people residing in the United States, especially those at the intersection of historically marginalized racial identity, gender, class,[128] and rurality,[129] federal and state immigration policies that result in the arrest, detention, deportation, and family separation of immigrants uniquely impact immigrant access to abortion care.[130] Federal practices like immigration detention, post-release restrictions on mobility, immigrant surveillance, border zone checkpoints, and federal-state immigration enforcement agreements all significantly restrict noncitizens' ability to engage in healthcare-related movement within the United States. The

123. *See, e.g.*, ARIZ. REV. STAT. ANN. § 36-2160 (2021); GA. CODE ANN. § 16-12-140 (2025); OKLA. STAT. tit. 63, § 1-756.3 (2021).

124. *See, e.g.*, IND. CODE ANN. § 16-34-2-1(d) (2022).

125. Currently, several states have passed statutes that criminalize or impose civil penalties for the recruiting, harboring, or transporting of unemancipated minors out-of-state for purposes of obtaining an abortion. *See, e.g.*, IDAHO CODE § 18-623(1) (2022); MO. REV. STAT. § 188.250 (2024); TENN. CODE ANN. § 39-15-202 (West 2019). While these statutes generally provide an "exception" where a parent consents to the travel, some of these exceptions are set forth as affirmative defenses to the crimes, meaning that even when a parent consents to the travel, an individual who facilitates or transports a minor out-of-state can nonetheless be arrested, charged, and even subject to a jury trial. *See, e.g.*, IDAHO CODE § 18-623(1)-(2) (2022).

126. *See* S.B. 603, 101st Gen. Assembly, 2021 Reg. Sess. (Mo. 2021); H.B. 2012, 101st Gen. Assembly, 2nd Reg. Sess. (2022) (proposing amendment 4488H03.01H). While not specifically addressing abortion, some states criminalize a conspiracy to commit an act that is legal in a destination state but illegal in the home state. *See* ALA. CODE § 13A-4-4 (2025) ("A conspiracy formed in this state to do an act beyond the state, which, if done in this state, would be a criminal offense, is indictable and punishable in this state in all respects if such conspiracy had been to do such act in this state."). For a detailed analysis of the complex jurisdictional and constitutional issues arising from extraterritorial statutes, *see* Cohen et al., *supra* note 2, at 22–51.

127. *Interactive Map: US Abortion Policies and Access After Roe*, GUTTMACHER INST., https://states.guttmacher.org/policies/ [https://perma.cc/E4JU-UB42].

128. Madeline M. Gomez, *Intersections at the Border: Immigration Enforcement, Reproductive Oppression, and the Policing of Latina Bodies in the Rio Grande Valley*, 30 COLUM. J. GENDER & L. 84, 89–91 (2015).

129. Lisa R. Pruitt & Marta R. Vanegas, *Urbanormativity, Spatial Privilege, and Judicial Blind Spots in Abortion Law*, BERKELEY J. GENDER L. & JUST. (2015).

130. Gomez, *supra* note 128, at 86.

combination of immigration enforcement systems with the proliferation of abortion-restrictive zones uniquely encumbers immigrant access to reproductive healthcare and autonomy, particularly for those with unauthorized status.

A. Immigration Detention

Immigration detention is a civil carceral space overseen by the Department of Homeland Security and its subcontractors that warehouses noncitizen people suspected of being removable from the United States.[131] Generally, the federal government has broad authority to detain noncitizens as they await final adjudications on immigration proceedings or, if already ordered removed, as they wait for the U.S. government to deport them to another country.[132] Although immigration detention is a civil form of custody that, in the government's words, is "non-punitive,"[133] conditions in immigration detention facilities are generally indistinguishable from those in prisons.[134] By incarcerating immigrants in detention centers that they cannot freely leave and limiting their access to the outside world, immigration detention centers strip detained people of their agency to make decisions about their reproductive health; to make use of the knowledge, support, and resources of their communities; and to access the healthcare they are entitled to under the law.[135]

The government's broad authority to detain noncitizens raises significant concerns for all immigrants who can become pregnant in the United States. Through immigration detention, the Department of Homeland Security exercises near complete control over detained people's bodies, meaning that detained individuals can exercise little bodily autonomy or agency over healthcare decisions that may impact them and their families. Reports from government investigators and advocates alike reveal that immigration detention facilities regularly fail to provide the spectrum of

131. *See Detention Management*, U.S. DEP'T OF HOMELAND SEC., U.S. IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/detain/detention-management [https://perma.cc/NT94-HVJS]; U.S. GOV'T ACCOUNTABILITY OFF., IMMIGRATION DETENTION: ACTIONS NEEDED TO IMPROVE PLANNING, DOCUMENTATION, AND OVERSIGHT OF DETENTION FACILITY CONTRACTS 11–12, (2021) [hereinafter GAO ACTIONS], https://www.gao.gov/assets/gao-21-149.pdf [https://perma.cc/6L3K-LBKP].

132. *See* 8 U.S.C. § 1226.

133. *Detention Management*, *supra* note 131.

134. CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, MIGRATING TO PRISON: AMERICA'S OBSESSION WITH LOCKING UP IMMIGRANTS 87–90 (New Press 2019).

135. Ariella J. Messing, Rachel E. Fabi & Joanne D. Rosen, *Reproductive Injustice at the US Border*, 110 AM. J. PUB. HEALTH 339, 341–42 (2020).

reproductive healthcare that is supposed to be available to detained individuals, including routine preventative gynecological healthcare services and pregnancy-related care.[136] Notwithstanding detention standards that claim to provide detained noncitizens with access to abortion care, even noncitizens confined to detention centers in states where abortion is legal often cannot readily exercise their right to an abortion. The Trump Administration's stated commitment to expanding immigration detention raises alarm about the increased detention of pregnant noncitizens in facilities where access to abortion and other reproductive healthcare is severely limited.[137] Furthermore, the proliferation of detention centers in states with restrictive abortion laws under such a policy framework poses new and significant barriers for pregnant noncitizens seeking abortion care.

i. Overview of Immigration Detention and National Detention Standards for the Care for Pregnant People

Between 2016 and 2018, the Department of Homeland Security confined pregnant women 4,600 times in immigration detention.[138] As of the time of the drafting of this article, the Department of Homeland Security is keeping over 37,000 individuals[139] in immigration detention facilities that the agency

136. *See* Messing et al., *supra* note 135; *Immigration Detention: ICE Can Improve Oversight and Management*, U.S. GOV'T ACCOUNTABILITY OFF. (Jan. 9, 2023), https://www.gao.gov/products/gao-23-106350 [https://perma.cc/67CU-LQ46]); *Barriers to Reproductive Justice While Detained*, ACLU OF NORTHERN CA (Nov. 17 2020), https://www.aclunc.org/RJdetained [https://perma.cc/SYP6-H7GT]; ACLU OF PA., LEGAL SERVS. OF N. J. & UNIV. OF PA. CAREY L. SCH., COMPLAINT TO THE DEP'T OF HOMELAND SEC. OFFICE OF C.R. & C.L. 48–50 (2024), https://www.aclupa.org/sites/default/files/field_documents/2024.07.10_crcl_complaint_-_moshannon.pdf [https://perma.cc/9LM2-AF3F].

137. Julia Ainsley, Didi Martinez & Laura Strickler, *Incoming Trump Admin Is Eyeing New Immigrant Detention Centers Near Major U.S. Cities*, NBC NEWS (Nov. 12, 2024), https://www.nbcnews.com/politics/immigration/incoming-trump-admin-eyeing-new-immigrant-detention-centers-major-us-c-rcna179843 [https://perma.cc/Y5CZ-BFFC].

138. U.S. GOV'T ACCOUNTABILITY OFF., IMMIGRATION DETENTION: CARE OF PREGNANT WOMEN IN DHS FACILITIES 5 (2020), https://www.gao.gov/assets/gao-20-330.pdf [https://perma.cc/U9KW-QM5A]. Note that the Government Accountability Office only accounts for women in its report on pregnancy-related medical care. It is not clear whether it uses the term to refer to all people assigned female at birth, or whether ICE reported no pregnant transmen or nonbinary people in the data that the GAO reviewed.

139. *Immigration Detention Quickfacts*, TRANSACTIONAL RECORDS ACCESS

operates or subcontracts to private corrections corporations and other local, state, or federal government agencies through intragovernmental service agreements.[140] These numbers have remained staggeringly high in both Republican and Democratic administrations like.[141]

The Department of Homeland Security (DHS) has promulgated several sets of national detention standards that each adult detention facility must agree to follow as a matter of law or, for subcontractors, as a condition of their operating contract.[142] These national detention standards outline a facility's immigration detention obligations and describe the services the facility must provide to each detained individual.[143]

The most recently revised detention standards, the 2019 National Detention Standards, set forth detention facility obligations for detained pregnant people.[144] Once detention facility

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CLEARINGHOUSE (July 14, 2024), http://web.archive.org/web/20240801001102/https://trac.syr.edu/immigration/quickfacts/ [https://perma.cc/P953-UUQZ].

140. GAO ACTIONS, *supra* note 131, at 7.

141. *See* Jessica Rofé, *Peripheral Detention, Transfer, and Access to the Courts*, 122 MICH. L. REV. 867, 893–94 (2024).

142. *ICE Detention Standards*, IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/factsheets/facilities-pbnds [https://perma.cc/P2BD-2W83].

143. *Id.* Facilities that detain children have their own sets of standards. Family detention centers, where children are detained with a parent, are likewise administered by ICE or an ICE contractor, and are governed by the 2020 Family Residential Standards. Unaccompanied children held in the custody of the Office of Refugee Resettlement, an agency within the U.S. Department of Health and Human Services, are governed by the ORR Unaccompanied Children Program Policy Guide. *See* IMMIGR. & CUSTOMS ENF'T, FAMILY RESIDENTIAL STANDARDS: PROGRAM, PHILOSOPHY, GOALS, AND EXPECTED OUTCOMES (2020), https://www.ice.gov/doclib/frs/2020/2020family-residential-standards.pdf [https://perma.cc/3M9U-J3TN]; *ORR Unaccompanied Alien Children Bureau Policy Guide*, OFF. OF REFUGEE RESETTLEMENT, https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide [https://perma.cc/LM68-GFA7]*; see also*, Valeria Gomez & Marcy L. Karin, *Menstrual Justice in Immigration Detention*, 41 COLUM. J. GENDER & L. 123 (2021) (describing how the varying standards of care between detention facilities can significantly curtail a detained person's ability to ascertain and assert healthcare rights).

144. IMMIGR. & CUSTOMS ENF'T, NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES 112 (2019) [hereinafter NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES], https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf [https://perma.cc/2EGT-QH5E]. The 2011 Performance-Based National Detention Standards, which were last revised in 2016, sets forth substantially similar abortion-related standards, though it outlines more specific goals and obligations related to women-specific medical care. *See* IMMIGR. & CUSTOMS ENF'T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011, at 322 (2011) [hereinafter ICE NATIONAL DETENTION STANDARDS]. For purposes of simplicity, this paper will focus on the 2019 National Detention Standards to assess the rights of detained pregnant people.

personnel receive medical confirmation that a detained person is pregnant, the facility must provide "close medical supervision," which includes access to prenatal care and "comprehensive counseling" on topics including family planning and "abortion services."[145] The facility administrator must notify ICE that a detained person is pregnant within seventy-two hours of reaching such a determination, and to inform all security staff and facility authorities if a pregnant person has particular needs such as a specialized diet, housing arrangement, or accommodations such as the provision of extra pillows.[146]

If the pregnant individual chooses to terminate a pregnancy, ICE is required to arrange for transportation to the medical appointment for the pregnancy termination at no cost to the detained individual; if requested, ICE is also required to facilitate access to religious counseling and "non-directive (impartial) medical resources and social counseling."[147] Because federal legislation popularly known as the Hyde Amendment forbids the federal government from paying abortion-related expenses,[148] ICE does not pay any abortion expense, except where proceeding with the pregnancy would endanger the pregnant person's life, or in situations where the pregnancy is a consequence of rape or incest.[149] The national standards are silent, however, on what kinds of consequences are considered life endangering, or on how a person would have to substantiate allegations of rape or incest.

ii. Shortcomings and Violations of the Pregnancy-Related Detention Standards

Notwithstanding these recently revised detention standards, reports and first-hand accounts reveal that the detention standards claiming to protect an individual's rights to reproductive healthcare

145. NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES, *supra* note 144, at 125. Note that not all immigration detention facilities have an on-location medical staff (referred to as the ICE Health Service Corp or "IHSC"). In non-IHSC, facility administrators are obligated to ensure that detained individuals receive appropriate healthcare at outside medical facilities. *See ICE Can Improve Oversight and Management*, *supra* note 136.

146. NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES, *supra* note 144, at 125.

147. *Id.* at 125–26.

148. *See* Consolidated Appropriations Act, Pub. L. No. 118–42, tit. II, § 202-03, 138 Stat. 25 (2024).

149. NATIONAL DETENTION STANDARDS FOR NON-DEDICATED FACILITIES, *supra* note 144.

do not square with the lived experiences of those trying to attain adequate reproductive healthcare and effectuate their reproductive healthcare choices.[150] As reproductive justice advocates have long observed, the existence of a legal right does little to protect members of marginalized communities who lack the power to assert those rights.[151] Nowhere is that more evident than in carceral spaces like immigration detention, where incarcerated individuals live under the threat of deportation; have no control over their physical location; depend on guards to access medical care; and are often isolated in facilities far from hometowns, emotional and religious support systems, or cities where advocates, nonprofit organizations, lawyers, or other healthcare providers might be able to provide support, information, or assistance in asserting their healthcare rights.[152]

Accounts from detained individuals, former employees of detention facilities, and nonprofit organizations lay bare how detention facilities fail to respect the physical integrity or reproductive healthcare choices of those detained.[153] Immigration detention, by its nature, is dangerous to maternal health, as evidenced by the experiences of this 23-year-old asylum seeker in New Mexico:

> A 23-year-old asylum seeker was detained at a U.S. port of entry when she was 12 weeks pregnant. She was held in ICE custody for three months and transferred between facilities six times. One transfer between New Mexico and Texas took 23 hours and landed her in the hospital for exhaustion and dehydration. She experienced nausea, vomiting, weakness, headaches, and abdominal pain during her detention and did

150. *See, e.g.*, Alexandria Doty, *ICE Detainees Denied Access to Abortion*, IMMIGR. & HUM. RTS. L. REV. BLOG (Mar. 25, 2022), https://lawblogs.uc.edu/ihrlr/2022/03/25/ice-detainees-denied-access-to-abortion/ [https://perma.cc/VJG3-YRF4]; Messing et al., *supra* note 135.

151. *See* ROBERTS, *supra* note 51, at 294–312 ("The concept of the already autonomous individual who acts freely without government intrusion is a fallacy that privileges decisionmaking by the most wealthy and powerful members of society. It ignores the communities and social systems that both help and hinder an individual in determining her reproductive life."); *Reproductive Justice*, *supra* note 8; Rebouché, *supra* note 8.

152. Rofé, *supra* note 141, at 894; Kevin Sieff, *Access Denied*, THE TEXAS OBSERVER (Feb. 20, 2009), https://www.texasobserver.org/2963-access-denied/ [https://perma.cc/WU2S-Q7AZ] (noting that immigration detention centers are impenetrable to abortion clinics and family planning centers, and quoting Brownsville Planned Parenthood CEO as stating that once people are in immigration detention "it feels like they're lost").

153. Messing et al., *supra* note 135; Marissa McFadden, Christine Marie Velez & Maria Mercedes Ávila, *Pregnant Migrant Latinas at the US Border: A Reproductive Justice Informed Analysis of ICE Health Service Policy During "Zero-Tolerance"*, 7 J. HUM. RTS. & SOC. WORK 349 (2022).

> not receive sufficient prenatal vitamins or adequate medical attention.[154]

The failure to provide even the most basic prenatal care is particularly alarming give the prevalence of sexual violence in immigration detention facilities. Notwithstanding the passing of laws like the Prison Rape Elimination Act, ostensibly enacted to promote systems that protect individuals in federal and state custody from sexual violence,[155] journalists and advocacy groups continue to uncover accounts of systemic sexual assault and sexual harassment of detained women and children[156] at immigration detention facilities by guards[157] and even medical personnel.[158]

Whistleblowers have also alleged that severe medical malpractice has permanently stripped some detained women of their reproductive capacities. In September 2020, for example, advocacy organizations filed a complaint with the DHS Office of the Inspector General on behalf of women detained at the Irwin County Detention Center and of whistleblower Dawn Wooten, a former nurse at the same facility.[159] This complaint made national

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154. McFadden et al., *supra* note 153, at 356 (quoting Victoria López, *Working to Uncover How ICE Treats Pregnant Women in Detention*, AM. CIV. LIBERTIES UNION (May 3, 2018), https://www.aclu.org/news/immigrants-rights/working-uncover-how-ice-treats-pregnant-women) [https://perma.cc/UE8B-BGJV]).

155. *See* 34 U.S.C. § 30302, *et seq*.

156. *See, e.g.*, Caitlin Owens, Stef W. Kight & Harry Stevens, *Thousands of Migrant Youth Allegedly Suffered Sexual Abuse in U.S. Custody*, AXIOS (Feb. 26, 2019), https://www.axios.com/2019/02/26/immigration-unaccompanied-minors-sexual-assault [https://perma.cc/JR65-9HBL].

157. *See* Lomi Kriel, *ICE Guards "Systematically" Sexually Assault Detainees in an El Paso Detention Center, Lawyers Say*, PROPUBLICA (Aug. 14, 2020), https://www.propublica.org/article/ice-guards-systematically-sexually-assault-detainees-in-an-el-paso-detention-center-lawyers-say [https://perma.cc/S8ML-5M9T]; *see also* Valerie G. Zarate, *Disposable Immigrants: The Reality of Sexual Assault in Immigration Detention Centers*, 53 ST. MARY'S L. J. 619 (2022) (describing the convoluted system in place for reporting sexual assault in immigration detention and the barriers detained individuals face in reporting and seeking justice).

158. Jose Olivares & John Washington, *ICE Jail Nurse Sexually Assaulted Migrant Women, Complaint Letter Says*, THE INTERCEPT (July 13, 2022), https://theintercept.com/2022/07/13/ice-stewart-detention-sexual-misconduct/ [https://perma.cc/S72S-V2VR] (describing allegations of sexual assault by a nurse employed by a privately owned immigration detention center in Georgia); Kriel, *supra* note 157.

159. Letter from Project South, Georgia Detention Watch, Georgia Latino Alliance for Human Rights, South Georgia Immigrant Support Network to Joseph V. Cuffari, Inspector Gen., Dep't of Homeland Sec., Cameron Quinn, Officer for C.R. & C.L., Dep't of Homeland Sec., Thomas P. Gies, Acting Dir. of Atlanta ICE Field Off., U.S. Immigr. and Customs Enf't Atlanta Field Off., David Paulk, Warden of the Irwin Cnty. Det. Ctr., (Sept. 14, 2020), https://projectsouth.org/wp-

headlines after alleging that an alarming number of women confined at the detention facility had been subjected to hysterectomies without their informed consent.[160] It was not until the news of these alleged abuses made national headlines that ICE took steps to end its immigration detention contract with the Irwin County Detention Center, despite numerous investigations by the Office for Civil Rights and Civil Liberties (CRCL), which repeatedly investigated and substantiated problems with the facility's the provision of healthcare.[161]

By design and through implementation, the carceral immigration detention system also obstructs the detained noncitizen's access to abortion care. This obstruction is particularly troubling when considering the context in which many individuals find themselves in the custody of the Department of Homeland Security—after traversing one or more countries by land in an attempt to seek asylum or another form of refuge in the United States. Reports show that, tragically, migrants commonly suffer sexual assault and rape along the journey to the United States; in fact, migrants traveling to the United States often take oral contraceptives to proactively avoid becoming pregnant in the event of rape along the way.[162] With stakes like these, access to reproductive healthcare in the form of gynecological counseling, pre- and post-natal care, or abortion care takes on an urgent significance.

As noted previously, however, people confined to immigration detention facilities have little control over their healthcare and are

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content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf [https://perma.cc/BB28-ZK93]; *see also* Wendy Dowe, *"The Traumas of Irwin Continue to Haunt Me": Non-Consensual Surgery Survivor Seeks Restitution, Calls to Shut Down Detention Centers*, MS. MAGAZINE (Dec. 9, 2021), https://msmagazine.com/2021/12/09/immigrants-ice-detention-center-georgia-irwin-women-reparations-sexual-violence/ [https://perma.cc/2TKL-R7BR] (describing her experience of having been subjected to an involuntary gynecological surgery at the Irwin County Detention Center and the subsequent retaliation and eventual deportation she experienced after protesting her treatment).

160. Dowe, *supra* note 159.

161. Memorandum from Peter E. Mina, Senior Off. Performing the Duties of the Officer for C.R. and C.L. & Susan Mathias, Assistant Gen. Couns., Legal Couns. Div. Off. of the Gen. Couns. to Tae D. Johnson, Acting Dir., U.S. Immigr. and Customs Enf't & Kerry E. Doyle, Principal Legal Advisor, Off. of the Principal Legal Advisor U.S. Immigr. and Customs Enf't, *Recommendations Memo to ICE Concerning Irwin County Detention Center in Ocilla, Georgia*, (Sept. 12, 2022), https://www.dhs.gov/sites/default/files/2023-02/rec-memo-ice-irwin-icdc-09-12-22.pdf [https://perma.cc/FUC9-RFEN].

162. Paola Letona, Erica Felker-Kantor & Jennifer Wheeler, *Sexual and Reproductive Health of Migrant Women and Girls from the Northern Triangle of Central America*, 47 PAN AM. J. OF PUB. HEALTH 59 (2023).

at the complete mercy of facility employees to communicate their medical needs, facilitate access to healthcare providers, vet the competence of healthcare providers, provide prescribed alimentary regimens, medication, or treatment, and follow up with healthcare providers. Because statutes explicitly forbid the federal government from covering the costs of abortion-related care, those detained are forced to find a way to pay for their own abortions while incarcerated. Being forcibly confined in detention, pregnant detained people cannot save for abortion-related expenses (absent resorting to "voluntary" employment by providing services for the immigration detention center for as little as a dollar a day).[163] As a result, abortion costs render abortions out of reach for many detained individuals. While the Hyde Amendment does make an exception for those who became pregnant as a result of rape or incest, such survivors of rape or incest are nonetheless forced to "prove" this to immigration officials in order to access their right to a government-funded abortion.[164] This requires that survivors of rape relive their experiences through disclosure to as many officials as required to access this right, and they must do so without ready access to potential witnesses, foreign medical records, and trauma-informed mental healthcare.[165] All of this must happen within the window of time in which an abortion can still be legally performed in the state.

For unaccompanied immigrant children in the custody of the Office for Refugee Resettlement, abortion access can be even harder to obtain. Generally, states that allow minors to receive abortions[166] have judicial bypass procedures, whereby certain minors can reach decisions relating to abortion without the consent of a parent or guardian.[167] Access to a judicial bypass and to abortion-providing facilities may often be obstructed by agency policy, however, as

163. Anita Sinha, *Slavery by Another Name: "Voluntary" Immigrant Detainee Labor and the Thirteenth Amendment*, 11 STAN. J. CIV. RTS. & CIV. LIBERTIES 1, 31–36 (2015); Jonathon Booth, *Ending Forced Labor in ICE Detention Centers: A New Approach*, 34 GEO. IMMIGR. L. J. 573, 590–92 (2020).

164. *See* Lauren Holter, *Detained Immigrant Women Are Facing a Grueling Abortion Struggle*, BUSTLE (May 10, 2017), https://www.bustle.com/p/detained-immigrant-women-are-facing-a-grueling-abortion-struggle-50388 [https://perma.cc/R8DZ-Z4BB] (noting that rape survivors must bear the burden of reliving the trauma to prove they were raped).

165. *Id.*

166. *See An Overview of Consent to Reproductive Health Services by Young People*, GUTTMACHER INST., https://www.guttmacher.org/state-policy/explore/overview-minors-consent-law [https://perma.cc/NL5Z-B2ED].

167. *See* 1 C.J.S. Abortion & Birth Control § 24 (2024).

experienced by Jane Doe, the teenage asylum-seeker at the center of *Garza v. Hargan*.

Garza v. Hargan was an intensely litigated case challenging an abortion-obstructive Trump Administration policy well before the *Dobbs* decision.[168] In March 2017, the Office of Refugee Resettlement ("ORR") informed ORR shelter employees that they were "'prohibited from taking any action that facilitates an abortion without direction and approval from the Director of ORR.'"[169] The ORR directive required ORR staff to immediately notify the agency of any minor's request to terminate a pregnancy, and informed staff that they were not permitted to "support[] abortion services pre or post-release; only pregnancy services and life-affirming options counseling."[170] The ORR directive required parental consent before any abortion facilitation would occur, and labeled the pursuance of judicial bypasses as a form of prohibited "facilitation."[171]

While this policy was in place, Jane Doe entered the United States unaccompanied at the age of seventeen and learned she was pregnant shortly after she was placed in an ORR shelter in Texas, a state that required parents of pregnant minors to consent to a minor's abortion.[172] With the assistance of counsel, Jane immediately recognized that she did not want to continue her pregnancy and expressed her desire to obtain an abortion.[173] Jane pursued and obtained a judicial bypass of Texas's consent laws, secured private funding for her abortion, and secured her own

168. *See* Garza v. Hargan, Civil Action No. 17-cv-02122 (TSC), 2017 U.S. Dist. LEXIS 175415 (D.D.C. Oct. 18, 2017) (granting Garza's temporary restraining order and ordering the Office of Refugee Resettlement to facilitate her access to an abortion); Garza v. Hargan, No. 17-5236, 2017 U.S. App. LEXIS 20711, at *2 (D.C. Cir. Oct. 20, 2017) (vacating the district court's temporary restraining order under the notion than the government's anti-abortion policy did not constitute an undue burden to an abortion); Garza v. Hargan, 874 F.3d 735 (D.C. Cir. 2017) (en banc) (vacating panel order and remanding the case to district court); Azar v. Garza, 584 U.S. 726 (2018) (vacating D.C. Circuit's en banc order, and remanding the case to the D.C. Circuit with instructions to dismiss for mootness).

169. Garza v. Hargan, 304 F. Supp. 3d 145, 150 (D.D.C. 2018).

170. *Id.*

171. *Id.*

172. *Id.* at 151; *see also After a Month of Obstruction by the Trump Administration, Jane Doe Gets Her Abortion*, AM. CIV. LIBERTIES UNION (Oct. 25, 2017) [hereinafter ACLU, *After Obstruction by Trump Administration, Jane Doe Gets her Abortion*], http://www.aclu.org/press-releases/after-month-obstruction-trump-administration-jane-doe-gets-her-abortion [https://perma.cc/V9VV-BCAX] (including statement from the principal plaintiff, Jane Doe, about her experiences in ORR custody).

173. ACLU, *After Obstruction by Trump Administration, Jane Doe Gets her Abortion*, *supra* note 172.

transportation to an abortion clinic.[174] When it came time to leave the shelter to effectuate the abortion, however, the ORR refused to allow Jane to be transported to the abortion clinic, claiming that such action would be contrary to the ORR directive.[175] The ORR contended that the only way Jane could access an abortion would be if she could identify an appropriate adult sponsor to pass agency vetting and take custody over her, or to voluntarily self-deport to the country from which she had initially fled, where abortion was illegal.[176]

The ORR tried other measures to dissuade Jane from having an abortion.[177] The agency forced Jane to undergo counseling at a religiously affiliated crisis pregnancy center and made her view a sonogram.[178] And without regard to the fact that Jane had previously informed the agency that her parents had abused her—indeed this was the reason she had fled her country of origin in the first place—the ORR informed Jane's parents of her desire to terminate her pregnancy without her consent.[179] The U.S. District Court for the District of Columbia granted Jane's request for injunctive relief, a decision which the ORR appealed all the way to the Supreme Court.[180] Eventually, after extensive litigation, and with the window for an abortion rapidly narrowing, Jane was able to secure her abortion.[181]

The ACLU, which represented Jane in her case, notes that Jane's case was not unique.[182] In the case of another pregnant teenager in ORR custody, ORR Director Scott Lloyd "personally visited a young woman who was seeking an abortion to attempt to dissuade her from her decision."[183] On another occasion, the ORR forcibly rushed another teenager to the emergency room after she

174. *Garza*, 304 F. Supp. 3d at 151.
175. *Id.*
176. *Id.*
177. *Id.*
178. *Id.*
179. *Id.*
180. *Id.*
181. ACLU, *After Obstruction by Trump Administration, Jane Doe Gets her Abortion*, *supra* note 172.
182. *Id.*
183. *Garza v. Hargan - Challenge to Trump Administration's Attempts to Block Abortions for Young Immigrant Women*, AM. CIV. LIBERTIES UNION (Aug. 8, 2018) [hereinafter ACLU, *Challenge to Trump Administration's Abortions Blocks for Immigrant Women*], https://www.aclu.org/cases/garza-v-hargan-challenge-trump-administrations-attempts-block-abortions-young-immigrant-women [https://perma.cc/X5WC-2LBM].

took an abortion-inducing pill, in attempts to prevent the abortion from taking place.[184] Even after the *Garza* litigation ended and the ORR changed its official policy on abortion obstruction, journalists reported that the ORR was still meticulously tracking the menstrual cycles of the girls in ORR custody in attempts to ascertain whether they might be pregnant.[185]

iii. Abortions in Detention in a Post-*Dobbs* World

Garza secured Jane Doe's access to an abortion in a time before *Dobbs*, when courts still recognized a federal constitutional right to abortion. Without a constitutional right to abortion, however, Jane likely would not have obtained the injunctive relief that secured her abortion. Jane's case also reveals another vulnerability present in the immigration system: abortion access for individuals in immigration detention is dependent on the policies and politics of the executive administration in power at any given time.

Under the Biden Administration, both ICE and the ORR ostensibly have had directives in place to facilitate abortion access for individuals held in ICE or ORR custody.[186] Under these directives, agencies have committed to facilitating the transfer of pregnant individuals confined in anti-abortion states to facilities in states that do allow abortions.[187] News outlets report that Acting ICE Director Tae Johnson issued a memorandum shortly after the *Dobbs* decision, instructing ICE officials to ensure that pregnant individuals in ICE custody had access to "full reproductive

184. *Id.*

185. Jennifer Wright, *The U.S. Is Tracking Migrant Girls' Periods to Stop Them from Getting Abortions*, HARPER'S BAZAAR (Apr. 2, 2019), www.harpersbazaar.com/culture/politics/a26985261/trumpadministration-abortion-period-tracking-migrant-women/ [https://perma.cc/632S-8N93].

186. *See* ADMIN. OF CHILD. & FAMS., OFF. OF REFUGEE RESETTLEMENT, FIELD GUIDANCE – REVISED NOVEMBER 10, 2022 (FIRST ISSUED OCTOBER 1, 2021) 1, 3 (2022) [hereinafter ORR GARZA FIELD GUIDANCE], https://assets.law360news.com/1548000/1548745/field-guidance-21.pdf [https://perma.cc/H54Y-LGD5] (RE: Field Guidance #21 – Compliance with Garza Requirements and Procedures for Unaccompanied Children Needing Reproductive Healthcare) (stating that the ORR will, "to the greatest extent possible," transfer pregnant unaccompanied minors to a state-licensed ORR facility in a state where the minor can lawfully obtain an abortion); Michelle Hackman, *ICE Says Immigrant Women in Custody Still Entitled to Abortion Services*, WALL ST. J., (July 12, 2022), https://www.wsj.com/articles/ice-says-immigrant-women-in-custody-still-entitled-to-abortion-services-11657639375 [https://perma.cc/4M4F-3UFD] (reporting that ICE Acting Director directed a memo to the head of ICE ERO after the *Dobbs* decision, advising that ICE may need to transfer detained pregnant individuals to facilities "when appropriate and practicable" to ensure abortion access).

187. ORR GARZA FIELD GUIDANCE, *supra* note 186, at 3.

healthcare."[188] This memorandum called for detention facilities to transfer detained pregnant individuals seeking abortions to facilities where abortion would be accessible "when appropriate and practicable," in accordance with "existing ICE policy."[189]

Though these media reports suggest that the Biden Administration prioritizes abortion access for detained pregnant immigrants, the circumstances surrounding the memorandum still leave cause for concern. Precisely what Acting Director Johnson meant by "existing ICE policy" regarding abortion-related travel is unclear. ICE has since provided no additional information as to what the transfer process would look like, what constitutes a "practicable" transfer, or, perhaps more importantly, what kind of transfer would be "impracticable" under current policy.

It is not clear that these directives ever translated to the actual facilitation of abortion access in detention centers, given that even when abortion was a recognized constitutional right, detained pregnant people nonetheless struggled to have their abortion decisions respected. But these directives point to a more concerning problem. Any such abortion directives are precarious stances that exist solely as products of agency policy. With the Supreme Court's elimination of the constitutional right to an abortion, and absent federal legislation or regulations cementing ICE and ORR's obligation to facilitate abortion-related transfers, these directives and detention standards are readily subject to change.

The precarity of Biden-era abortion-protective directives is particularly dire considering the current immigration detention landscape. As of August 2, 2024, the states with the most detained immigrants are Texas (13,448 detained), Louisiana (6,186 detained), California (2,596 detained), Arizona (2,457 detained), and Georgia (2,404 detained).[190] Of these five states, four of them––Texas, Louisiana, Georgia, and Arizona—have abortion-restrictive statutes on the books, with Texas and Louisiana having a total abortion ban in effect,[191] Georgia having a six-week abortion

188. Hackman, *supra* note 186. Journalists reported that they had reviewed this memorandum before reporting on it, *id.*, but to date, ICE has not made this memorandum readily available to the public.

189. *Id.*

190. *Immigration Detention Quickfacts*, *supra* note 139. *See Arizona Abortion Laws, supra* note 91 (announcing passing of the amendment to the Arizona Constitution to establish a fundamental right to an abortion through fetal viability); ARIZ. CONST. art. II, § 8.1.

191. *See* TEX. HEALTH & SAFETY CODE ANN. § 170A.002 (2022); LA. STAT. ANN. § 14:87.7 (2022).

ban in effect,[192] and Arizona having a fifteen-week abortion ban in effect.[193] As of August 2, 2024, ICE detained over 67% of its detained population in states in which abortion is either completely banned or is banned upon the detection of a fetal heartbeat.[194] Effectively, ICE's detention capacity is greatest in states where abortion access is completely or significantly restricted. Following Donald Trump's election victory, his administration's anticipated expansion of immigration detention and commitment to anti-abortion policies suggest a significant risk of agency directives that discourage or outright forbid the facilitation of abortions or detainee transfers to states where abortion remains legal, echoing the troubling policies at issue in *Garza*.

Concerningly, the immigration detention map continues trending towards confinement in abortion-restrictive states, as ICE increasingly builds or contracts with detention centers located in regions where abortion access has been severely restricted or is banned.[195] While detention facilities have multiplied in recent years in states like Louisiana,[196] ICE has closed facilities or terminated contracts with facilities in states where abortion is more accessible

192. *See* GA. CODE ANN. § 16-12-141 (2024) (criminalizing abortions of any fetus with a detectable heartbeat, generally understood to be six weeks into a pregnancy).

193. ARIZ. REV. STAT. ANN. § 36-23-2322 (2002); H.B. 2677, 2024 Leg. Sess., 2d Reg. Sess. (Arizona 2024) (repealing 1864 territorial statute instituting a total abortion ban); *see Arizona Abortion Laws*, *supra* note 91; ARIZ. CONST. art. II, § 8.1.

194. *Detention Facilities Average Daily Population*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, https://trac.syr.edu/immigration/detentionstats/facilities.html [https://web.archive.org/web/20240804164745/https://trac.syr.edu/immigration/detentionstats/facilities.html] [perma.cc/GM8C-M4BL].

195. *See* Rofé, *supra* note 141, at 907; Nomann Merchant, *Louisiana Becomes New Hub in Immigrant Detention Under Trump*, AP NEWS (Oct. 9, 2019), https://apnews.com/article/donald-trump-us-news-ap-top-news-ar-state-wire-immigration-c72d49a100224cb5854ec8baea095044 [https://perma.cc/4RA3-F2YY] (commenting that Louisiana had become an "epicenter for immigrant detention" under President Trump and noting how over the past year, eight Louisiana jails had started housing asylum-seekers and other migrants). Conversely, ICE has recently closed detention centers or ended contracts with facilities located in states where abortion is more accessible or protected by state law. *See, e.g.*, Brian Witte, *Maryland Lawmakers Override Immigrant Detention Bill Veto*, AP NEWS (Dec. 7, 2021), https://apnews.com/article/immigration-larry-hogan-maryland-redistricting-congress-bbe562a766a32a2436cfd245063b274c [https://perma.cc/Y6PY-GHW8]; Marc Fortier, *ICE to Close Detention Center in Massachusetts After Allegations of Mistreatment*, NBC BOS. (May 20, 2021), https://www.nbcboston.com/news/local/ice-to-close-detention-center-in-massachusetts-after-allegations-of-mistreatment/2385676/ [https://perma.cc/88ME-C9T2].

196. Merchant, *supra* note 195.

or protected by state law, such as Maryland[197] and Massachusetts.[198]

Immigration detention facilities systematically fail to uphold basic standards of reproductive justice, subjecting detained individuals to inadequate medical care, barriers to abortion access, and violations of their bodily autonomy. Because immigration detention keeps people in confinement, often in locations that are far removed from noncitizens' homes,[199] immigration detention also obstructs noncitizens' ability to parent their children with dignity and agency. Whether through obstructionist abortion policies or immigrant sterilization practices, immigration detention interferes with immigrants' rights to craft their own families and is an embodiment of the state's preoccupation with controlling immigrants' bodies and reproductive choices.[200] As the *Garza* and Irwin County Detention Center cases demonstrate, immigration detention policies can shackle pregnant immigrants to a lose-lose binary: remain in detention, where you may be effectively forced to give birth against your will and lose agency over your body and family life, or accept deportation and give up your claims to protection in the United States. In essence, the detention system's supreme control over the female and pregnant-capable body makes the pregnant body its own locus of immigration enforcement and control.

B. Post-Detention Surveillance and Conditions of Release

The sphere of ICE's control over immigrant bodies does not end with immigration detention. Noncitizens released from immigration detention, or subjected to so-called "Alternatives to Detention," also find that the conditions of such release can severely limit their ability to access abortion-related care and even render them especially vulnerable to prosecution in abortion-restrictive states.[201] These conditions of release can range from restrictions on geographic mobility (such as restrictions on interstate travel), in-

197. Witte*, supra* note 195.

198. Fortier, *supra* note 195.

199. Rofé, *supra* note 141, at 891.

200. *See* Rebouché, *supra* note 8**,** at 594; Messing et al., *supra* note 135, at 339; DOROTHY E. ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 56 (2d Vintage ed. 2017) (noting that the policies of forcing enslaved Black women to give birth and of reducing Black women's fertility share in common the belief that "Black women's childbearing should be regulated to achieve social objectives").

201. *See infra* Part III.B.ii.

person check-ins or visits, and home curfews, to electronic surveillance through the use of GPS ankle monitors, geo-locating phone services, and data-collecting apps.[202] By conditioning a person's release from detention on geographic restrictions, the government imposes another form of carceral control,[203] exerts additional power over the reproductive agency of noncitizens in the United States, and uniquely impacts their access to reproductive justice in the post-*Dobbs* legal landscape.

i. Conditions of Release

As noted above, the Department of Homeland Security exercises broad discretion in its immigration detention policies.[204] As part of this broad discretion, ICE has carte blanche to define the conditions under which a detained individual may be subjected to release. Conditions of release can vary widely, including: (a) release on an individual's own recognizance, whereby the released individual signs paperwork committing to appear for all scheduled immigration court hearings and to comply with specified conditions of release; (b) on an Order of Supervision, for individuals who have been ordered removed and are unlikely to be deported within the foreseeable future;[205] (c) through conditional parole, a form of permission to reside in the United States for a finite time for humanitarian reasons, such as a medical emergency;[206] and (d) after a payment of a bond of at least $1,500[207] (and up to the tens of

202. *See* U.S. DEPT. OF HOMELAND SEC., DHS/ICE/PIA-062, PRIVACY IMPACT ASSESSMENT FOR THE ALTERNATIVES TO DETENTION (ATD) PROGRAM (Mar. 30, 2023) [hereinafter PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM], https://www.dhs.gov/publication/dhsicepia-062-alternatives-detention-atd-program [https://perma.cc/BN4E-YZQX] (describing the structure of the program).

203. *See* Sarah Sherman-Stokes, *Immigration Detention Abolition and the Violence of Digital Cages*, 95 U COLO. L. REV. 219, 256–57, 263–66 (2024); Constantine Gidaris, *Rethinking Confinement Through Canada's Alternatives to Detention Program*, 1 INCARCERATION 1, 5 (2020).

204. *See* 8 U.S.C. § 1226(c); 8 C.F.R. § 236.1(b), (c), (g) (2024).

205. *See* PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM, *supra* note 202, at 3; AM. IMMIGR. COUNCIL, SEEKING RELEASE FROM IMMIGRATION DETENTION 2 (2019) [hereinafter AILA, SEEKING RELEASE FROM IMMIGRATION DETENTION], https://www.americanimmigrationcouncil.org/research/release-immigration-detention [https://perma.cc/DHV2-SNME].

206. *See* 8 U.S.C. § 1226(a)(2)(B).

207. 8 U.S.C. § 1226(a)(2)(A); *see* 8 C.F.R. § 236.1(g) (2024) (referencing the issuance of a Notice of Custody Determination, which determines the conditions of a detained individual's release, including the payment of an ICE-determined bond amount); *see* 8 C.F.R. § 1003.19 (2017) (establishing that certain instances, an immigration judge can hold a bond hearing, also called a Custody Redetermination Hearing, through which it can (re-)set the bond amount a detained person must pay to ICE in order to secure their release); 8 C.F.R. § 1236.1(d) (2022).

thousands of dollars, as there is no statutory maximum for immigration bonds).[208] Except for certain limited exceptions, the INA prohibits federal courts from overturning ICE's custody determinations and conditions of release.[209] ICE can generally revoke its custody determination and re-detain a noncitizen at will, especially if noncitizens violate their conditions of release.[210]

As alluded to above, ICE may predicate an individual's release from detention on the meeting of certain conditions.[211] While some of these conditions may be minimally invasive, such as the promise to appear to all scheduled immigration court hearings (something a noncitizen with a pending immigration court case is required to do anyway to avoid being ordered removed in their absence),[212] others seriously restrict a noncitizen's movement and conduct. For example, as a condition for release, ICE may forbid an individual from traveling outside of their state of residence, or forbid them from violating federal, state, or local laws,[213] without regard to

208. Sarah Betancourt, *Immigrants Pay Cripplingly High Bail Bonds to Be Released from Detention Across US*, THE GUARDIAN (Aug. 25, 2021), https://www.theguardian.com/us-news/2021/aug/25/immigrants-pay-high-bonds-released-detention-us [https://perma.cc/3CT9-S9R6]; *Immigration Court Bond Hearings and Related Case Decisions*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (2023) [hereinafter TRAC, *Immigration Court Bond Hearings and Related Case Decisions*], https://trac.syr.edu/phptools/immigration/bond/ [https://web.archive.org/web/20230603041518/https://trac.syr.edu/phptools/immigration/bond/] [https://perma.cc/8692-CQJ5].

209. *See* 8 U.S.C. § 1226(e); HILLEL R. SMITH, CONG. RSCH. SERV., IF1343, THE LAW OF IMMIGRATION DETENTION: A BRIEF INTRODUCTION 2 (2022), https://www.congress.gov/crs-product/IF11343 [https://perma.cc/UCF7-E4BD] (discussing that these exceptions generally relate to constitutional challenges to detention decisions, such as suits challenging the indefinite custody of nonremovable noncitizens after a removal order and the conditions of confinement in immigration detention).

210. 8 C.F.R. § 236.1(c)(9) (2022).

211. AILA, SEEKING RELEASE FROM IMMIGRATION DETENTION, *supra* note 205.

212. *See* 8 U.S.C. § 1229a(b)(5) (establishing that the consequences for failing to appear are severe; generally, an immigration judge can order a noncitizen removed in absentia if the noncitizen does not appear to any scheduled immigration court hearing); 8 U.S.C. § 1229(b)(5)(C), (b)(7), (e) (noting that an in absentia removal order can only be rescinded if an immigration judge grants a noncitizen's motion to reopen, which requires a showing of exceptional circumstances, a threshold that is difficult to meet).

213. *See, e.g.*, U.S. DEP'T OF HOMELAND SEC., U.S. IMMIGR. & CUSTOMS ENF'T, ICE FORM I-220B [hereinafter ICE FORM I-220B], https://www.ice.gov/doclib/detention/checkin/I_220B_OSUP.pdf [https://perma.cc/LF3Y-J587] (form that ICE issues to individuals released on an Order of Supervision, which provides a checklist of potential conditions of release which includes, among other conditions, restrictions on traveling outside of a

whether the individuals are actually prosecuted for said violations or whether the laws conflict with federal public policy (such as statutes that restrict medical or reproductive freedom). During the Biden administration, for example, ICE piloted a house arrest program for certain asylum-seeking families, which required individuals to remain at their stated residence from eleven p.m. to five a.m., or else risk re-arrest and detention.[214]

ii. Geo-Tracking and Electronic Surveillance as an "Alternative to Detention"

Under the guise of "assist[ing] enrolled noncitizens' compliance with release conditions,"[215] ICE established the "Alternatives to Detention" (ATD) program in 2004.[216] The ATD program acts a "supplemental requirement" for release, wherein released individuals are subject to more "intensive supervision through case management and electronic monitoring," than those who are otherwise released without having to enroll in the ATD

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specified geographic region "for more than 48 hours without first having notified this agency office of the dates and places, and obtaining approval from this agency office of such proposed travel" and requirements that noncitizens provide information under oath about their "circumstances, habits, associations, and activities and such other information as the agency considers appropriate"); U.S. DEP'T OF HOMELAND SEC., U.S. IMMIGR. & CUSTOMS ENF'T, ICE FORM I-220A [hereinafter ICE FORM I-220A], https://www.ice.gov/doclib/detention/checkin/I_220A_OREC.pdf [https://perma.cc/6USM-CJY3] (form ICE issues to individuals released on an Order of Release on Recognizance, which provides a checklist of potential conditions of release that includes, among other conditions, restrictions on being able to change one's place of residence "without first securing the written permission" from the agency, and refraining from "violat[ing] any local, State or Federal laws or ordinances").

214. *See Statement Regarding the Family Expedited Removal Management Program*, U.S. DEP'T OF HOMELAND SEC., U.S. IMMIGR. & CUSTOMS ENF'T (Aug. 2, 2023) [hereinafter ICE Statement Regarding the Family Expedited Removal Program], https://www.ice.gov/news/releases/statement-regarding-family-expedited-removal-management-program [https://perma.cc/7L49-MGSM]; Jason Fernandes, *Alternatives to Detention and the For-Profit Immigration System*, CTR. FOR AM. PROGRESS (June 9, 2017), https://www.americanprogress.org/article/alternatives-detention-profit-immigration-system/ [https://perma.cc/87P2-LZ3T]. The house arrest pilot program, which launched in Baltimore and Houston, only provided exceptions to accommodate work schedules of those authorized to work and "extraordinary circumstances." Ted Hesson, *U.S. to Try House Arrest for Immigrants as Alternative to Detention,* REUTERS (Feb. 8, 2022), https://www.reuters.com/world/us/us-try-house-arrest-immigrants-alternative-detention-2022-02-08/ [https://perma.cc/ZSP2-SDQN].

215. PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM, *supra* note 202, at 3.

216. U.S. GOV'T ACCOUNTABILITY OFF., ALTERNATIVES TO DETENTION: ICE NEEDS TO BETTER ASSESS PROGRAM PERFORMANCE AND IMPROVE CONTRACT OVERSIGHT 10 (2022) [hereinafter GAO Alternatives to Detention Report], https://www.gao.gov/assets/gao-22-104529.pdf [https://perma.cc/5R6X-HAP7].

program.[217] The ATD program has evolved significantly since its inception, in tandem with the growing capabilities of electronic surveillance systems. The current iteration of the ATD program, known as Intensive Supervision Appearance Program IV (ISAP), has been in effect since 2020 and is managed by contractor BI Incorporated, a subsidiary of The GEO Group, a private prison corporation most known for operating for-profit immigration detention centers.[218] Officers with ICE's Enforcement and Removal Operations determine whether individuals released from detention will be subject to the ISAP surveillance program on a case-by-case basis, weighing factors such as criminal and immigration history, family and community ties, status as a caregiver or provider, and general humanitarian or medical factors.[219] At minimum, noncitizens subject to ISAP surveillance must be released from DHS custody, be at least 18 years old, and be believed to be removable from the United States and in some stage of immigration proceedings.[220]

In reality, the term "Alternatives to Detention" operates as a misnomer, particularly when it comes to the ISAP program. Tellingly, ICE itself repeatedly emphasizes that ATD programs are not a "substitute for detention."[221] To leave or avoid imprisonment through immigration detention, noncitizens are required to sign forms warning that their freedom from detention is contingent on allowing the government to surveil them and even impose curfews:

> Your release is contingent upon your enrollment and successful participation in an ATD program as designated by the U.S.

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217. *Id.* at 8.

218. U.S. DEP'T OF HOMELAND SEC., IMMIGR. & CUSTOMS ENF'T, INTENSIVE SUPERVISION APPEARANCE PROGRAM FISCAL YEARS 2017, 2018, 2019, & 2020: FISCAL YEAR 2020 REPORT TO CONGRESS 2–3 (2022), https://www.dhs.gov/sites/default/files/2022-06/ICE%20-%20Intensive%20Supervision%20Appearance%20Program%2C%20FYs%202017%20-%202020.pdf [https://perma.cc/6QXP-ZMCP]; *see GEO Group History Timeline*, THE GEO GROUP, INC., https://www.geogroup.com/about-us/history-timeline/ [https://perma.cc/5466-EYVQ] (establishing that BI Incorporated was acquired by GEO in 2011).

219. PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM, *supra* note 202, at 9. *See* Sara DeStefano, *Unshackling the Due Process Rights of Asylum-Seekers*, 105 VA. L. REV. 1667, 1677–82 (2019) (providing more detail on the ISAP enrollment process).

220. *Alternatives to Detention Frequently Asked Questions*, U.S. DEP'T OF HOMELAND SEC., U.S. IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/atd-faq [https://perma.cc/7GQZ-LQQZ].

221. AUDREY SINGER, CONG. RSCH. SERV., R45804, IMMIGRATION: ALTERNATIVES TO DETENTION (ATD) PROGRAMS 6 (2019) https://www.congress.gov/crs-product/R45804 [https://perma.cc/T34B-7BEA]; *see also* Sherman-Stokes, *supra* note 203, at 265–66.

> Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention.[222]

As the release forms indicate, ISAP monitors and controls individuals through the use of surveillance technology and case management.[223] In light of ICE's intense surveillance and control over released individuals' mobility and conduct,[224] some scholars have concluded that ISAP is not an "Alternative *to* Detention," but rather, is an "Alternative *Form of* Detention."[225]

ISAP surveils immigrants in a number of ways. ISAP case managers surveil individuals by requiring scheduled in-person or telephonic meetings.[226] Case managers can also monitor ISAP enrollees through the use of both scheduled and unannounced in-home visits, wherein contractors travel to individuals' homes, document information about any other individuals residing at the residence (citizens and noncitizens alike), and generally observe and record any information related to an individual's likelihood of future compliance.[227]

Using surveillance technology, ISAP contractors also track noncitizens through the use of telephonic reporting, GPS ankle

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222. *See* ICE FORM I-220B, *supra* note 213; ICE FORM I-220A, *supra* note 213.

223. *See* PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM, *supra* note 202, at 3; *see also* AM. IMMIGR. COUNCIL, ALTERNATIVES TO IMMIGRATION DETENTION: AN OVERVIEW 3–4 (2023) [hereinafter AILA, ALTERNATIVES TO IMMIGRATION DETENTION OVERVIEW], https://www.americanimmigrationcouncil.org/research/alternatives-immigration-detention-overview [https://perma.cc/DG68-6AJL].

224. Perhaps a more accurate description of the program would be "Alternatives to Release Without Surveillance," given that increased use of the ATD program has not coincided with a significant decrease in immigration detention numbers. *See* AILA, ALTERNATIVES TO IMMIGRATION DETENTION OVERVIEW, *supra* note 223, at 3–4; *see generally* ALY PANJWANI & HANNAH LUCAL, TRACKED AND TRAPPED: EXPERIENCES FROM ICE DIGITAL PRISONS (May 2022), https://notechforice.com/digitalprisons/ [https://perma.cc/79GH-C5K2]; Gidaris, *supra* note 203, at 5–6; Johana Bhuiyan, *'Constantly Afraid': Immigrants on Life under the US Government's Eye*, THE GUARDIAN (Mar. 8, 2022), https://www.theguardian.com/us-news/2022/mar/08/us-immigrants-isap-ice-bi-ankle-monitor [https://perma.cc/G5GX-ML5T].

225. Tosca Giustini, Sarah Greisman, Peter Markowitz, Ariel Rosen, Zachary Ross, Alisa Whitfield, Christina Fialho, Brittany Castle & Leila Kang, *Immigration Cyber Prisons: Ending the Use of Electronic Ankle Shackles*, ONLINE PUBLICATIONS, 21 (2021) (emphasis added), https://larc.cardozo.yu.edu/faculty-online-pubs/3 [https://perma.cc/2YEE-J35L].

226. *See* GAO Alternatives to Detention Report, *supra* note 216, at 14, 46; SINGER, *supra* note 221, at 7.

227. *See* GAO Alternatives to Detention Report, *supra* note 216, at 14, 46; SINGER, *supra* note 221, at 7–8.

monitors, and SmartLINK, a smartphone application.[228] ICE determines on a case-by-case basis which forms of technological surveillance it will use to monitor an individual.[229] The three electronic surveillance modalities vary, but all make use of geo-tracking[230] to determine the location of an individual at a given "check-in" moment.[231]

The telephonic reporting modality makes use of voice-recognition and geolocation technology, calling individuals periodically to verify their identities and locations.[232] At the time of check-in, the individual will receive a notification call from the telephone reporting system, and thereafter will have only a limited window of time in which to return the call through a pre-authorized phone.[233] The telephone reporting system then matches the voiceprint of the individual to the voiceprint stored at the moment of ISAP enrollment and maps a caller's geographic information.[234] The system will alert contractors if the ISAP enrollee fails to return a notification call within five minutes, if the caller returns the call from an unauthorized phone number, or if the voice captured does not match the voiceprint on file.[235]

The second surveillance modality, the GPS ankle monitor,[236] uses GPS technology, wireless internet, and mobile phone

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228. PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM, *supra* note 202, at 27; *see* AILA, ALTERNATIVES TO IMMIGRATION DETENTION OVERVIEW, *supra* note 223, at 3.

229. SINGER, *supra* note 221, at 7; *see* PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM, *supra* note 202, at 3.

230. *See Geotracking*, OXFORD ADVANCED LEARNER'S DICTIONARY, https://www.oxfordlearnersdictionaries.com/definition/english/geotracking?q=geo-tracking [https://perma.cc/VQ9Z-CTQM] (geo-tracking technology is technology that enables users to find the exact position of a subject "by obtaining data from a smartphone or other device").

231. GAO Alternatives to Detention Report, *supra* note 216, at 13.

232. *Id.*

233. *See* JUST FUTURES LAW & MIJENTE, ICE DIGITAL PRISONS 8 (2021), https://static1.squarespace.com/static/62c3198c117dd661bd99eb3a/t/62de8b2537755401fac9368d/1658751793934/ICE+Digital+Prisons+Report_FINAL+%281%29.pdf [https://perma.cc/8UB5-25B5].

234. *See id.*

235. *See id.* at 11; U.S. IMMIGR. & CUSTOMS ENF'T, ATD AND BOND BASICS FOR FOJCS JUVENILE AND FAMILY RESIDENTIAL MANAGEMENT UNIT 19 [hereinafter ICE ATD AND BOND BASICS FOR FOJCS POWERPOINT], https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2021-02/Remedies-ICE_PowerPoint_on_Bond_and_Alternatives_to_Detention.pdf [https://perma.cc/QH7F-9TJN].

236. Government agencies often use the term "ankle bracelet" euphemistically when referring to the GPS ankle monitor. Those wearing the GPS ankle monitors

technology to track an individual's location at any given moment.[237] These ankle monitors require regular charging and can only be removed or adjusted by ISAP contractors.[238] GPS ankle monitors can send alerts to contractors if an individual moves beyond the geographic limitations set as a condition of their release, the ankle monitor is not adequately charged, or if its anti-tampering feature detects that an individual has moved the ankle monitor in a way that suggests that they are trying to remove it.[239]

SmartLINK, the most recently implemented form of electronic surveillance, utilizes individuals' own phones to track them via a smartphone app.[240] Individuals selected for SmartLINK tracking must download the app upon release from ICE custody.[241] Individuals on SmartLINK use the smart phone app to check-in with ISAP caseworkers through the app, which uses facial recognition and geo-locating software to confirm individuals' identities and collect and provide their latitude and longitude points.[242] The SmartLINK app may also require released individuals to upload any requested documents, confirm scheduled appointments, and can provide updates on immigration court proceedings.[243]

ICE's use of ISAP surveillance has increased exponentially since ICE introduced the Alternatives to Detention program. From 2015 to 2020, the number of people surveilled through the ISAP program more than doubled, from 53,000 to 111,000.[244] From 2020 to 2023, the number of people surveilled nearly doubled again, up

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often use the term "shackle" instead. *Compare* GAO Alternatives to Detention Report, *supra* note 216 (using the terms "ankle bracelet" and "GPS tracking ankle bracelet" and refraining from the use of "GPS monitor" or "ankle monitor"), *with* PANJWANI & LUCAL, *supra* note 224, at 36 n.5 (noting that the individuals whose experiences are highlighted in the report used the terms "ankle shackle," "ankle monitor," and "GPS monitor" interchangeably).

237. GAO Alternatives to Detention Report, *supra* note 216, at 13.

238. AILA, ALTERNATIVES TO IMMIGRATION DETENTION OVERVIEW, *supra* note 223, at 4.

239. JUST FUTURES LAW & MIJENTE, *supra* note 233, at 11; GAO Alternatives to Detention Report, *supra* note 216, at 13.

240. For those who do not own their own phone, ICE will issue a device that is only capable of operating the SmartLINK app, which must be returned to ICE upon the completion of the ISAP program. *Alternatives to Detention*, U.S. DEP'T OF HOMELAND SEC., IMMIGR. & CUSTOMS ENF'T (2023) [hereinafter ICE, Alternatives to Detention], https://www.ice.gov/features/atd [https://perma.cc/Q8G8-DLM2].

241. SINGER, *supra* note 221, at 7; JUST FUTURES LAW & MIJENTE, *supra* note 233, at 8.

242. SINGER, *supra* note 221, at 7 n.53.

243. *Id.*

244. GAO Alternatives to Detention Report, *supra* note 216, at 17.

to over 209,000 as of July 1, 2023.[245] Of the three forms of electronic surveillance methods employed by ISAP, the use of the SmartLINK app has quickly become the most dominant form of electronic surveillance modality used.[246] In December 2020, ICE surveilled 32% of noncitizens in ISAP using GPS ankle monitors, 30% using telephonic reporting, and 35% using SmartLINK.[247] One year later, GPS ankle monitors were used in 19% of cases, telephonic reporting in 16% of cases, and SmartLINK in 63% of cases.[248]

iii. Concerns about Conditions of Release and Surveillance in a Post-*Dobbs* World

The fact that ICE may release a person from a carceral detention space does not mean that the agency cedes control over the location and movements of that person. For those residing in states that limit access to abortion care, the requirements that ICE imposes as conditions of release pose serious limitations on the ability to privately access reproductive healthcare for themselves and their family members. This is especially true for those who may have to traverse several state borders to access or help others access abortion-related care.

a. Geographic and Physical Limitations as Conditions of Release

As described above, ICE can impose restrictions on an individual's movements or require them to remain in an authorized

245. *Alternatives to Detention Table*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE [hereinafter TRAC, *Alternatives to Detention Table*], https://trac.syr.edu/immigration/detentionstats/atd_pop_table.html [https://web.archive.org/web/20230727192640/https://trac.syr.edu/immigration/detentionstats/atd_pop_table.html] [https://perma.cc/N4WG-XDZL]. Note that the Transactional Research Access Clearinghouse, a research organization that receives and validates data from ICE source documents it receives, has noted that some of the 2022 ATD figures ICE released to the organization were inaccurate. *See id.* This data error reflects a long history of error-ridden data reporting on behalf of ICE. *See ICE's Sloppy Public Data Releases Undermine Congress's Transparency Mandate*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (Sept. 20, 2022) [hereinafter TRAC, *ICE's Sloppy Public Data*], https://trac.syr.edu/reports/696/ [https://web.archive.org/web/20220920181602/https://trac.syr.edu/reports/696/] [https://perma.cc/94ZC-MB76] (providing a list of ICE data releases that have contained verifiable data errors).

246. TRAC, *Immigration Court Bond Hearings and Related Case Decisions*, *supra* note 208.

247. *Id.*

248. *Id.*

region as a condition of release.[249] Release conditions that forbid unapproved out-of-state-travel can have the effect of making ICE the decisionmaker in questions of reproductive healthcare, as an individual's access to abortion-related care may be contingent on ICE's (timely) decision to allow interstate travel. In addition, if the request for interstate travel reveals an intent to engage in conduct that might violate state abortion laws—for example, if an individual in Idaho requests permission to leave the state to help a minor sibling access an abortion out of state—they may be admitting to an intent to violate state law, an act which itself could trigger a different violation of the conditions of release and could subject the individual to criminal prosecution if the information is shared with state law enforcement.[250] As discussed in Part II, such an admission or prosecution could likewise bring immigration consequences beyond re-confinement.

For those surveilled through GPS ankle monitors, the nature of life with an ankle monitor may likewise make long-distance travel within the United States practically impossible. In addition to accounts that the ankle monitors can cause physical and mental injury[251] and bring social stigma,[252] those subject to GPS ankle monitoring note that that they are required to charge their monitors frequently, at least twice a day.[253] Those on GPS ankle monitors

249. *See supra* Part III.B.i.

250. *See* IDAHO CODE § 18-623 (2023) *declared unconstitutional by* Matsumoto v. Labrador, 122 F.4th 787 (9th Cir. 2024).

251. *See* Johana Bhuiyan, *A US Surveillance Program Tracks Nearly 200,000 Immigrants. What Happens to Their Data?*, THE GUARDIAN (Mar. 14, 2022) [hereinafter Bhuiyan, *US Surveillance Tracking Program*], https://www.theguardian.com/us-news/2022/mar/14/us-immigration-surveillance-isap [https://perma.cc/EXT6-HD5N] (highlighting the experiences of a woman whose GPS ankle monitor overheated, leading to burning and bleeding skin); PANJWANI & LUCAL, *supra* note 224, at 12–34 (sharing experiences of individuals with GPS monitors who noted that the GPS ankle monitors caused the skin under the monitor to peel, bruising, foot pain, headaches, and anxiety, and interfered with sleep); *Shackling of Asylum Seekers Interferes With Due Process, Causes Serious Health Problems*, CENTRO LEGAL DE LA RAZA (May 27, 2016), https://www.centrolegal.org/shackling-of-asylum-seekers-interferes-with-due-process-causes-serious-health-problems/ [https://perma.cc/A735-KGFZ] (reporting on a complaint filed by fifteen asylum seekers with GPS ankle monitors).

252. PANJWANI & LUCAL, *supra* note 224, at 12–34 (noting that monitors were bulky and nearly impossible to hide, leading to bias from community members that assumed those with ankle monitors were criminals and even subjecting one individual to physical violence).

253. *Fact Sheet: Electronic Monitoring Devices as Alternatives to Detention*, NAT'L IMMIGR. F. (2019), https://immigrationforum.org/article/fact-sheet-electronic-monitoring-devices-as-alternatives-to-detention/ [https://perma.cc/U6SS-V5LG]; Julie Pittman, *Released into Shackles: The Rise of Immigrant E-Carceration*, 108 CALIF. L. REV. 587, 602–03 (2020).

must charge the monitors while they are still attached to their bodies by using a power cord that connects to a power outlet.[254] Practically speaking, this means that individuals cannot be away from electric outlets for longer than a few hours at a time without potentially triggering an alert that could lead to immigration enforcement action. A recent report on the effects of ISAP surveillance highlighted how the ankle monitors' limited battery life inhibits freedom of movement:

> They say 8 hours of battery life, but after 2 or 3 hours, the GPS starts emitting cries, and if you don't charge the battery quickly, you receive a call. If you do not answer, your relatives or friends will receive calls . . . a friend, a cousin, a nephew. It can be 4 AM, but that doesn't prevent them from calling. It weighs heavily.[255]

Other accounts corroborate that GPS ankle monitor batteries "start to die" and broadcast loud charging notifications, even after wearers have "just finished charging it."[256] As innocuous as a charging requirement may seem, an individual whose GPS ankle monitor requires charging every two or three hours may find it impossible to travel hundreds of miles through car, bus, train, or plane to access abortion care.

GPS ankle monitors also continuously track the movements of its wearers, alerting agencies when immigrants travel outside of "assigned zone[s]"[257] (generally, within eighty-five miles of an ISAP contractor office).[258] When combined with separate conditions that explicitly forbid individuals from traveling outside of an authorized zone, this tracking feature can materially limit the extent to which an individual can venture out of their geographic region to access healthcare. The following first-hand account, for example, describes how GPS ankle monitor surveillance interfered with a woman's attempts to secure healthcare for her child out-of-state:

> My son has many special medical needs and the restrictions with this shackle impeded me in being able to seek adequate medical care for him. I eventually found a hospital in Philadelphia that could treat him, but I report to ISAP in NYC. I had to ask for permission from ISAP to leave NYC, and even when they would give it, sometimes I'd be on the bus leaving NYC and the shackle would start to beep and everyone would

254. *Fact Sheet: Electronic Monitoring Devices as Alternatives to Detention*, *supra* note 253; Pittman, *supra* note 253.

255. PANJWANI & LUCAL, *supra* note 224, at 12.

256. *Id.*

257. PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM, *supra* note 202, at 14.

258. Pittman, *supra* note 253.

> look at me as though I were trying to escape from something, then the office would call me.[259]

Other wearers report that the ankle monitor will loudly play a pre-recorded message along with loud beeping, with one noncitizen recounting how his ankle monitor repeatedly announced, "You are exiting your master zone," when he traveled a few blocks outside of his authorized zone during his honeymoon.[260]

Consequences for traveling beyond the authorized zone can be dire. After Marco Tulio Hernandez, a noncitizen released on ISAP conditions, secured permission to travel beyond his authorized zone to visit an out-of-state relative, he was nonetheless arrested by ICE agents and re-incarcerated in an immigration detention facility for allegedly violating the conditions of his release by traveling outside of the authorized zone, notwithstanding ICE's pre-authorization and a four-year track record of ISAP compliance.[261]

Home visits and office appointments may also clash with the need to travel and access abortion-related care. Reports from people subjected to case manager home visits describe ISAP case managers who appear several hours late to their scheduled home visits and conduct unannounced visits.[262] A person whose freedom is predicated on being available for unannounced visits cannot plan for and execute travel that requires them to be absent from home for hours or days.

b. Geo-Tracking, Data Collection, and Privacy Concerns

Since the *Dobbs* decision, advocates, scholars, and even tech workers have sounded the alarm to the dangers that data-collecting devices, websites, programs, and apps pose for those seeking to access comprehensive reproductive healthcare.[263] In an economy

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259. PANJWANI & LUCAL, *supra* note 224, at 13.

260. Pittman, *supra* note 253, at 602.

261. Fernandes, *supra* note 214.

262. *Id.*; PANJWANI & LUCAL, *supra* note 224, at 12–34.

263. *See, e.g.*, Elizabeth E. Joh, *Dobbs Online: Digital Rights as Abortion Rights*, FEMINIST CYBERLAW (Amanda Levendowski & Meg Leta Jones, eds., forthcoming 2023) (manuscript at 3–4) https://papers.ssrn.com/abstract=4210754 [https://perma.cc/ZYT7-SNP7]; Michele Estrin Gilman, *Periods for Profit and the Rise of Menstrual Surveillance*, 41 COLUM. J. OF GENDER & L. 100, 102–05 (2021); Joseph Cox, *Data Broker Is Selling Location Data of People Who Visit Abortion Clinics*, VICE (May 3, 2022), https://www.vice.com/en/article/m7vzjb/location-data-abortion-clinics-safegraph-planned-parenthood [https://perma.cc/RE54-M88T]; Rina Torchinsky, *How Period Tracking Apps and Data Privacy Fit into a Post-*Roe v. Wade *Climate*, NPR (Jun. 24, 2022), https://www.npr.org/2022/05/10/1097482967/roe-v-wade-supreme-court-abortion-period-apps [https://perma.cc/6YHN-C76R]; Lil

where technology access is commonly paid for not through fees, but through agreements to share vast amounts of personal information, social media platforms, search engines, smart appliances, and smart phone apps continuously collect, store, and sell user information in ways that are not always obvious to the consumer.[264] With the advent of the *Dobbs* decision, advocates warn that law enforcement agencies in states criminalizing abortion might acquire data collected by websites, apps, and devices, and use this data as evidence in abortion-related prosecutions.[265] As scholar Elisabeth E. Joh notes, "[W]hen abortion becomes a crime, the massive amounts of data we produce every day become criminal evidence."[266]

As described previously, immigration agencies already exert control over immigrants through an enforcement system that increasingly relies on the surveillance, data-collection, and tracking of immigrants as part of what Professor Anil Kalhan has dubbed "the immigration surveillance state."[267] Given that all ISAP tech modalities engage in some form of geo-tracking, and that some modalities, such as the SmartLINK app, may have the capacity to capture and store vast troves of personal information, the potential use of immigrants' ISAP-collected data for abortion-related prosecution or abortion-related civil litigation (such as for bounty-hunter civil suits in states like Texas[268]) merits scrutiny. Because agency policy can change with future administrations, and

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Kalish, *Meet Abortion Bans' New Best Friend: Your Phone*, MOTHER JONES (Feb. 16, 2022), https://www.motherjones.com/politics/2022/02/meet-abortion-bans-new-best-friend-your-phone [https://perma.cc/YQ4E-PAPG]; Daly Barnett, *Digital Security and Privacy Tips for Those Involved in Abortion Access*, ELEC. FRONTIER FOUND. (2022), https://www.eff.org/deeplinks/2022/05/digital-security-and-privacy-tips-those-involved-abortion-access [https://perma.cc/7244-NAJU]; Gerrit De Vynck, Caroline O'Donovan, Nitasha Tiku & Elizabeth Dwoskin, *Abortion Is Illegal for Millions. Will Big Tech Help Prosecute It?*, WASH. POST (Jun. 30, 2022), https://www.washingtonpost.com/technology/2022/06/29/google-facebook-abortion-data/ [https://perma.cc/V82Q-UXR3].

264. *See* Aziz Z. Huq & Rebecca Wexler, *Digital Privacy for Reproductive Choice in the Post-*Roe *Era*, 98 N.Y.U. L. REV. 555, 569–72 (2023).

265. *See* Kalish, *supra* note 263; Barnett, *supra* note 263; Cox, *supra* note 263. For a detailed discussion about the legal mechanisms that states could employ to further abortion-related prosecutions and their implications, *see* Huq & Wexler, *supra* note 264.

266. Joh, *supra* note 263, at 4.

267. Anil Kalhan, *Immigration Surveillance*, 74 MD. L. REV. 1, 27 (2014).

268. *See* TEX. HEALTH & SAFETY CODE ANN. § 171.208 (West 2023) (allowing any private citizen to bring a civil lawsuit against anyone who performs, aids, or abets an abortion after a fetal heartbeat is detected and providing for injunctive relief, attorneys' fees, and damages of at least $10,000 for each illegal abortion performed).

contractual agreements between ICE and BI, Inc. can be amended, an assessment of ISAP's potential risks vis-à-vis abortion access should include analysis of ICE's current practices and of the potential capabilities and future uses of ISAP technologies, including potential capabilities that go beyond current use. Notwithstanding ICE's assertions that ISAP devices and technology only engage in limited location tracking and data storage,[269] there are already indications that ISAP technology is being used for purposes beyond simply ensuring immigrants' compliance with terms of release.[270]

GPS ankle monitors, by design, continuously track the movements of the immigrants on which they are affixed. To do this, the device's transmitter stores a person's GPS coordinates and uploads the amassed coordinates to a monitoring database every four hours.[271] In addition, the GPS ankle monitor allows ICE to obtain "an immediate and accurate one-time location fix in real time."[272] Through the GPS ankle monitor, ICE can track the latitude and longitude coordinates through "global positioning triangulation via satellites, cell tower triangulation via cell towers, and Wi-Fi positioning technologies,"[273] and obtain "'turn-by-turn directions' to the location of the device."[274] According to the Department of Homeland Security, ISAP case managers "can view, search, and review the participants' historical ICE ATD data via the ISAP ATD case management system by retrieving the participants' record at any time."[275] ICE has not disclosed how, how much of, or for how long the GPS ankle monitor tracking information is stored, raising concerns that a monitored person's movement history information can be subpoenaed as evidence for criminal prosecutions or civil suits.

While ICE claims that, as a matter of general practice, it does not continuously monitor the location of those on GPS ankle monitors,[276] ICE has already used GPS ankle monitor location data in immigration enforcement and criminal law enforcement operations, such as it did in the 2019 investigation of Koch Foods,

269. ICE, *Alternatives to Detention*, supra note 240; *BI SmartLINK® Privacy Policy*, BI INC., https://bi.com/bi-smartlink-privacy/ [https://perma.cc/6QZW-EJL9].

270. *See* Bhuiyan, *US Surveillance Tracking Program*, *supra* note 251.

271. JUST FUTURES LAW & MIJENTE, *supra* note 233, at 8.

272. *Id.*

273. PRIVACY IMPACT ASSESSMENT FOR ATD PROGRAM, *supra* note 202, at 14.

274. JUST FUTURES LAW & MIJENTE, *supra* note 233, at 8.

275. *Id.*

276. *See id.* at 14 n.20.

Inc.,[277] which led to the largest workplace ICE raid in U.S. history to date.[278] In an application for the search warrant, an ICE HSI agent explicitly referred to the historical GPS coordinates recorded from the GPS ankle monitors of certain Koch employees who wore the monitors pursuant to their release on the ISAP program.[279] The agent's affidavit revealed how extensively ICE surveils those on GPS ankle monitors, as well as how readily the agency can retrieve the information captured by these monitors to pursue unrelated investigations.[280] For the three GPS-tracked individuals featured in the affidavit, the agent described the precise time that each individual arrived at the Koch Foods plant on a given day, how long she[281] remained at the plant, the precise time that she left the plant, and where she went after leaving the plant.[282] Even though the GPS-monitor data was ostensibly intended to further the *criminal* investigation of the noncitizens' *employer*, and was not intended solely for immigration enforcement purposes, the raid led to the arrest of approximately 680 noncitizens for immigration-related infractions.[283]

Likewise, SmartLINK's data-collecting capabilities have alarmed advocates and privacy experts, who question the amount and kinds of information the smartphone app can capture, store, and share.[284] Legislators have expressed "serious concerns" over SmartLINK's potential ability to "track individuals in real-time and collect and repurpose the data" on noncitizens and U.S. citizens, as

277. *See* Affidavit by Homeland Security Investigations Special Agent Anthony Todd Williams in Support of Application for Search Warrant, *In re* Koch Foods Mississippi, No. 3:19-mj-00205-LRA (S.D. Miss. Aug. 5, 2019) [hereinafter Affidavit by Special Agent Williams], https://www.ice.gov/sites/default/files/documents/Document/2019/kochfoods-319mj.pdf [https://perma.cc/M262-GFFU].

278. Miriam Jordan, *ICE Arrests Hundreds in Mississippi Raids Targeting Immigrant Workers*, N.Y. TIMES (Aug. 7, 2019), https://www.nytimes.com/2019/08/07/us/ice-raids-mississippi.html [https://perma.cc/AGV3-5T2Y].

279. *Id.* The search warrant application sought judicial authorization for a workplace raid and asserted that Koch Foods was unlawfully employing certain noncitizens in violation of federal law. *Id.*

280. *Id.*

281. All of the GPS-tracked individuals described in the affidavit were women.

282. Affidavit by Special Agent Williams, *supra* note 277, at 12, 14–15.

283. *See* Jordan, *supra* note 278.

284. *See* Jake Wiener, *New ICE Privacy Impact Assessment Shows All the Ways the Agency Fails to Protect Immigrants' Privacy*, ELECTRONIC PRIV. INFO. CTR. (Apr. 20, 2023), https://epic.org/new-ice-privacy-impact-assessment-shows-all-the-way-the-agency-fails-to-protect-immigrants-privacy/ [https://perma.cc/F8MG-7LEV].

well as concerns over BI, Inc.'s vague privacy policies.[285] On its website, ICE contends that BI SmartLINK "does not access" a phone's call history, contact information, "text messages made outside of the SmartLINK app," "location data outside of single data points gathered through the application at login or pre-scheduled check-in times," or other personal data from personally owned phones.[286]

Advocates, privacy experts, and even former BI, Inc. employees question the reliability of these statements, however.[287] As privacy watchdog Jake Wiener has recently noted, ICE has yet to mention, either in its 2023 Privacy Assessment report or in any other statement, whether any party has tested BI, Inc.'s claims about the technical surveillance limitations of the SmartLINK app.[288] Recent reporting similarly calls into question whether SmartLINK truly limits its data collection as claimed. For example, *The Guardian* has reported that BI case managers have instructed ISAP enrollees "to always keep their phones on so the company could track them."[289] Certain immigrants interviewed by the publication reported that their case managers told them that the app "was always running," that they had to keep location services on at all times, and that they could not let their phone batteries die.[290] When a reporter asked ICE why SmartLINK participants were told that location services always had to remain on, ICE did not respond.[291]

On May 11, 2023, the federal government implemented the "Circumvention of Lawful Pathways" rule, which requires that asylum-seekers at the U.S.-Mexico border download and use a smartphone app called CBP One to schedule a screening interview.[292] Failure to use CBP One results in a rebuttable

285. Letter from Reps. Rashida Tlaib, Jesus G. Garcia, Ayanna Pressley, et al., to Alejandro Mayorkas, Sec'y, Dep't of Homeland Sec. (Feb. 22, 2022), https://epic.org/wp-content/uploads/2022/02/ICE-ISAP-Congressional-Letter_final.pdf [https://perma.cc/M7JH-CGU3].

286. ICE, *Alternatives to Detention*, *supra* note 240.

287. *See* Bhuiyan, *US Surveillance Tracking Program*, *supra* note 251 ("But former BI case managers said they were able to access the images and location data that immigrants had uploaded to the app for their weekly check-ins in previous months.").

288. Wiener, *supra* note 284.

289. Bhuiyan, *US Surveillance Tracking Program*, *supra* note 251.

290. *Id.*

291. *Id.*

292. *CBP One ™ Mobile Application*, U.S. CUSTOMS & BORDER PROT. (Jan. 21, 2025), https://www.cbp.gov/about/mobile-apps-directory/cbpone [https://perma.cc/W28P-TBCS].

presumption of asylum ineligibility.[293] Like the SmartLINK app, the CBP One app uses geolocation and facial recognition technology to keep track of asylum-seekers at the border, which the Department of Homeland Security itself admits could be used "to conduct surveillance on travelers or to track travelers' movements."[294] Human rights advocates, privacy experts, and even the United Nations have raised similar concerns to those raised in the case of SmartLINK, alerting that the CBP One's privacy policy does not fully disclose the contractors and agencies with which user information will be shared; that use of CBP One is functionally involuntary; and that the conditions under which certain technologies are engaged are not clearly delineated.[295] Undeterred, the Department of Homeland Security continues piloting new immigrant surveillance technologies like VeriWatch, a geo-tracking smart watch.[296]

Precisely understanding the extent to which BI, Inc. technology can collect monitored noncitizens' smart-tech data becomes particularly crucial in a post-*Dobbs* world. Any information collected by this technology could presumably be requested for a criminal prosecution or civil suit through discovery or a court subpoena. Under the upcoming Trump administration, which has signaled a hardline stance on immigration and reproductive rights, the risks of such data being weaponized against noncitizens—including in abortion-related criminal investigations or

293. Circumvention of Lawful Pathways, 88 Fed. Reg. 31314 (May 16, 2023) (to be codified at 8 C.F.R. pts. 208, 235, 1003, 1208, 1235).

294. DEP'T OF HOMELAND SEC., PRIVACY IMPACT ASSESSMENT FOR CBP ONE™ 9 (2021), https://www.dhs.gov/publication/dhscbppia-068-cbp-one-mobile-application [https://perma.cc/9REL-87WY]. The Department of Homeland Security assures that geolocation information is only used when the app user "pushes the submit button" when submitting the requisite information. *Id.* at 10.

295. *See, e.g.*, AMNESTY INT'L, CBP ONE: A BLESSING OR A TRAP? 45–47 (2024), https://www.amnesty.org/en/documents/amr51/7985/2024/en/ [https://perma.cc/K7LY-9VUV]; E. TENDAYI ACHIUME, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMMISSIONER, RACIAL AND XENOPHOBIC DISCRIMINATION AND THE USE OF DIGITAL TECHNOLOGIES IN BORDER AND IMMIGRATION ENFORCEMENT 16 (2021), https://www.ohchr.org/en/documents/thematic-reports/ahrc4876-racial-and-xenophobic-discrimination-and-use-digital [https://perma.cc/AAK8-3SGE]; *EPIC Comments to CBP and OMB on CBP One Expansion for Biometric Exit*, ELEC. PRIV. INFO. CTR. (Apr. 26, 2024), https://epic.org/documents/epic-comments-to-cbp-and-omb-on-cbp-one-expansion-for-biometric-exit/ [https://perma.cc/JBP6-R96W].

296. *ICE Begins Testing Wrist-Worn GPS Monitoring Technology*, U.S. IMMIGR. & CUSTOMS ENF'T (Apr. 24, 2023), https://www.ice.gov/news/releases/ice-begins-testing-wrist-worn-gps-monitoring-technology [https://perma.cc/ZLJ3-NZ9E].

immigration enforcement proceedings—are significantly heightened.

C. The Immobilizing Effect of Spatialized Immigration Enforcement

Federal and state immigration enforcement policies, particularly those operating within border zones and through spatialized enforcement programs, immobilize noncitizens and exacerbate their vulnerability. The extensive network of checkpoints operated by Customs and Border Patrol (CBP) near U.S. borders, for example, weaponizes transportation routes and creates a unique form of geographic isolation for unauthorized noncitizens, trapping them in border areas and limiting their access to reproductive care.[297] Additionally, states have increasingly taken active roles in immigration enforcement, especially through cooperative programs that enable state and local law enforcement to perform federal immigration duties, creating a patchwork of regions that pose risk for transversing immigrants.[298] These programs often lead to racial profiling and further restrict the movement of noncitizens, posing significant challenges to their reproductive rights and overall wellbeing. Together, these immigration enforcement policies compound the oppressive effects of restrictive state abortion policies on the reproductive autonomy and health of noncitizens in the United States.

i. Immobilization Through Border-Zone Checkpoints

The INA authorizes immigration officials to interrogate individuals and search vehicles for potentially removable individuals within "a reasonable distance" from the border, defined in regulation as one hundred air miles from an external boundary of the United States.[299] As an exercise of this authority, Customs and Border Patrol (CBP) officers operate a web of checkpoints near U.S. border areas, with the goals of intercepting individuals suspected of being present in violation of immigration laws and preventing them from traveling to the interior of the United

297. *See infra* Part III.C.i.

298. *See infra* Part III.C.ii.

299. 8 U.S.C. § 1357(a)(3); 8 C.F.R. § 287.1(a)(1) (2025). The regulations define an external boundary as "the land boundaries and the territorial sea of the United States extending 12 nautical miles from the baselines of the United States determined in accordance with international law." 8 C.F.R. § 287.1(a)(1) (2025).

States.[300] These border-zone checkpoints trap certain unauthorized noncitizens in a form of geographic isolation under the threat of detection and deportation.

CBP generally positions its checkpoints along major highways and secondary roads in the interior of the United States, generally between twenty-five and one-hundred miles inland from the northern and southern U.S. borders.[301] Border Patrol officials strategically place these checkpoints far enough inland to detect individuals traveling to the interior of the United States after having entered the United States without inspection, but close enough to the border to siphon off access to major population centers near the border.[302] Between 2016 and 2020, CBP operated seventy-two checkpoints along the southwest U.S. border; of these checkpoints, fifty-eight operated during all five fiscal years.[303]

Checkpoints can be permanent or temporary in nature. Permanent checkpoints consist of brick-and-mortar structures that impede traffic and are situated in terrain that limits a vehicle's ability to circumvent the checkpoint.[304] CBP generally places permanent checkpoints near the convergence of significant highways that lead away from the border.[305] Permanent checkpoints are typically equipped with surveillance technology, such as electric sensors, video surveillance, license plate readers, closed circuit televisions, and other remote surveillance capabilities.[306] On the other hand, temporary (or "tactical") checkpoints are strategically placed checkpoints that lack permanent infrastructure, but otherwise operate like permanent checkpoints.[307]

At checkpoints, CBP agents may stop a vehicle, question its occupants about their immigration status, visually inspect the

300. U. S. GOV'T ACCOUNTABILITY OFF., BORDER PATROL: ACTIONS NEEDED TO IMPROVE CHECKPOINT OVERSIGHT AND DATA 6 (2022) [hereinafter GAO Border Patrol Checkpoint Report], https://www.gao.gov/products/gao-22-104568 [https://perma.cc/8VEX-46RQ].

301. *Id.*

302. *Id.* at 6–7.

303. *Id.* at 9.

304. Kate Huddleston, *Border Checkpoints and Substantive Due Process: Abortion Rights in the Border Zone*, 125 YALE L. J. 1746, 1752 (2016); *see also* U.S. v. Martinez-Fuerte, 428 U.S. 543, 553 (1976) (summarizing Border Patrol's requisites for effective physical checkpoints).

305. GAO Border Patrol Checkpoint Report, *supra* note 300, at 6–7.

306. Huddleston, *supra* note 304, at 1752; GAO Border Patrol Checkpoint Report, *supra* note 300, at 13.

307. GAO Border Patrol Checkpoint Report, *supra* note 300, at 11.

exterior, and use drug- and human-detection canines to sniff outside of the vehicle.[308] Upon completing this inspection, agents may refer the vehicle for a "secondary" inspection, in which agents question individuals further and may use fingerprint readers and iris scanners to collect biometric data from the vehicle's occupants.[309] If agents have probable cause of an immigration violation or a criminal offense, agents may also search vehicles' interiors during a secondary inspection.[310]

While the Fourth Amendment protects individuals from the government's unreasonable searches and seizures of their persons and property, the Supreme Court has endorsed border policing practices that would otherwise be considered Fourth Amendment violations in other contexts.[311] In *United States v. Martinez-Fuerte*, the Court held that the Fourth Amendment permits immigration officials to operate immigration checkpoints in the interior of the country without a warrant.[312] Although use of non-immigration checkpoints, like DUI checkpoints, generally requires officers to provide justification for referring drivers to more intensive follow-up inspections,[313] the Court held that the Fourth Amendment does not require immigration officials to articulate reasonable suspicion that the occupants of a vehicle are removable or are committing any crimes, or to otherwise provide *any* justification for the referral.[314] As such, government agents have "wide discretion" at checkpoints,[315] and can refer vehicles and their occupants to secondary inspection for additional questioning and biometrics data collection for any reason at all, including reasons grounded in racial or ethnic profiling.[316] For this reason, scholars have referred to these border zones as "anomalous zones," spaces "in which certain

308. *Id.* at 7.

309. *Id.* at 13.

310. *See* Almeida-Sanchez v. United States, 413 U.S. 266, 273 (1973).

311. *See* Jennifer M. Chacon, *Border Exceptionalism in the Era of Moving Borders*, 38 FORDHAM URB. L.J. 129, 134 (2010); Alameida-Sanchez v. United States, 413 U.S. 266 (1973); United States v. Brignoni-Ponce, 422 U.S. 873 (1975).

312. United States v. Martinez-Fuerte, 428 U.S. 543 (1976).

313. *See* Chacon, *supra* note 311, at 142 (citing Mich. Dep't of State Police v. Sitz, 496 U.S. 444 (1990)).

314. *Martinez-Fuerte*, 428 U.S. at 547.

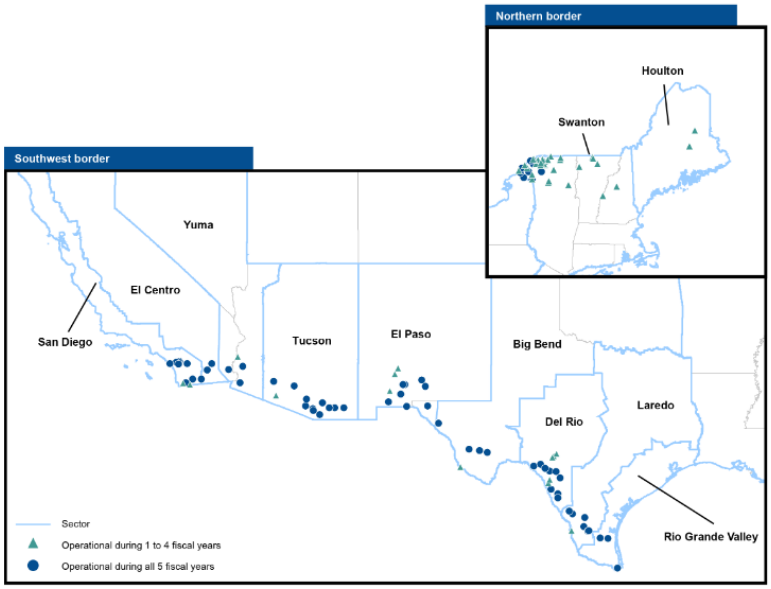
315. *Id.* at 564.

316. *See id.* at 563 ("[E]ven if it be assumed that such referrals are made largely on the basis of apparent Mexican ancestry, we perceive no constitutional violation."); *see also* César Cuauhtémoc García Hernández, *La Migra in the Mirror: Immigration Enforcement and Racial Profiling on the Texas Border*, 23 NOTRE DAME J.L., ETHICS, & PUB. POL'Y 167, 180–84 (2009) (discussing the broad discretion granted to Border Patrol agents at checkpoints which facilitate racial profiling); Chacon, *supra* note 311, at 142.

legal rules, otherwise regarded as embodying fundamental policies of the larger legal system, are locally suspended."[317]

Although the government operates immigration checkpoints along the northern and southern border, the majority of checkpoints operate in the CBP sectors located in California, Arizona, New Mexico, and Texas—the states bordering Mexico.[318] With little to check immigration officials' power during these checkpoints, unauthorized immigrants who live between the southern border and an immigration checkpoint find themselves trapped in a narrow sliver of land, unable to travel further north to other parts of the country without risking detection, detention, and removal.[319] A map published by the Government Accountability Office in 2020,[320] which depicts the locations of checkpoints operating between Fiscal Years 2016 and 2020, illustrates the confinement of those stuck between the border and a checkpoint:

Figure 2: Border Patrol Sector and Checkpoint Locations, Fiscal Years 2016 through 2020



Source: GAO analysis of information from U.S. Border Patrol sectors. | GAO-22-104568

317. Huddleston, *supra* note 304, at 1754 (quoting Gerald L. Neuman, *Anomalous Zones*, 48 STAN. L. REV. 1197, 1201 (1996)).

318. GAO Border Patrol Checkpoint Report, *supra* note 300, at 9–10. Arrests at southern border checkpoints overwhelmingly outnumber those along the northern border; of all checkpoint apprehensions tracked between fiscal year 2016 and 2020, less than 1% of those took place in northern border sectors. *Id.* at 22.

319. *See* Huddleston, *supra* note 304, at 1752; Gomez, *supra* note 128, at 94–95.

320. GAO Border Patrol Checkpoint Report, *supra* note 300, at 10.

Scholars and advocates have long sounded the alarm about the deleterious health effects that checkpoint-induced confinement can have on those unable to travel beyond immigration checkpoints, including harms affecting border-zone residents' access to reproductive care.[321] Years before *Dobbs* eliminated the substantive due process right to abortion, for example, Kate Huddleston described how Texas's laws restricting abortion led to the closures of many abortion clinics and increased the distance that many Texas residents had to travel to access surviving abortion clinics.[322] Huddleston recognized that the border zone—and the spatially selective immigration enforcement actions that operate within it—trapped unauthorized immigrants between the border and immigration checkpoints, who had to risk their liberty in the United States to travel beyond the immigration checkpoints to access their fundamental rights to an abortion.[323]

Madeline M. Gomez used the framework of intersectional subordination to illustrate how Texas's abortion-restricting legislation and federal border-zone immigration enforcement worked together to enact a particular form of reproductive violence against undocumented Latinas in Texas.[324] Gomez noted that immigration enforcement at border checkpoints, together with abortion-restrictive legislation that drastically decreased the number of abortion clinics in the border zone, has led many undocumented women to rely solely on whatever medical facilities exist within the narrow region between the checkpoints.[325] These checkpoints have the practical effect of forcing women to forgo reproductive healthcare, which has not only rendered abortion care inaccessible, but has also resulted in higher rates of contraceptive failure, incidents of untreated sexually transmitted infections, maternal mortality, and family separation.[326]

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321. *See, e.g.*, Huddleston, *supra* note 304; Gomez, *supra* note 128; Mary Giovagnoli, *Overturning Roe Creates More Barriers for Asylum-Seekers and Immigrants*, MS. MAG. (May 24, 2022), https://msmagazine.com/2022/05/24/abortion-immigration-laws-roe-v-wade-asylum-women/ [https://perma.cc/VP6Q-ZLN8]; Sofia Ahmed, *Abortion Worries Heightened for Unauthorized Immigrants in the U.S.*, REUTERS (Jul. 5, 2022), https://www.reuters.com/world/us/abortion-worries-heightened-unauthorized-immigrants-us-2022-07-05/ [https://perma.cc/67VU-P3CR]; Manny Fernandez, *Checkpoints Isolate Many Immigrants in Texas' Rio Grande Valley*, N.Y. TIMES (Nov. 23, 2015), https://www.nytimes.com/2015/11/23/us/checkpoints-isolate-many-immigrants-in-texas-rio-grande-valley.html [https://perma.cc/J8ZB-M5CF].

322. Huddleston, *supra* note 304, at 1747–50.

323. *Id.* at 1761–93.

324. Gomez, *supra* note 128, at 89–104.

325. *Id.* at 99–108.

326. *Id.* at 108–09.

The predicament for those trapped in the immigration checkpoint web has only worsened since the *Dobbs* decision. At the drafting of this article, two of the four states with regular immigration checkpoints, Texas and Arizona, have enacted legislation that outlaws abortion care early in a pregnancy, with Arizona outlawing abortion after fifteen weeks of pregnancy[327] and Texas outlawing abortion outright.[328] With these more restrictive policies in effect, undocumented pregnant immigrants, particular those in the state of Texas, have no options for accessing safe abortion care absent leaving the state, something they cannot freely do without risking arrest and deportation. The risk of becoming ensnared by the immigration checkpoint system is not theoretical. From fiscal year 2016 to fiscal year 2020, almost 65% (23,180) of the 35,742 checkpoint apprehensions took place in two Texas sectors, the Laredo and Rio Grande Valley sectors.[329]

ii. State Involvement in Specialized Immigration Enforcement

Thus far, this paper has focused on federal laws and policies that restrict immigrant movement in ways that interfere with reproductive freedom. Increasingly, however, states have taken more active roles in immigration enforcement, through cooperative agreements with federal immigration agencies,[330] or by involving the state in migration management through state laws that punish those who transport or host unauthorized immigrants within the state.[331] While the constitutionality and enforceability of some of these measures continues to be contested, the resulting chilling effect that these measures have, both on immigrants and on those who would otherwise be inclined to assist them, poses serious barriers for immigrants' ability to travel through abortion-restrictive zones and increases the risk that traveling for reproductive healthcare services could lead to arrest, detention, and deportation.

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327. *See* ARIZ. REV. STAT. ANN. § 36-2322 (2022). *But see supra* note 91 (regarding Arizona's constitutional amendment enshrining abortion rights into the Arizona Constitution after the state passed a fifteen-week abortion ban).

328. TEX. HEALTH & SAFETY CODE ANN. § 170A.004 (West 2023).

329. GAO Border Patrol Checkpoint Report, *supra* note 300, at 21.

330. *See infra* Part III.C.ii.a.

331. *See infra* Part III.C.ii.b.

a. Risks of Traversing 287(g) Jurisdictions to Access Abortion Care

Generally speaking, the constitutional law doctrine of federal preemption prevents states from regulating migration and from creating and enforcing immigration law.[332] The INA does, however, authorize certain state and local involvement in the enforcement of federal immigration law through cooperative enforcement agreements.[333] To participate in these cooperative enforcement arrangements, colloquially known as "287(g) programs" after the provision of the INA that provides for them, state and local law enforcement agencies enter into formal written memoranda of agreement, commit designated officers to training on federal immigration law and enforcement practices, and answer to the Secretary of the Department of Homeland Security on matters of federal immigration enforcement.[334] The memoranda of understanding generally set forth the specific eligibility standards and training requirements for the 287(g) designated law enforcement officers and describe the immigration enforcement duties that said officers are authorized to carry out.[335] Pursuant to the INA, memoranda of agreement may authorize 287(g) designated law enforcement officers to perform the functions of federal immigration officers in relation to the investigation, apprehension, or detention of noncitizens in the United States, including the issuance of immigration detainers[336] and the transportation of noncitizens to detention centers across state lines.[337] In short, the 287(g) program enables ICE to expand its footprint to any jail or

332. *See* Arizona v. United States, 567 U.S. 387, 402–10 (2012). The Supreme Court ruled that three provisions of the sweeping Arizona statute were federally preempted: (1) a provision that made it a crime under state law to be unlawfully present in the United States, (2) a provision that made it a crime under state law to work or seek work without authorization, and (3) a provision that authorized warrantless arrests of noncitizens believed to be removable from the United States. *Id.*

333. *See* 8 U.S.C. § 1357(g).

334. *Id.*

335. *See* 8 U.S.C. § 1357(g)(1)–(2);

336. An immigration detainer is a notice from ICE to a federal, state, or local law enforcement agency that articulates probable cause for a noncitizen's removability and requests that such agency detain and transfer custody of a noncitizen to ICE. *See* U.S. GOV'T ACCOUNTABILITY OFF., IMMIGRATION ENFORCEMENT: ICE CAN FURTHER ENHANCE ITS PLANNING AND OVERSIGHT OF STATE AND LOCAL AGREEMENTS 7 (2021) [hereinafter GAO ICE Can Enhance Planning and Oversight of State and Local Agreements Report], https://www.gao.gov/products/gao-21-186 [https://perma.cc/5D6E-2UKS].

337. *See* 8 U.S.C. § 1357(g)(1).

correctional facility operated by participating state and local law enforcement agencies.[338]

In theory, the 287(g) program enables designated officers to enforce immigration laws in the execution of the law enforcement agencies' already-existing state and local law enforcement activities. Studies have suggested, however, that after implementing the programs, many law enforcement agencies participating in 287(g) adapt their usual state law enforcement practices by engaging in increased racial profiling against Latino and other non-white groups.[339] Twice, the Department of Justice has sued participating law enforcement agencies for engaging in arrest and detention practices that targeted Latinos.[340] Additionally, subsequent studies suggest that the implementation of 287(g) programs may even lead to racial profiling by *non*-participating law enforcement agencies that are geographically near a participating agency.[341] Worryingly as it relates to immigrant mobility, reports show that a substantial portion of

338. *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. DEP'T OF HOMELAND SEC., IMMIGR. & CUSTOMS ENF'T, https://www.ice.gov/identify-and-arrest/287g [https://perma.cc/TF5Z-NEQW].

339. *See* Michael Coon, *Local Immigration Enforcement and Arrests of the Hispanic Population*, 5 J. MIGRATION & HUM. SEC. 645, 663 (2017) (empirical study identifying changes in arrest patterns following the Frederick County Sherrif's Office implementation of 287(g), suggesting that the FCSO had redirected its resources to increase arrests of the Hispanic community); Huyen Pham & Pham Hoang Van, *Sheriffs, State Troopers, and the Spillover Effects of Immigration Policing*, 64 ARIZ. L.R. 463, 473 (2022) (citing statements by participating 287(g) law enforcement agencies that revealed that the agencies' goals would be to arrest as many unauthorized immigrants as possible); U.S. GOV'T ACCOUNTABILITY OFF., IMMIGRATION ENFORCEMENT: BETTER CONTROLS NEEDED OVER PROGRAM AUTHORIZING STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS 23 (2009) [hereinafter GAO Better Controls Needed Over Program Authorizing State and Local Enforcement of Immigration Law Report], https://www.gao.gov/products/gao-09-109 [https://perma.cc/5K3Q-AXSR] (finding that some participating agencies used the 287(g) program to process immigrants for minor crimes, like speeding, instead of focusing on more serious crimes).

340. Debbie Cenziper, Madison Muller, Monique Beals, Rebecca Holland & Andrew Ba Tran, *Under Trump, ICE Aggressively Recruited Sheriffs as Partners to Question and Detain Undocumented Immigrants*, WASH. POST (Nov. 23, 2021), https://www.washingtonpost.com/investigations/interactive/2021/trump-ice-sheriffs-immigrants-287g/ [https://perma.cc/TAY9-H9S5].

341. Pham & Van, *supra* note 339, at 490 (finding that North Carolina and South Carolina's State Highway Patrols, which were not 287(g) signatories, displayed changes in arrest patterns suggesting racial profiling after jurisdictions with whom they shared jail facilities entered into 287(g) agreements).

immigration detainers issued as part of the 287(g) program have resulted from arrests for traffic-related stops.[342]

The fact that traffic-related stops account for so many of the 287(g)-related immigration detainers means that undocumented immigrants driving through regions with a 287(g) presence face a substantial risk of being detained and arrested and facing potential negative immigration consequences. As such, the existence of 287(g) programs can significantly interfere with noncitizens' access to reproductive healthcare, particularly for those who leave their state or otherwise traverse large distances to access care. The scope of the 287(g) program reveals the gravity of this risk. As of June 2024, ICE had operative 287(g) agreements with 136 state and local law enforcement agencies in 22 different states.[343] Of these 287(g) agencies, 131 agencies—95.6%—operate in states that explicitly deny driver's licenses to noncitizens that cannot prove authorized status in the United States,[344] namely Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Louisiana, Montana, Nebraska, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Wisconsin, and Wyoming.[345] Because unauthorized noncitizens residing in these states are unable to obtain driver's licenses, law enforcement officers in 287(g) agencies may target drivers that they

342. RANDY CAPPS, MARC R. ROSENBLUM, CRISTINA RODRÍGUEZ & MUZAFFAR CHISHTI, MIGRATION POL'Y INST., DELEGATION AND DIVERGENCE: A STUDY OF 287(G) STATE AND LOCAL IMMIGRATION ENFORCEMENT (2011), https://www.migrationpolicy.org/sites/default/files/publications/287g-divergence.pdf, [https://perma.cc/W58T-R3J7]; Mat Coleman & Austin Kocher, *Rethinking the "Gold Standard" of Racial Profiling: §287(g), Secure Communities and Racially Discrepant Police Power*, 63(9) AM. BEHAV. SCIENTIST 1185, 1196 (2019).

343. *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 338. Of those 136 participating law enforcement agencies, five are state-level law enforcement agencies and 131 are local or county-level law enforcement agencies. All five state law enforcement agencies are state departments of correction, specifically, the Alaska Department of Corrections, the Arizona Department of Corrections, the Florida Department of Corrections, the Georgia Department of Corrections, and the Massachusetts Department of Corrections. *Id*.

344. *Id*.

345. *See* ALA. CODE § 32-6-10.1(e) (2025); ALASKA ADMIN. CODE tit. 2, § 90.420(b) (2024); ARIZ. REV. STAT. ANN. § 28-3153.D. (2024); ARK. CODE ANN. §§ 27-16-604(a)(10), 27-16-111(a)(2)-(b) (2025); FLA. STAT. § 322.05(c)(8) (2024); GA. CODE ANN. § 40-5-21.1(a) (2024); IDAHO CODE ANN. § 49-303(14) (2024); KAN. STAT. ANN. § 8-237(i) (2024); LA. STAT. ANN. § 32:409.1(d)(iv) (2024); MONT. CODE ANN. § 61-5-105(10) (2023); NEB. REV. STAT. § 60-484.04 (West 2025); N.C. GEN. STAT. § 20-7(b1) (2025) (requires valid social security number); OKLA. STAT. tit. 47 § 6-103(A)(9) (2024); S.C. CODE ANN. § 56-1-40(7) (2025); TENN. CODE ANN. §§ 55-50-303(a)(9), 55-50-331(g) (2025); TEX. TRANSP. CODE ANN. § 521.142(a) (West 2023); WIS. STAT. § 343.14(2)(es) (2025); WYO. STAT. ANN. § 31-7-108(b)(vi) (2024).

determine "look" like an unauthorized immigrant, under the assumption that they can be arrested for driving without a license.[346]

This risk is not hypothetical. Investigations by Department of Justice Civil Rights Division have already uncovered rampant racial profiling in the policing practices of certain 287(g) agencies.[347] In 2011, for example, the DOJ revealed that with Arizona's Maricopa County Sheriff's Office, then a 287(g) agency, Latino drivers were four to nine times more likely to be stopped for alleged traffic-related violations than similarly situated non-Latino drivers.[348] Investigators found that officers arrested and detained Latinos without legal justification, essentially using their state policing power as a way to enforce federal immigration law.[349] In the report, the DOJ detailed how officers stopped and detained individuals solely on the characteristics like having "dark skin" or speaking Spanish.[350] Over a three-year period, DOJ investigators discovered that about one-fifth of all traffic-related incident reports generated by the Maricopa County Sheriff's Office "Human Smuggling Unit" were unconstitutional; almost all of these reports involved Latinos.[351]

Just one year later, the DOJ made similar findings of discriminatory policing in an investigation of the Alamance County Sheriff's Office in North Carolina.[352] The DOJ's report on the Alamance County Sherriff's Office lay bare the intent to enforce immigration law through local policing practices, including through reports that the Alamance County Sheriff had instructed his

346. *See* Coon, *supra* note 339, at 663; Pham & Van, *supra* note 339, at 473.

347. *See* Letter from Thomas E. Perez, Asst. Att'y Gen., Dept. of Justice to Clyde B. Albright, Cnty. Att'y, Alamance Cnty. and Chuck Kitchen, Turrentine Law Firm (Sept. 18, 2012) [hereinafter Letter from Asst. Att'y Gen. Perez to Alamance Cnty. Att'y Albright], https://www.justice.gov/iso/opa/resources/17120129181246248819 8.pdf [https://perma.cc/S8PW-JBM8]; Letter from Thomas E. Perez, Asst. Att'y Gen., Dept. of Justice to Bill Montgomery, Cnty. Att'y, Maricopa Cnty. (Dec. 15, 2011) [hereinafter Letter from Asst. Att'y Gen. Perez to Maricopa Cnty. Att'y Montgomery], https://www.justice.gov/sites/default/files/crt/legacy/2011/12/15/mcso_findletter_12-15-11.pdf [https://perma.cc/WKZ9-R66N].

348. Letter from Asst. Att'y Gen. Perez to Maricopa Cnty. Att'y Montgomery, *supra* note 347, at 3.

349. *Id.*

350. *Id.*

351. *Id.*

352. Letter from Asst. Att'y Gen. Perez to Alamance Cnty. Att'y Albright, *supra* note 347.

deputies to target Latinos, ordering, "If you stop a Mexican, don't write him a citation. Arrest him."[353]

Given that 287(g) designated officers are authorized to issue immigration detainers and hold immigrants in custody while ICE assesses their legal status, it follows that immigrants arrested in these programs may also be trapped in these 287(g) jurisdictions for some time, which could pose a problem for those stuck in abortion-restrictive states. Indeed, there is significant overlap between the states with 287(g) agencies and states with restrictive abortion laws. As of June 2024, thirteen of the twenty-two states with 287(g) agencies have enacted abortion-restrictive laws that ban abortion at fifteen weeks or earlier—Alabama (total ban), Arizona (fifteen-week ban), Arkansas (total ban), Florida (six-week ban), Georgia (six-week ban), Idaho (total ban), Louisiana (total ban), Nebraska (twelve-week ban), North Carolina (twelve-week ban), Oklahoma (total ban), South Carolina (six-week ban), Tennessee (total ban), and Texas (total ban).[354] In total, 85% of participating law enforcement agencies are found in states with restrictive abortion laws.[355]

b. On the Horizon: State Restrictions on the Movements of Noncitizens

In recent months, states have increasingly passed laws that aim to restrict the ingress and intrastate movement of immigrants suspected of being present without authorization. While the constitutionality of these statutes remains an open question,[356] the

353. *Id*. at 5.

354. *Compare Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, *supra* note 338, *with Interactive Map: US Abortion Policies and Access After Roe* , *supra* note 127. *See also* ALA. CODE § 26-23H-4 (2025); ARIZ. REV. STAT. ANN. § 36-2322 (2022); ARK. CODE ANN. § 5-61-102 (2025); FLA. STAT. § 390.0111 (2024); GA. CODE ANN. § 16-12-141 (2024); IDAHO CODE ANN. § 18-622 (2024); LA. STAT. ANN. § 40:1061.1 (2024); NEB. REV. STAT. § 71-6915 (West 2025); N.C. GEN. STAT. § 14-45 (2025); N.C. GEN. STAT. § 90-21.81A (2025); OKLA. St. tit. 21, § 861 (2024); S.C. CODE ANN. § 44-41-630 (2025); TENN. CODE ANN. § 39-15-213 (2025); TEX. HEALTH & SAFETY CODE ANN. § 170A.004 (West 2023).

355. This 85% statistic was calculated by the author by comparing the comprehensive list of 287(g) jurisdictions as of June 2024, finding which were in abortion-restrictive states, and finding which proportion of the total number this amounted to. *But see supra* note 91 (regarding Arizona's constitutional amendment enshrining abortion rights into the Arizona Constitution after the state passed a fifteen-week abortion ban).

356. The U.S. District Court for the Southern District of Florida issued a preliminary injunction on Section 10 of Florida S.B. 1718 on May 22, 2024. The court found that the Section 10 of the bill was likely preempted by 8 U.S.C. § 1324, the

existence of these statutes nonetheless serves to chill immigrant movements through state enforcement of immigration law. These state immigration statutes, which target both unauthorized immigrants and any state residents who aid them, makes unlawful cargo of immigrant bodies and creates further barriers to an immigrant's ability to access healthcare, abortion care, and other important services.

Florida's recently enacted S.B. 1718[357] paints a dismal picture of how an immigration-oriented state statute uses potential criminal prosecution to discourage residents from helping immigrants move safely within the state. Signed into law in May 2023,[358] this statute is sweeping in scope, though certain provisions specifically impact immigrant mobility within and outside of the state. For example, the statute invalidates any out-of-state driver's license if it is a license specially designated for unauthorized immigrants.[359] If an unauthorized immigrant with a valid driver's license from Maryland[360] were to drive into Florida, for example, that driver would be subject to arrest and prosecution for driving without a license upon entering the state, essentially becoming arrestable upon any traffic stop. Given that Florida already has forty-eight law enforcement agencies participating in the 287(g) program, this statute raises serious concerns about potential racial profiling and the use of perfunctory traffic stops to further immigration-enforcement aims.[361] Although parts of Florida S.B. 1718 have been enjoined by a federal court, the driver's license

federal statute that criminalizes bringing unauthorized individuals into the country and harboring said individuals within the United States. *See* Order Granting Motion for Preliminary Injunction at 20–29, 40, Farmworker Ass'n of Fla. v. Moody, No. 23-cv-22655-ALTMAN/Reid (S.D. Fla. May 22, 2024) [hereinafter *Moody* Order Granting Preliminary Injunction], https://assets.aclu.org/live/uploads/2024/05/PI-ORDER-THE-FARMWORKER-ASSOCIATION-OF-FLORIDA-v.-MOODY.pdf [https://perma.cc/XJ2N-HXL5].

357. 2023-40 Fla. Laws 1.

358. *Id.* at 2.

359. *Id.* at 3–4.

360. Maryland law allows for special driver's licenses for individuals who cannot demonstrate authorized presence in the United States. *See* MD. CODE ANN., TRANSP. § 16-122(a) (West 2024).

361. *See, e.g.*, Foreign Relations Ministry, *The Government of Mexico Expresses Its Repudiation and Concern Regarding Florida's Anti-immigrant Law SB1718*, GOV'T OF MEX. (2023), http://www.gob.mx/sre/prensa/the-government-of-mexico-expresses-its-repudiation-and-concern-regarding-florida-s-anti-immigrant-law-sb1718?idiom=en [https://perma.cc/2EDA-JXQD]; Raymond G. Lahoud, *Florida's Controversial Immigration Law: Examining the Impact*, NAT'L REV. (2023), https://natlawreview.com/article/floridas-controversial-immigration-law-examining-impact [https://perma.cc/W4VP-PDSK].

invalidation provisions remain in effect.[362] Concerningly, other states have proposed similar bills to invalidate driver's licenses issued to unauthorized noncitizens.[363]

Section 10 of the new law, disingenuously titled "Human Smuggling," also punishes those who help unauthorized immigrants travel within the state.[364] Under that provision, a person commits a third-degree felony, punishable by a maximum of five years in prison and a $5,000 fine,[365] when they knowingly and willfully transport into the state a person they know "or reasonably should know" has entered the United States in violation of law, or when they conceal, harbor, or shield such person from detection.[366] A person commits a separate offense for each person that is transported or "harbored;"[367] when five or more people are transported in a single episode, the offense becomes a second-degree felony.[368] The statute requires that an individual arrested under this statute be held in state custody until they have a custody hearing with a judge,[369] a concerning issue for abortion care, where the window of time to obtain an abortion may already be limited.

Community advocates have already testified to the chilling effect that this statute has had on people's willingness and ability to help immigrants within the state. As support for its decision to enjoin Section 10 of the statute, the Southern District of Florida cited residents of Florida who feared criminal prosecutions for helping immigrants get to their immigration agency appointments or access lifesaving healthcare in a Florida hospital.[370] Other witnesses described the way the law had separated their families: witnesses included parents and grandparents who were afraid of visiting relatives in other states with their undocumented children, out of fear of being arrested and prosecuted upon their reentry to Florida.[371]

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362. *Moody* Order Granting Preliminary Injunction, *supra* note 356, at 20–29, 40 (enjoining Section 10 of Florida S.B. 1718 on federal preemption grounds).

363. *See, e.g.*, S.B. 108, 2024 Leg., Reg. Sess. (Ala. 2024).

364. S.B. 1718, § 10, 2023 Leg. Sess., Reg. Sess. (Fla. 2023), codified as FLA. STAT. ANN. § 787.07 (West 2024).

365. FLA. STAT. ANN. §§ 775.082(e), 775.083(c) (West 2024).

366. S.B. 1718, § 10(1)(a)-(b), 2023 Leg. Sess., Reg. Sess. (Fla. 2023), codified as FLA. STAT. ANN. § 787.07 (West 2024).

367. S.B. 1718, § 10(2).

368. S.B. 1718, § 10(3). Second-degree felonies are punishable by a term of imprisonment of up to fifteen years in prison or a $10,000 fine. *Id.*

369. S.B. 1718, §10(6).

370. *See Moody* Order Granting Preliminary Injunction, *supra* note 356, at 30 (quoting Declaration of Mendoza).

371. *Id.* at 31–32 (quoting Declarations of Aragon and Medrano-Rios).

This statute, and others that may follow,[372] pose serious concerns for the ability of immigrants to safely leave or travel through the state for abortion access and reproductive healthcare. The statute makes no exceptions for emergency situations, healthcare access, or family unity. State laws similar to those of Florida limit immigrants' ability to move freely within the United States by converting an immigrant's body into a form of contraband. A pregnant unauthorized immigrant's body becomes double contraband, and a locus of immigration enforcement. Being in Florida, she is unable to access an abortion within the state after the sixth week of pregnancy,[373] and runs considerable risk by leaving the state for a location where an abortion is available.

Conclusion

Migration control fundamentally revolves around the control of movement, and this control becomes particularly invasive when directed at pregnant immigrant bodies. Current immigration policies do not only limit physical movement; when combined with a patchwork of state laws that restrict abortion-related healthcare, they also impede immigrants' autonomy over their health and family decisions. By treating the bodies of pregnant immigrants as sites for immigration enforcement, these policies extend the reach of migration control into the intimate realm of reproductive health. This form of control curtails the ability of immigrants to make crucial decisions about their health and the shape of their families, illustrating a deeply entrenched intersection of immigration enforcement and reproductive regulation.

The results of the 2024 presidential election have only intensified this reality. With the Trump administration's stated goals of escalating immigration enforcement and curtailing reproductive rights, the intersection of oppressions faced by immigrants, particularly those capable of pregnancy, is set to deepen. Immigration detention, surveillance, and localized enforcement practices like border-zone checkpoints and 287(g) programs already restrict physical movement and amplify barriers

372. *See, e.g.*, H.B. 4156, 59th Leg., 2d Reg. Sess. (Okla. 2024) (codified as OKLA. STAT. tit. 21 § 1795 (2024)), *preempted by* United States v. Oklahoma, 739 F. Supp. 3d 985 (W.D. Okla. 2024) (granting preliminary injunction); S.B. 4, § 2, 88th Legis., 4th Spec. Sess. (Tex. 2023) (codified as TEX. PENAL CODE § 51.02(a) (West 2023)), *preempted by* United States v. Texas, 719 F. Supp. 3d 640 (W.D. Tex. 2024), *vacated*, 144 S. Ct. 797 (2024).

373. *See* FLA. STAT. ANN. § 390.0111(1)(a) (West 2024).

to accessing reproductive healthcare. Now, under an administration committed to increasing both immigration enforcement and restrictions on reproductive autonomy, the risks and vulnerabilities faced by immigrant communities will likely escalate. The threat of detention, deportation, and punitive measures for seeking reproductive healthcare will not only endanger the physical and mental health of noncitizens but also further isolate them from critical support systems.

When viewed through the lens of feminist geography and reproductive justice, the unique challenges faced by immigrants under these policies become even more stark. Feminist geography underscores how control over physical movement and space translates into broader social and political domination, particularly for marginalized groups. Reproductive justice, with its emphasis on the right to have children, not have children, and parent children in safe and sustainable environments, exposes how immigration enforcement and reproductive restrictions jointly undermine these rights for immigrant communities. Pregnant immigrants navigating a web of immigration surveillance and restrictive abortion laws are forced to contend with an environment where their bodies are simultaneously politicized and criminalized.

This moment calls for urgent action. Reproductive justice advocates must recognize and respond to the interconnected nature of immigration policy and reproductive health regulation. Advocacy efforts must address not only the systemic barriers to abortion access, but also the broader structures of surveillance and enforcement that disproportionately target immigrants. Collaborative approaches that bridge reproductive justice and immigrant rights frameworks are essential to dismantling these systems of oppression. Advocates must engage in federal, state, and local policy advocacy to resist efforts to further restrict reproductive and migratory autonomy. They should also invest in community-based support networks that provide resources, legal assistance, and healthcare access to immigrant populations.

To ensure that reproductive freedom is truly accessible to all, the movement must center the experiences and leadership of immigrant communities. This includes amplifying the voices of immigrant women and gender-diverse individuals who are directly affected by these intersecting oppressions. By adopting an intersectional approach and building coalitions across movements, reproductive justice advocates can challenge the dual control of movement and bodily autonomy imposed by the state, working

toward policies that respect and uphold the dignity and agency of all individuals, regardless of citizenship status.