



TRAPPED IN TEXAS

How Federal—and Now State—Immigration
Enforcement Traps People Trying to Escape
Texas' Abortion Ban

ACLU

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In 2021, Texas passed SB 8, one of the most extreme abortion bans in the country at that time, allowing private citizens to enforce a ban on abortion as early as six weeks in pregnancy. SB 8 drastically limited access to abortion when it took effect in 2021; the following year, *Dobbs v. Jackson Women’s Health Organization* overturned *Roe v. Wade*, paving the way for Texas’ near-total abortion ban to take effect. Texas is the second largest and second most populous state in the nation, and now, Texans who need abortion care must travel hundreds of miles out of state to the nearest clinic, assuming they can absorb the significant costs. But on top of the distance, time, and expense required, noncitizens and those in mixed-status families in South Texas face an additional obstacle to travel: federal immigration checkpoints and, with them, the risk of arrest, detention, and deportation.

Federal Immigration Checkpoints En Route to Care

Imagine that you live in a state with a near-total ban on abortion and you cannot get this essential care without fleeing your state, investing multiple days, and spending hundreds or even thousands of dollars for health care; and while on the journey you’re forced to justify your travel at one, two, or sometimes up to eight checkpoints with armed guards and surveillance cameras. Even if you are a U.S. citizen or have a green card or a visa, how comfortable will you and other passengers be answering or refusing to answer

any questions at a checkpoint or if stopped by a roving patrol en route to medical care?

Beyond the immigration inspections at ports of entry to the United States, Customs and Border Protection (CBP), through its subagency U.S. Border Patrol, operates checkpoints well into the interior of the United States. These checkpoints are located within 100 miles of the international border, an area that is home to two-thirds of U.S. residents.¹ At these interior checkpoints, Border Patrol is permitted to screen vehicles for people in the United States without authorization and for illegal narcotics. Border Patrol also operates roving patrols and temporary checkpoints within this interior “border zone”² and has deployed a growing range of technology,³ including surveillance towers and drones, to further monitor and collect data on people’s movements in this broad border zone.⁴ These roving patrols

and surveillance towers also operate on the northern U.S. border, where the ACLU of Michigan has previously documented patterns of racial profiling and pretextual stops by Border Patrol.⁵ But most permanent federal checkpoints are located along the U.S.' southern border, where around 19 million people live.⁶

While there is no public list of all the interior border checkpoints, according to a Government Accountability Office (GAO) report, between 2016 and 2020, U.S. Border Patrol operated over 110 interior checkpoints.⁷ In Texas alone, there are approximately 19 interior checkpoints, stationed on the major (and sometimes only) roads in Texas within 100 miles north of the U.S.-Mexico border. These checkpoints and the border surveillance equipment stationed around this border zone capture a lot of information about border residents' movements – and with limited oversight on the use and retention of this expanding technology. The 2022 GAO report on checkpoints concluded that Border Patrol

Texas, home to 3 million border residents has around 19 interior immigration checkpoints run by Border Patrol.

headquarters lacked complete information about where and how checkpoints operate as well as daily checkpoint operations and activities; in particular, the report raised concerns about oversight for the use of technology and resources at checkpoint operations.⁸

Every day, these permanent inspection sites shape and constrict the movement of border residents who must have their license plate and other information recorded just to drive through or out of their city⁹ In Texas, which has around 3 million border residents¹⁰ and the second largest undocumented population in the U.S. (1.6 million

Interior Border Patrol Checkpoints—25 to 100 miles of the southern U.S. Border



Interior checkpoint locations are based on ACLU analysis.



Photo © Bloomberg via Getty Images

Border Patrol agent inspects car.

residents¹¹), interior checkpoints present a real and daily danger, isolating some people from services and making it almost impossible to travel safely to get medical care or to accompany a loved one to their appointment. This is true for travel within Texas as well as travel across state lines.

According to Lucie Arvalo, executive director of Jane’s Due Process, which supports young Texans in accessing abortion and birth control, this intersection of immigration surveillance and abortion criminalization has already led to a chilling effect in immigrant communities when accessing reproductive health care of any kind: “We receive many calls and texts from young immigrants in Texas unsure about how to access birth control and abortion care, with questions ranging from what identification will the clinic staff ask me to produce to how do I safely leave the state,” says Arvalo. “Some young women are afraid to even travel to a clinic to access their birth control for fear of immigration questioning.”

A person driving themselves or a loved one from Laredo, Texas to a clinic providing abortion care in Las Cruces, New Mexico, for example, would likely have to drive through six CBP checkpoints in Texas alone, and can only reduce the number of inspections (but not avoid them altogether) by adding several hours to their drive. At each checkpoint they may be asked their citizenship and can be asked further questions about why and where they are traveling, in addition to having their license plate and other information recorded by border surveillance equipment.

In 2021, the Department of Homeland Security (DHS) issued guidance to all its subagencies to limit immigration enforcement near or at protected areas, including schools, places of worship, and hospitals and clinics.¹² In the past, border patrol officers have sat at hospital parking lots and monitored people receiving care,¹³ and this guidance is an important limitation on that type of abusive and terrifying policing. But the DHS guidance does not address the fact that many people in South Texas may encounter CBP at a checkpoint on a major road en route to

a hospital or when trying to leave their state for care. Since permanent checkpoints are placed on major roads and highways between cities in Texas, they are often unavoidable. And this danger of being arrested at a checkpoint while seeking medical care is not speculative.

In 2017, Border Patrol encountered Rosa Maria Hernandez, a 10-year-old girl with cerebral palsy, at an interior checkpoint en route to a Corpus Christi hospital for gall bladder surgery.¹⁴ The officers followed the family to the hospital, stayed outside of Rosa Maria's room until she was discharged, and then placed her in a federal immigration shelter for children. She was only released to her family after the ACLU filed a lawsuit to challenge her detention.¹⁵

Knowing this danger, many people will forgo medical care or travel alone if they or a loved one cannot avoid a checkpoint to access a clinic. Rosa Maria's own mother could not accompany her to the hospital because of this fear of enforcement at a CBP inspection site, and Rosa Maria's experience has set a chilling precedent for other undocumented and mixed-status families in Texas.

Texans Trapped by Extreme Anti-Abortion Laws

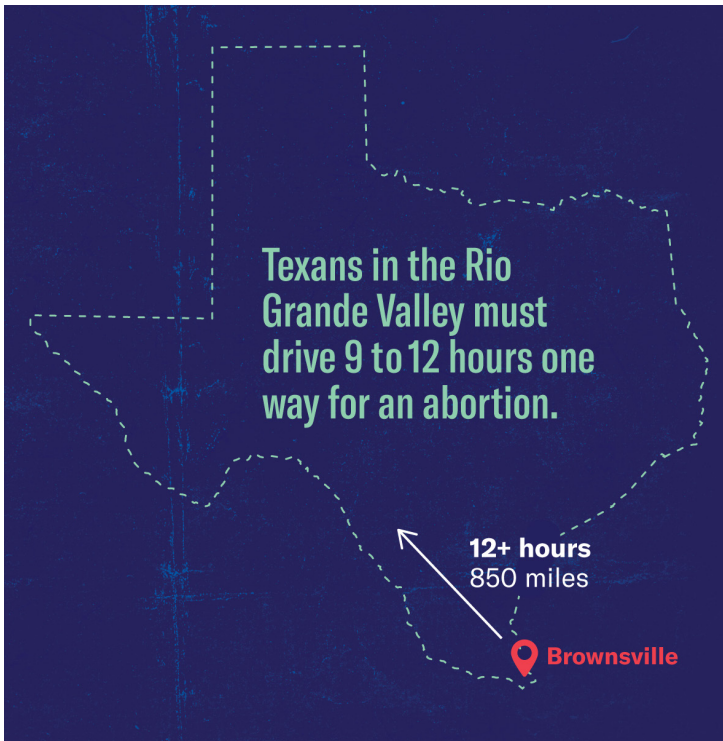
Federal immigration enforcement continues to shape how people can access basic services in their communities, but Texans who need abortion care are now forced to leave their communities and their state to get this essential care. The extreme bans on abortion are forcing people to leave Texas for care — but federal checkpoints impose another restriction on noncitizens trying to access abortion care out of the state.

Texas's Laws Restricting Abortion

Texas's SB 8 took effect on September 1, 2021, even before *Dobbs v. Jackson Women's Health Organization* overturned *Roe v. Wade* in 2022 and allowed states to ban abortion.¹⁶ SB 8 effectively banned abortion as early as six weeks in pregnancy — before some know they are pregnant — by authorizing private citizens to enforce the law against their neighbors.¹⁷ This law, which is now compounded by the end of *Roe*, has no exceptions for rape, and although it has a limited medical emergency exception, confusion persists as to when doctors can rely on these exceptions.

After the Supreme Court eliminated constitutional protections for abortion in *Dobbs*, Texas' so-called "trigger ban" came into effect, prohibiting abortion at all stages of pregnancy and making it punishable by up to 99 years imprisonment for providers.¹⁸ Added to these stringent restrictions, Texas also criminally restricts access to abortion medication,¹⁹ and Attorney General Ken Paxton is currently maintaining that Texas' dormant 19th-century criminal abortion law — the law struck down by *Roe v. Wade* — has been resuscitated.²⁰ This combination of restrictions on abortion has endangered Texans who need this essential health care.

In a recent case brought by 20 women denied an abortion despite facing dangerous pregnancy complications, the Texas Supreme Court held that abortions are not permitted in situations where the fetus has a lethal condition and will not survive *unless* the pregnant patient *also* has a life-threatening condition.²¹ And while the Texas court said that exceptions can be made for life-threatening conditions, it did not specify when those exceptions apply; therefore it did not specify when a patient who is experiencing a deteriorating health situation can get an abortion. This ambiguous and dangerous situation has



for example, the distance to the nearest abortion clinic is over 870 miles, a drive of at least 12 but up to 15 hours one-way to New Mexico; from Galveston, Texas, the trip is a one-day, nine-and-a-half-hour drive of more than 650 miles. Further tightening the restrictions on people in need of care, several cities and counties in West Texas have now introduced civil “travel bans” in an attempt to prevent pregnant people from leaving their communities to get abortion care.²⁸

Right now, Texas is mostly surrounded by similarly restrictive states like Louisiana, which has a near-total ban on abortion, and Oklahoma, where a pre-*Roe* ban was reinstated after the 2022 *Dobbs* decision. The only state that directly borders Texas where abortion is legal is New Mexico, which has become the primary destination for many patients living in restrictive states.²⁹

already had consequences for Texas patients. Over the last few years, Texas anti-abortion laws have resulted in a rise in infant mortality rates in Texas,²² largely due to fatal fetal diagnoses²³ and declining medical care²⁴ for pregnant Texans in a state with one of the worst maternal mortality rates in the country,²⁵ particularly for women of color.²⁶

Lengthy, Costly, and Risky Out-of-State Travel for Abortion Care

In addition to putting pregnant people’s lives in danger, Texas’ cumulative bans on abortion have forced residents to travel out of state for essential health care. In 2023, Texas had the most residents traveling out of state for an abortion, with enormous distances to travel.²⁷ Residents of South Texas travel farther than anyone in the country to get to an abortion clinic: From Brownsville,

According to the Guttmacher Institute, in 2023, almost three-quarters of all abortions in New Mexico were provided to out-of-state patients, with many coming from Texas.³⁰ New Mexico, which has seen a 256 percent increase in clinician-provided abortions since 2020, largely because

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of out-of-state patients, is the closest and most accessible place for many Texans to get abortion care.³¹ It also does not mandate a waiting period between consultation and the abortion itself, nor does it mandate parental consent.

But crossing the border into New Mexico doesn’t erase all barriers to care. Driving from Texas,

some of the closest abortion care providers in New Mexico are in Las Cruces, but – with the exception of one provider who offers early procedural abortion – these clinics mainly provide medication abortion. As a result, many people will still need to travel to Albuquerque – four hours north of Las Cruces – where most abortion services in New Mexico are provided, and where hospitals and clinics offer a broader range of abortion care, including procedural abortion later in pregnancy.

With around one-third of New Mexicans living in obstetric care deserts,³² New Mexicans also face considerable costs and barriers in accessing reproductive services and timely abortion care – and, like Texans, they also face immigration checkpoints and other policing en route to care. As Ellie Rushforth, managing attorney at the ACLU of New Mexico, observes, “Most people don’t realize just how large, rural, and hyper-policed New Mexico is. Geographic isolation, limited health care facilities, and a shortage of medical professionals create substantial barriers for those seeking essential care, including reproductive health services. These challenges are compounded for marginalized communities, further exacerbating health disparities. And we know that these factors only increase the risks immigrants and people of color face when seeking abortion care amidst the pervasive threat of immigration enforcement.”

Alongside the legal and logistical barriers to abortion, the financial costs of getting an abortion have multiplied exponentially and are particularly acute for those traveling out of state.³³ A medication abortion can cost \$250-800 depending on the provider,³⁴ and abortions that take place later in pregnancy may involve longer stays and cost thousands of dollars. Most out-of-state patients are funding their care themselves or relying on assistance from increasingly overburdened abortion funds (grassroots organizations that provide funding and related support to people seeking abortions). Noncitizens

face additional costs and hurdles in accessing abortion care; undocumented immigrants are excluded from nearly all federal benefits, including most health care programs, and must rely on a patchwork of state eligibility rules and benefits, where they exist. Even driving to get care itself presents challenges for undocumented patients and their relatives, as several states like Texas do not issue driver’s licenses to undocumented residents.³⁵

A board member of the Mariposa Fund, which helps pay for abortion care in New Mexico, observed: “For undocumented patients or patients who are not U.S. citizens, traveling adds another layer of fear and anxiety due to the fear of encountering immigration officials or law enforcement. I have had patients pay a thousand dollars to pay someone to drive them to their appointment because they are scared to get on a plane. Some patients have to take alternative routes to avoid checkpoints, which adds travel time and costs more. This also means that many patients travel alone in order to avoid putting family members at risk.”

These costs are significant and are disproportionately borne by people in low-income communities of color. Texans in the Rio Grande Valley live in one of the poorest areas of the United States, with one-third of the population living below the federal poverty line,³⁶ and they face some of the highest costs to access abortion care as they must travel the farthest distance. More generally, abortion bans disproportionately harm communities of color throughout the United States,³⁷ and this is particularly true in the Rio Grande Valley where more than 90 percent of the population is Latine.³⁸ Latine people in South Texas are living under one of the most restrictive abortion regimes in the country, traveling longer and at greater expense to get an abortion outside Texas, and risking immigration enforcement just by driving to get this essential care.

Expanded State Enforcement Against Immigrants in Texas

Border enforcement within the 100-mile zone — including checkpoints, roving patrols, and expanding surveillance — has long been a concern for border residents, particularly people of color. The ACLU and border groups have repeatedly raised concerns about abuses by border agents, including racial profiling, excessive use of force, and harassment of border communities by roving patrols.³⁹ But federal immigration agents are no longer the only actors attempting to enforce federal immigration law in Texas.

In recent years, the lines between federal and state officers have been increasingly blurred in Texas, where state troopers and National Guard troops have been assigned to conduct “border enforcement” activities. Almost all counties⁴⁰ along the southern Texas border are also participants in Operation Lone Star, Governor Greg Abbott’s multi-billion-dollar, anti-immigrant initiative to arrest, prosecute, and punish

“Texas has created a climate of fear so that law enforcement can impact a person’s decisions in accessing medical care, including reproductive health care.”

— Cathy Torres, *Frontera Fund*

undocumented immigrants under charges like trespassing.⁴¹ This program has been rife with civil rights abuses, including racial profiling,⁴² prolonged and unlawful detention of those arrested,⁴³ unlawful detention of U.S. citizens,⁴⁴ and deadly car chases.⁴⁵ But last year, Texas

went even further and passed a dangerous and unconstitutional law that purports to give Texas officials the power to arrest, detain, and deport noncitizens anywhere in the state.

SB 4, currently stayed by a federal court, authorizes police to arrest and charge individuals



Border inspection station.

Credit: Robert Daemmrich Photography Inc

with a new state crime of “illegal entry” to Texas, punishable by up to six months in jail, and authorizes state deportations. The law further allows officials to charge individuals previously denied admission to or deported from the United States — including those unlawfully deported by Texas officials — with “illegal re-entry” to Texas, punishable by up to 10-20 years in prison.⁴⁶ Separate from its SB 4 scheme, in 2023 Texas also increased penalties for “human smuggling” to a mandatory 10 years in prison or five years if an individual violating this law is transporting certain close undocumented family members such as siblings, parents, or grandparents.⁴⁷ This dramatically increases the danger for the 840,000 people in Texas⁴⁸ who live in mixed-status families and may be stopped by state police when driving a loved one in Texas.

Although SB 4 has been framed as an extension of Texas’ “border security” operations, if allowed to go into effect, this law would operate throughout the state of Texas, putting millions of families at risk of this illegal arrest and deportation scheme.



Credit: Ismael Quintanilla III

Protest for abortion rights in Austin, Texas.

Given the precedent of Operation Lone Star, people of color may be reasonably afraid that this law may be used to justify pretextual stops and questioning by local and state police.

Texas anti-immigrant policing through Operation Lone Star has not impacted border management or arrivals,⁴⁹ but it has had a chilling effect on Texas residents trying to access care. As Cathy Torres of Frontera Fund, which provides abortion support to people living within the 100-mile zone, observes: “Because we live in a border area, it doesn’t matter what your citizenship status is – we are under so many layers of policing and law enforcement from local police but especially DPS [Department of Public Safety]. Texas has created a climate of fear so that law enforcement can impact a person’s decisions in accessing medical care, including reproductive health care.”

Texas’ expanding anti-immigrant policing only adds to the danger that noncitizens face in accessing medical care in their own communities⁵⁰ and in trying to travel out of Texas for abortion care. Although Texas’ abortion bans do not apply to a person who obtains

abortion care in another state where it is legal, a person trying to leave Texas for abortion care may nevertheless be afraid of being stopped and questioned by state police or immigration agents about their reasons for travel. Police themselves may be unclear what conduct is lawful or overly aggressive in attempting to enforce the state’s abortion ban. In 2022, for example, Lizelle Gonzales was unlawfully arrested in the Rio Grande Valley after receiving a medication abortion. Even though Texas law clearly prohibits the criminal prosecution of a pregnant person for conduct that ends their pregnancy, the county sheriff, district attorney, and assistant district attorney investigated and indicted Ms. Gonzales for murder. Although these unlawful charges were dismissed (and the ACLU and local firm Garza Martinez have filed a lawsuit seeking accountability for violations of Ms. Gonzales’ constitutional rights⁵¹), this case illustrates the justified fear of and chilling effect on people of color trying to access medical care against a background of hostile and activist policing.

Conclusion

Texans are living under the intersecting dangers of abortion bans, immigration enforcement, and hyperbolic anti-immigrant policing by state authorities, and the lives and liberties of residents of South Texas in particular are shaped by these legal and literal barriers to care.

But while the federal government has sued to enjoin SB 4, Texas' unconstitutional "immigration enforcement" law, it has not addressed its own expansive policing of border communities, far beyond ports of entry. The 100-mile border zone has for too long been treated as a special sector where people live under both continuous surveillance and the restrictions on free movement and privacy that checkpoints create. Over the years, even as the range and quantity of surveillance equipment used by the federal government has expanded in the interior of the country, there has been limited oversight or review of the use of checkpoints, roving patrols, or surveillance technology that is used routinely on border residents, including U.S. citizens and mixed-status families. The lack of oversight and guardrails – at a time when Texas is expanding its policing of noncitizens and given ⁵² – needs to be addressed to protect border residents.

The overlapping dangers of federal immigration enforcement, aggressive anti-immigrant state policing, and abortion bans create a web of barriers to abortion care for people living in border communities. The federal government needs to address its own immigration enforcement activities, particularly at checkpoints, which overlie the state bans and other obstacles that noncitizens face in accessing abortion care. Texans face multiple intersecting restrictions to abortion access, but the federal government can and should act to remove the danger of immigration enforcement from border residents trying to get to essential care.

Recommendations

To Ensure that Immigrants Can Safely Access Necessary Medical Care, the Department of Homeland Security Should:

1. Ensure that people can safely reach protected facilities without CBP checkpoints or other immigration enforcement impeding their travel or exposing people to potential detention and deportation, consistent with the DHS' protected area guidance's direction that "we should not take an enforcement action in or near a location that would restrain people's access to essential services or engagement in essential activities." The DHS should robustly apply this guidance and strengthen policies to ensure that people are able to safely reach the protected facilities and that enforcement actions are not taken at temporary or permanent checkpoints en route to medical clinics and hospitals. The location of medical services should also inform any decisions to set up new temporary or other checkpoints. Enforcement of the guidance should reflect the need to protect against violations of privacy by federal immigration enforcement personnel and to guarantee confidentiality of medical information;
2. Prohibit the acquisition, retention, use, or dissemination of information collected at Border Patrol checkpoints in furtherance or assistance of any investigation or proceeding initiated by federal or state authorities that seeks to impose civil or criminal liability, or professional sanction, upon a person or entity for the provision of abortion care or other reproductive medical care services;
3. Establish additional public and reviewable limits on the circumstances under which the DHS may share information collected at Border Patrol checkpoints with other federal, state, and local law enforcement agencies. Explicitly limit the DHS collection and retention of information at checkpoints, and its sharing of information with other federal, state, and local law enforcement agencies, to prevent disclosure of efforts to obtain or assist with an abortion except in limited circumstances, such as CBP obtaining emergency medical services for an individual;

4. Issue non-detained standards that direct U.S Immigration and Customs Enforcement (ICE) to ensure that people under orders of supervision, home curfew, or forms of electronic monitoring are promptly granted permission to travel for medical care, including abortion care;
5. Issue guidance directing the use of prosecutorial discretion in favor of individuals arrested at checkpoints when traveling to access critical medical care. The DHS must also clarify that it will not consider these arrests or convictions, or the disclosure of having obtained abortion care, as a bar to any form of immigration relief, including in discretionary determinations;
6. Develop a confidential, expedited process enabling undocumented immigrants who must travel through checkpoints to obtain essential medical care to apply for advance travel authorization from U.S. Citizenship and Immigration Services (USCIS), which they can present at checkpoints or to other immigration inspection officials en route to the facility providing care and back to their home residence; and
7. Prohibit any CBP collaboration with or facilitation of Operation Lone Star, in light of the well-documented pattern of racial profiling and other abuses.

To Address Overbroad Policing of Border Communities:

The ACLU has called for the elimination of all permanent interior Border Patrol checkpoints and full compliance with the Fourth Amendment, including requiring reasonable suspicion for all searches or seizures within any defined border zone. Until these steps are taken, the DHS should improve reporting, transparency, and accountability mechanisms, including:

1. Collecting and publishing quarterly the number and location of permanent and temporary CBP checkpoints, including a description of other local, state, or federal law enforcement agencies or resources as well as the technology utilized at each checkpoint;
2. Requiring CBP to collect and publish monthly incident data on all stops by Border Patrol roving patrols (not just arrests), internal checkpoint searches and seizures, and incursions on private property, including the factual basis for and the duration of each stop of people and each incursion onto private property; whether a search was conducted or force was

used; whether an arrest was made; the race and ethnicity of the landowner or seized person(s); the badge number of any local, state, or federal law enforcement officer(s) present; and the legal justification for the agency's action each time. Personal identifying information of the person(s) stopped, searched, or seized should be redacted;

3. Adopting and implementing the GAO's recommendations to ensure oversight of checkpoint operations to ensure accurate and consistent reporting as well as transparency regarding the technology used at checkpoints;
4. Protecting the privacy of border residents and their movements by deleting any license plate reader information not necessary as evidence in a specific investigation within 30 days and limiting the retention of any data captured by surveillance towers, drones, blimps, and other surveillance technology encompassing data about people within the United States, including cities adjacent to an international border; and
5. Publishing information about the type of surveillance equipment used within 100 miles of the U.S. border — for example, the type of cameras used on surveillance towers and their range — so that border communities know what information about them is being routinely captured and stored.

To Expand and Secure Access to Safe and Legal Reproductive Care, Including Abortion Care and Contraception, Congress Should.

1. Enact federal legislation to ensure that everyone can access abortion care if they need it, no matter who they are, where they live, or how much money they have;
2. Repeal the Comstock Act to ensure that no future anti-abortion president can weaponize this antiquated law from the 1800s to attempt to misuse it to ban abortion nationwide; and
3. Pass the Equal Access to Abortion Coverage in Health Insurance (EACH) Act and end discriminatory abortion coverage bans to ensure that everyone, regardless of their income or source of health insurance, can access abortion.

State Governments Should:

1. In states where abortion is legal, remove barriers to access based on immigration status. New York, for example, has issued public guidance that assures people that accessing an abortion will not impact a person's immigration status and that pregnant noncitizens who live in New York (and meet the income requirements) are eligible for Medicaid, which includes abortion coverage in New York, regardless of immigration status;⁵³ and
2. Allocate additional resources for access to reproductive health services, like California's Reproductive Health Equity Fund,⁵⁴ to help mitigate the harm caused by a federal government attack on access. State governments should also expand, fund, and make usable an uncompensated care or gap coverage program to ensure providers are reimbursed for the reproductive health services they provide to undocumented patients without other means to pay for care.

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