

Congress of the United States
Washington, DC 20515

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
300 7th St, SW
Washington, DC 20528

September 23, 2024

Dear Secretary Mayorkas, Acting Commissioner Troy A. Miller, and Acting Director Tae D. Johnson,

In March 2023, we wrote to thank this Administration and this Department for revising the guidance to the Office of Refugee Resettlement (ORR) to ensure continued access to abortion care for unaccompanied youth. As we noted, it was and continues to be a monumental step towards maintaining and safeguarding reproductive health care for unaccompanied youth, including full access to abortion care. We also asked the Department to extend these protections to all immigrant communities so they can safely access abortion care.

Unfortunately, since we last wrote, the number of state abortion bans have only increased, leaving millions of people without access to necessary care. And for noncitizens who are in your care and custody or must risk immigration enforcement en route to a medical clinic, these state-level prohibitions present mounting dangers to their health and safety.

While Texas's SB8 law — which rendered *Roe v. Wade* meaningless for many people in immigrant communities in the state nearly a year before *Dobbs* was decided — was once the most extreme in the country, Texas is now surrounded by states like Louisiana and Oklahoma that have also adopted bans on abortion. In this context of expanding abortion deserts, and where immigrants face additional barriers to traveling for essential medical services, it is imperative that the Administration continue to take intentional action to protect immigrant access to abortion care.

Abortion bans exacerbate the obstacles to obtaining an abortion for immigrants detained in these states. Approximately 41% of immigrants in ICE detention are being held in two states that ban abortion: Texas and Louisiana. Arriving immigrants held in CBP custody—often much longer than the 72-hour limit and in some cases, up to 30 days—have been unable to access medical care including abortion and emergency contraception. This is particularly concerning as many arriving immigrants have been subject to sexual violence en route to the U.S. and/or while waiting for a CBP One appointment in Mexico. Emergency contraception is most effective within 24-72 hours to prevent pregnancy, but it is generally not available in these facilities, where people are now waiting longer to be processed and released to the community to access care. If someone becomes pregnant because they've been unable to access emergency contraception,

they may seek access to abortion but many of CBP facilities are based in Texas where abortion is almost completely banned. Even for immigrants who are not detained, obtaining an abortion is incredibly difficult because U.S. Customs and Border Protection (CBP) checkpoints in border communities make it all but impossible for undocumented immigrants to safely reach health care facilities located hundreds of miles away. For example, for undocumented immigrants living in the Rio Grande Valley in Texas, it is functionally impossible to travel safely to a legal abortion provider outside of Texas without encountering a CBP checkpoint. New Mexico is the only state adjacent to Texas where abortion is legal, but to access these clinics, noncitizens and their families must travel through checkpoints in New Mexico in addition to those in Texas, traveling an enormous distance just to get this essential care.

These permanent and temporary enforcement checkpoints, in addition to roving patrols, directly contribute to a chilling effect for people who must travel from the border region to other states for abortion care and restrict movement for both documented and undocumented immigrants; forcing some people to avoid traveling altogether and forgo the time-sensitive care they need.

Moreover, should Texas's anti-immigrant law SB4 go into effect, Texans will also have to worry about being stopped and questioned about their immigration status if they travel from Texas to an out-of-state abortion clinic, risking arrest, detention, and deportation. This is already a threat for Texans who live in or must drive through counties participating Operation Lone Star, where Texas troopers have stopped drivers of color and transferred immigrants to CBP custody.

Abortion is time-sensitive, essential health care, and no one should face the threat of being separated from their family and possibly deported for attempting to access it – but that is the reality for people in many parts of the country. For these reasons, it is particularly urgent that the Department of Homeland Security take the following actions to ensure immigrant communities retain vital access to abortion care:

1. Consistent with DHS's [protected areas guidance](#), DHS should ensure that people are able to safely reach those protected facilities without CBP checkpoints impeding their travel or exposing people to potential detention and deportation. Any policies must protect patients from violations of privacy by federal immigration enforcement personnel and guarantee confidentiality of medical information.

2. DHS should expand CBP's [November 2021](#) policy regarding the detention of pregnant, postpartum, and nursing people in CBP facilities to:

- a. Expedite processing to minimize the time that people who are pregnant, postpartum, and/or nursing, and their families, are in CBP custody to only the time period necessary to process them for release from CBP custody. In absolutely no case should custody exceed 12 hours from the time of initial apprehension.

b. Ensure that, together with their families, people who are pregnant, postpartum, and/or nursing are released from CBP custody as soon as possible after any discharge from an offsite hospital and are not transferred back to CBP detention for any purposes, including processing.

3. We believe that medically vulnerable people, including those who are pregnant, should not be in detention. If pregnant persons are detained, there should be no barrier to abortion. DHS should therefore issue guidance to build on ICE's [current policy](#) of ensuring abortion access:

a. Any pregnant person in ICE/CBP custody who requests access to abortion and is in a state that bans or significantly restricts abortion shall be afforded an immediate transfer (with the option to be transferred back), unless the individual affirmatively asserts a preference to stay in the current placement or state after receiving appropriate advisals.

b. Any pregnant person in ICE/CBP custody shall be promptly notified of the right to access abortion, regardless of state restrictions, in language that the individual can understand, in a comfortable and private venue in which they feel free to ask questions (such as non-directive medical counseling), and the delivery point of which information is standardized (e.g., always by an experienced medical professional). Pregnant persons in ICE/CBP custody who request access to abortion shall be afforded care as soon as they need it and shall be free to choose the abortion method that is best for them, including medication abortion, based on the options that are clinically appropriate.

c. In instances where it is possible, pregnant people in ICE/CBP custody shall not be placed in a U.S. state that bans or significantly restricts abortion access (e.g., bans abortion at fifteen weeks or earlier).

d. For people who are under Orders of Supervision that require ICE's permission to travel out of state, DHS must require ICE to permit interstate travel for people who need abortion care.

4. DHS should make it absolutely clear that the department will not take any enforcement action against people who may be arrested for or convicted of abortion care-related crimes. DHS must also clarify that it will not consider these arrests or convictions, or the disclosure of having obtained abortion care, to bar any form of immigration relief, including in discretionary determinations. It should also issue guidance urging the use of prosecutorial discretion for individuals arrested at checkpoints while trying to access medical care, including abortion and other reproductive care.

5. CBP should provide timely access to, and information about, emergency contraception in all its detention facilities in a manner consistent with ICE's [policy](#) on the provision of contraception. A person's immigration status must never be an additional obstacle to their access to essential, time-sensitive health care. We look forward to working with your agency to make this an integral part

of the administration's response to the growing crisis for abortion access and to close the existing, preventable gaps in coverage, particularly for people in your care and custody.

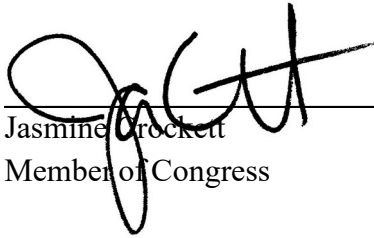
Sincerely,



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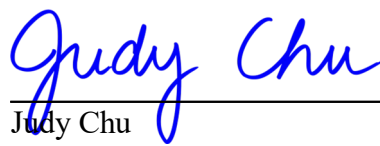
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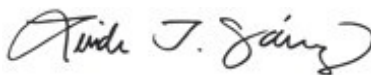
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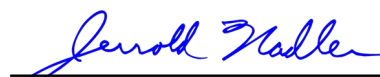
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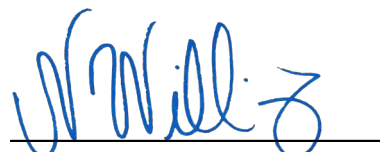
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