



Practice Alert:
**Abortion Rights for Immigrant Survivors:
The Impact of *Dobbs* on Representation of Immigrant Survivors
Seeking Reproductive Healthcare¹**

January 12, 2023

The landscape of abortion rights and restrictions is very complex and constantly shifting. This resource aims to provide accurate information and resources that can guide you to make reasoned decisions with your clients based on the current state of the *law*, not fear. As the law changes, we will keep this advisory as current as possible. Please be sure to consult the resources linked for additional information on the most recent developments.

Immigrant survivors of gender-based violence (GBV) and their advocates have long anticipated the impact of abortion restrictions on those with the least access to abortion care, the greatest likelihood of criminalization, and the most limited freedom of movement—and these concerns have been substantially magnified since the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. ____ (2022). The influx of abortion restrictions and criminalization in the wake of *Dobbs* imposes additional barriers to self-determination on survivors who become pregnant under abusive or coercive circumstances. Not only must survivors traverse their trauma and ongoing threats of abuse to obtain abortion care, but they must now also navigate severe abortion

¹ Copyright 2022, ASISTA. This practice advisory is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). The advisory is intended for authorized legal counsel and is not a substitute for independent legal advice provided by legal counsel familiar with a client's case. Counsel should independently confirm whether the law has changed since the date of this publication. ASISTA is grateful for the review and contributions of Sara Ainsworth, Senior Legal & Policy Director, If/When/How: Lawyering for Reproductive Justice.

restrictions and their potential impact in the immigration and criminal legal systems. This practice alert aims to provide initial guidance and resources to legal advocates working with immigrant survivors at the intersection of immigration and abortion rights.²

Many undocumented immigrant survivors seeking relief based on their victimization are required to affirmatively establish their admissibility and positive equities to the U.S. Citizenship and Immigration Services (USCIS), and are not automatically excluded from detention or immigration enforcement.³ These burdens, and the role of reproductive coercion in domestic abuse dynamics, raise important questions for advocates. This advisory is framed around those questions.

1. How does the *Dobbs* decision affect immigrant survivors?

Dobbs overruled *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), abolishing almost 50 years of precedent protecting access to abortion as part of a fundamental right of privacy.⁴ In so doing, *Dobbs* returned the regulation of abortion to the individual states. In the immediate aftermath of *Dobbs*, several states enacted trigger laws with varying degrees of abortion bans and penalties for their violation, some of which were successfully enjoined in litigation.⁵ On October 2, 2022, the Guttmacher Institute, which tracks abortion and reproductive health care policy, estimated that 66 clinics across 15 states have stopped offering

² In October 2022, the National Immigration Law Center (NILC) released a [Know Your Rights resource](#) for immigrants affected by abortion access restrictions in multiple languages, with information about obtaining health care and assistance with medication abortion. The ASISTA advisory is directed at advocates, but will reference the NILC resource as appropriate, and we encourage advocates to consult the advice and resources cited therein.

³ See ICE Directive 11005.3: *Using a Victim-Centered Approach with Noncitizen Crime Victims* (August 10, 2021) (“ICE Victims Directive”), <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>. Although the ICE Victims Directive provides guidance to DHS enforcement components for exercising favorable discretion for immigrants identified as victims with pending or potential claims for immigration relief, it contains an exception for immigrants detained under INA 236(c) (mandatory detention) and for whom “exceptional circumstances” exist.

⁴ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ____ (2022) (overruling *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992)).

⁵ Sarah McCammon, *Two months after the Dobbs ruling, new abortion bans are taking hold*, NPR.org, Aug. 23, 2022, <https://www.npr.org/2022/08/23/1118846811/two-months-after-the-dobbs-ruling-new-abortion-bans-are-taking-hold>.

abortions and “26 states are certain or likely to ban abortion within a year of *Roe* being overturned.”⁶

New abortion restrictions will strongly impact populations that already faced challenges accessing reproductive health care prior to *Dobbs*, such as people with low incomes, Black and Brown people, young people, people with disabilities, and people in rural communities. Immigrants, and immigrant survivors, comprise all of these populations.⁷ These groups experience higher rates of domestic violence and criminalization.⁸ Recent studies have found that the estimated travel time to abortion facilities in the US was significantly greater in the period following *Dobbs*.⁹ The average travel time exceeded one hour, and for people in Texas and Louisiana, more than seven hours.¹⁰

Immigrants additionally face deficient language access, movement restrictions imposed by immigration enforcement systems, and the ever-present fear of deportation.¹¹ **Immigrant survivors face the additional challenge of navigating abuse dynamics to access the limited services that are available to undocumented immigrants, such as emergency Medicaid and community-based supports.** Abuse dynamics such as isolation, surveillance, and control of resources often

⁶ Guttmacher Institute, *100 Days Post-Roe: At Least 66 Clinics Across 15 US States Have Stopped Offering Abortion Care*, Oct. 6, 2022, at <https://www.guttmacher.org/2022/10/100-days-post-roe-least-66-clinics-across-15-us-states-have-stopped-offering-abortion-care>. See also Guttmacher Institute, *Interactive Map: US Abortion Policies and Access After Roe*, updated Dec. 11, 2022, at <https://states.guttmacher.org/policies/>.

⁷ Lucy Ogbu-Nwobodo, M.D., et.al., *Mental Health Implications of Abortion Restrictions for Historically Marginalized Populations*, *New England Journal of Medicine*, Oct. 27, 2022, (noting that [t]he association between poverty and abortion is multifactorial and is grounded in reproductive injustice, including the fact that insurance coverage and access to contraception are tied to employment, while Black and Latinx people capable of becoming pregnant have higher rates of unemployment and underemployment than White people and are overrepresented in public insurance (Medicaid) programs that severely limit access to abortion under the Hyde and Helms Amendments.”), <https://www.nejm.org/doi/full/10.1056/NEJMms2211124>.

⁸ Marisa Iati, *Without abortion, advocates worry that abuse victims will be trapped*, *Washington Post*, July 9, 2022, <https://www.washingtonpost.com/nation/2022/07/09/abortion-domestic-violence-abuse/>.

⁹ Deidre McPhillips, *Travel time to abortion facilities grew significantly after Supreme Court overturned Roe v. Wade*, *CNN*, Nov. 1, 2022, <https://www.cnn.com/2022/11/01/health/abortion-access-travel-time/index.html>.

¹⁰ *Id.*

¹¹ National Partnership for Women and Families (NPWF), *State Abortion Bans Threaten 6.5 Million Latinas*, November 2022, https://www.nationalpartnership.org/our-work/health/reports/state-abortion-bans-threaten-latinas.html?utm_source=other&utm_medium=social&utm_campaign=hj_dobbs; NPWF, *State Abortion Bans Could Harm More than 1.3 Million Asian American and Pacific Islander Women*, August 30, 2022, <https://www.nationalpartnership.org/our-impact/blog/general/aapi-women-state-abortion-bans.html>.

prevent undocumented immigrants from acting independently to obtain resources. Moreover, survivors may have experienced rape and reproductive coercion as features of intimate partner violence or other forms of GBV. Reproductive coercion encompasses a range of behaviors including sexual coercion, birth control sabotage, and pregnancy pressure.¹² Rape is often used as a mechanism of GBV both inside and outside of intimate partner relationships, and against people identifying as women, men, or non-binary who might become pregnant.¹³

Following *Dobbs*, immigrant survivors of GBV face additional barriers to accessing abortion care, and an additional layer of fear—readily exploited by abusers—of the immigration consequences of entanglement in the criminal legal system. Although it is unlikely that survivors will face serious immigration consequences for accessing abortion care, the fear of criminalization or other punitive impacts of abortion may negatively impact immigrant survivors’ understanding of their options.¹⁴ Practitioners should be aware of these additional impacts of new abortion restrictions post-*Dobbs*.

2. What is the current status of abortion law in the states?

According to the Center for Reproductive Rights’ up to date analysis, most abortions are now banned in 12 states.¹⁵ Georgia also bans abortion at about six weeks of pregnancy, before many people know they are pregnant.¹⁶ Although the landscape of abortion restrictions across the

¹² WomensLaw.org, *Reproductive Abuse and Coercion*, Jan. 13, 2020, <https://www.womenslaw.org/about-abuse/forms-abuse/reproductive-abuse-and-coercion>.

¹³ *Id.*

¹⁴ See Lucy Ogbu-Nwobodo, M.D., et.al., *Mental Health Implications of Abortion Restrictions for Historically Marginalized Populations*, *New England Journal of Medicine*, Oct. 27, 2022, (“In a recent analysis of maternal mortality in the United States, homicide during pregnancy or within 42 days after the end of pregnancy was responsible for more than twice as many deaths as any other cause.”), <https://www.nejm.org/doi/full/10.1056/NEJMms2211124>; Nicole Acevedo, *Latinas are the targets of abortion misinformation. Providers and advocates are pushing back*, *NBC News*, August 5, 2022, <https://www.nbcnews.com/news/latino/latinas-abortion-misinformation-online-spanish-hispanic-rcna4059>; Lizzie Widdicombe, *A Reproductive-Rights Activist Explains the Realities of Abortion for Latina Women*, *The New Yorker*, Jan. 26, 2022, <https://www.newyorker.com/news/as-told-to/a-reproductive-rights-activist-explains-the-realities-of-abortion-for-latina-women>.

¹⁵ Center for Reproductive Rights, *After Roe Fell: Abortion Laws By State*, <https://reproductiverights.org/maps/abortion-laws-by-state/>.

¹⁶ Guttmacher Institute, *supra* n. 5. See NPR.org, *Georgia’s highest court reinstates ban on abortions after 6 weeks*, Nov. 23, 2022, <https://www.npr.org/2022/11/23/1139039767/georgia-supreme-court-reinstates-abortion-ban>.

states remains in flux, the most restrictive do not allow for abortions in the case of rape or incest. A limited number of these states allow abortion to preserve the life of the pregnant person. You can find up-to-date information about the availability of abortion in each state at AbortionFinder.org.

Despite the increased limits on access to abortion after *Dobbs*, abortion remains a legal right in the majority of states.¹⁷ Even in restricted states, the majority of abortion bans exempt the person who has an abortion from criminal liability. Nor is abortion a federal crime; in fact, the current administration has pledged support for people seeking abortion care, including immigrants.¹⁸ Rather, in the states that have banned abortion, most of the criminal penalties attach to the *provider* of abortion care instead of the person having the abortion. For know-your-rights information about legal rights to abortion care, you or your client can visit ReproLegalHelpline.org.

3. Are rape and incest exceptions helpful to immigrant survivors?

Rape and incest exceptions, where they exist, are difficult to access for the survivor, compound the trauma of abuse or victimization, and discourage the provision of abortion and related reproductive health care to populations that need it.¹⁹ In 2012, the World Health Organization (WHO) recommended the inclusion of rape and incest exceptions to abortion restrictions, with the caveat that they should “not impose unnecessary administrative or judicial procedures such as requiring women to press charges or to identify the rapist,” and that “[d]elays owing to such requirements can result in women being denied services because they

¹⁷ *Supra* n. 15.

¹⁸ See President Joseph R. Biden, Jr., *Executive Order 14076 (Protecting Access to Reproductive Healthcare Services)*, July 8, 2022, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/>. See e.g., Department of Health and Human Services, Office of Refugee Resettlement, *RE: Field Guidance #21 – Compliance with Garza Requirements and Procedures for Unaccompanied Children Needing Reproductive Healthcare* (Updated Nov. 10, 2022), <https://www.acf.hhs.gov/sites/default/files/documents/orr/field-guidance-21.pdf> (requiring that ORR staff and care providers not prevent unaccompanied minors from accessing legal abortion related services and that ORR staff and care providers make all reasonable efforts to facilitate access to these services if requested, including transport of the unaccompanied minor to jurisdictions where abortion is available).

¹⁹ Fabiola Cineas, *Rape and incest abortion exceptions don't really exist*, *Vox*, July 22, 2022, <https://www.vox.com/23271352/rape-and-incest-abortion-exception>.

have exceeded gestational age limits prescribed by law.”²⁰ Current state statutes authorizing rape and incest carve-outs to abortion prohibitions are not consistent with the WHO recommendations, or with each other, as to the process for determining if the exception should apply.²¹

A majority of sexual assaults already go unreported and are committed by someone known to the survivor, and rape and incest “exceptions are narrowly tailored and difficult to interpret,” making them ineffective to protect access to abortion for survivors.²² As WHO further noted, “[i]n many contexts, women who have been victims of rape may fear being stigmatized further by the police and others and will therefore avoid reporting the rape at all, thus precluding access to legal abortion.”²³ In 2012, the WHO expressed concern that as a consequence, “[e]ither situation can lead women to resort to clandestine, unsafe services to terminate their pregnancy.”²⁴ This is especially a concern for immigrant survivors, as unscrupulous people often prey upon undocumented people by spreading misinformation for profit. It is important to note, however, that more recent guidance published by WHO in 2022 explains that accurately informed, self-managed abortion with the appropriate pills before 12 weeks is safe, empowering, and practical, and should be an option supported by law and policy.²⁵

Moreover, rape and incest exceptions to abortion bans make it difficult, if not impossible, for survivors to obtain a surgical abortion within the state even if they qualify for one, because few abortion providers will continue operating in states that have banned abortion except for rape and incest.²⁶ **Nevertheless, practitioners whose clients may benefit from these limited exceptions are encouraged to reach out to reproductive**

²⁰ World Health Organization (WHO), *Safe Abortion: technical and policy guidance for health systems*, Section 3.3.5.5. (2012), https://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf;jsessionid=7D7261384A06937FFF02CB773EEB6FBE?sequence=1.

²¹ *Id.*

²² *Id.*

²³ *Id.* at Section 4.2.1.3.

²⁴ *Id.* Note that at the time of these 2012 recommendations, self-managed abortion using medication prior to 12 weeks of pregnancy was not considered. Updated WHO recommendations in 2022 recognized self-managed abortion as a safe method that may also be clandestine at the discretion of the person using this method. See WHO, *WHO recommendations on self-care interventions: self-management of medical abortion, 2022 update*, Sept. 21, 2022, <https://www.who.int/publications/i/item/WHO-SRH-22.1>.

²⁵ WHO, *WHO recommendations on self-care interventions: self-management of medical abortion, 2022 update*, Sept. 21, 2022, <https://www.who.int/publications/i/item/WHO-SRH-22.1>.

²⁶ *Id.*

justice advocates included at the end of this advisory to determine the best course of action, particularly if their clients face travel restrictions due to their immigration status.

4. Can my client travel to another state to access abortion care?

Yes, anyone can travel from one state to another state to obtain health care services. Immigrants residing near the US border, however, may be unable to pass through CBP or ICE checkpoints to non-restricted states without proof of lawful immigration status. Moreover, all undocumented immigrants traveling to non-restricted states should be aware that passing within 100 miles of any land border with either Mexico or Canada may result in an encounter with DHS that could trigger immigration enforcement action against them, including detention. Advocates should renew education efforts that make noncitizens aware of this expansive authority.

Advocates have requested that DHS issue guidance allowing pregnant noncitizens to travel to non-restricted states to obtain abortion care, but none has been published at the time of this advisory.²⁷ In 2021, ICE issued guidance discouraging the detention of pregnant persons, and instructing officers to employ a victim-centered approach to immigration enforcement.²⁸ This guidance is helpful, but may not protect noncitizens who are subject to exceptions because of their criminal histories, and may require additional advocacy to ensure timely access to abortion care.

Practitioners are encouraged to consult reproductive justice advocates for the latest advice on how to advocate for their clients in restricted and/or border states, where travel presents a risk of enforcement. The National Immigration Law Center (NILC) has issued a Know Your Rights advisory for community members that has information about travel

²⁷ Letter to Alejandro Mayorkas, Secretary of DHS joined by 156 organizations (July 19, 2022), https://nipnl.org/PDFs/2022_19July-post-Dobbs-letter.pdf.

²⁸ See ICE Victims Directive, *supra* n. 1; ICE Directive 11032.4: *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*, July 1, 2021 (“ICE Pregnancy Directive”), https://niwaplibrary.wcl.american.edu/wp-content/uploads/11032.4_IdentificationMonitoringPregnantPostpartumNursingIndividuals.pdf.

and related questions, including a link to this [guide for undocumented people traveling in the United States](#).²⁹

5. What is self-managed abortion, and is it safe?

“Self-managed abortion” as used here describes the process by which a pregnant person chooses to have an abortion using pills (misoprostol, used alone or in combination with mifepristone), outside of the healthcare system. Self-managed abortion with pills is safe and effective *if* the person has accurate information about how to use abortion pills and can ask questions. The organization “Self-Managed Abortion; Safe and Supported” ([SASS](#)) provides information and support around self-managed abortion to ensure that people have the information they need so that self-managed abortions are as medically safe as possible.³⁰

As noted above, the WHO considers self-managed abortion with pills to be a safe alternative to surgical abortion.³¹ Because it does not require the intervention of the formal healthcare system, it is a method that may be more accessible to noncitizens in need of abortion care.³² Despite its safety and effectiveness, there may be legal risks.³³ For questions about legal risk, practitioners and/or their clients are encouraged to contact If/When/How’s [Repro Legal Helpline](#). If/When/How also provides answers to frequently asked questions about the legality of self-managed abortion [here](#).

6. Is having an abortion a criminal offense now?

Penalties for violating abortion bans apply primarily to those performing abortions, and officials in several states that have adopted abortion restrictions following *Dobbs* say that they do not intend to prosecute people who have had abortions under the new laws.³⁴

²⁹ NILC, *supra* n. 2, *KNOW YOUR RIGHTS: Abortion Access for Immigrants*, Oct. 2022, https://www.nilc.org/wp-content/uploads/2022/10/KYR_Abortion-Access-for-Immigrants-English.pdf.

³⁰ For more information about self-managed abortion, please visit the SASS website at <https://abortionpillinfo.org/>.

³¹ *Supra* note 23.

³² Requests for medication abortions increased sharply following *Dobbs*. See Jayne Williamson-Lee, *Online requests for medication abortions spiked after the Dobbs decision*, Stat, Nov. 1, 2022, <https://www.statnews.com/2022/11/01/aid-access-abortion-dobbs-telemedicine/>.

³³ If/When/How: Lawyering for Reproductive Justice, *Abortion Laws FAQ*, <https://www.reprolegalhelpline.org/sma-faq/>.

³⁴ Sam McCann, *The Prosecutors Refusing to Criminalize Abortion*, Vera.org, Sept. 19, 2022, <https://www.vera.org/news/the-prosecutors-refusing-to-criminalize-abortion>.

Nevertheless, it is important to note that even before *Dobbs*, people were arrested and prosecuted for ending their own pregnancies.³⁵ Even so, pre-*Dobbs* arrests occurred under a different legal backdrop, in which the right to abortion was constitutionally protected. **Practitioners should assure their clients that abortions occurring prior to *Dobbs* were constitutionally protected and cannot be prosecuted under newly enacted restrictions.**

At the present time, most prosecutors are *not* seeking to file charges against people who have had, or tried to have, abortions under the new restrictions. Despite this, it's important to remain cautious when working with noncitizens who access abortion care. Prosecutors in some jurisdictions have previously filed charges against people who ended their own pregnancies or experienced a pregnancy loss, misusing manslaughter statutes, “fetal harm” laws, and more.³⁶ A recent study of pregnancy-related prosecutions found that when such charges are challenged (either pre-trial or upon appeal), there are often favorable outcomes for the defendants.³⁷

Currently, while the scope of abortion-related liability is shifting along with the various new restrictions on abortion, *most* states with bans exempt the person who has an abortion from criminalization.³⁸ It is possible, however, for laws prescribing how abortion is provided and by whom to be deployed against people self-managing their abortions.³⁹ The efforts of some states to statutorily define “person” to include fetuses (so-called “personhood” statutes) threaten to expand criminal and civil

³⁵ See Lucy Ogbu-Nwobodo, M.D., et.al., *Mental Health Implications of Abortion Restrictions for Historically Marginalized Populations*, New England Journal of Medicine, Oct. 27, 2022, (“Even before *Dobbs*, birthing and pregnant people with mental health or substance use disorders were incarcerated for child endangerment or homicide for using substances during pregnancy or even for suicide attempts.”), <https://www.nejm.org/doi/full/10.1056/NEJMms2211124>, Laura Huss, et al., *Self-Care, Criminalized: August 2022 Preliminary Findings*, *If/When/How: Lawyering for Reproductive Justice*, Aug. 2022, <https://www.ifwhenhow.org/resources/self-care-criminalized-preliminary-findings/>. See, e.g., Nicole Narea, *Why was a Texas woman charged with murder over an abortion?*, Vox, Apr. 12, 2022, <https://www.vox.com/policy-and-politics/23021104/texas-abortion-murder-charge-starr-county>; Associated Press, *Purvi Patel is released after feticide conviction overturned*, IndyStar, Sept. 2, 2016, <https://www.indystar.com/story/news/crime/2016/09/01/purvi-patel-releases-feticide-conviction-overturned/89707582/>.

³⁶ Laura Huss, et al., *Self-Care, Criminalized: August 2022 Preliminary Findings*, *If/When/How: Lawyering for Reproductive Justice*, Aug. 2022, <https://www.ifwhenhow.org/resources/self-care-criminalized-preliminary-findings/>.

³⁷ *Id.* at 4.

³⁸ *Supra* note 31, *If/When/How, Abortion Laws FAQ*.

³⁹ Laura Huss, *Self-Managed Abortion is Not Illegal in Most of the Country, but Criminalization Happens Anyway*, *If/When/How: Lawyering for Reproductive Justice*, Aug. 9, 2022, <https://www.ifwhenhow.org/abortion-criminalization-new-research/>.

liability across state legal codes to people who end their own pregnancies, but have not thus far been successful.⁴⁰ For questions about specific statutes and the scope of criminality, practitioners and/or their clients are encouraged to review the resources included at the end of this advisory, including If/When/How's [Repro Legal Helpline](#).

7. The U visa petition form I-918 asks whether my client has ever committed a crime for which they were not arrested. How should they answer this question if they have had an abortion in a restricted state?

Having an abortion is not a crime or offense for the vast majority of clients, as most states with bans in effect currently exempt the person who has had an abortion from criminalization. Thus, having an abortion in a restricted state should not trigger an affirmative answer to the question at Part 3, 1.a of the form I-918 asking whether a petitioner for a U visa has committed a crime for which they were not arrested.⁴¹

Many survivors may believe that they have committed a crime by obtaining an abortion or by self-managing an abortion, but actually have *not* committed a crime. That is because, as noted above, most abortion bans explicitly or implicitly exempt the person who has an abortion from criminal liability.⁴²

Even outside of the abortion context, the determination of whether a client has committed a crime is not one that the client should make alone. Nor is this a question that many immigration attorneys are equipped to answer. Determination of whether a client has committed a crime is a complex legal question that depends not only on the language of a statute, but its interpretation by experts, prosecuting agencies, and courts.⁴³ Hence,

⁴⁰ Madeleine Carlisle, *Fetal Personhood Laws Are a New Frontier in the Battle Over Reproductive Rights*, Time, June 28, 2022, <https://time.com/6191886/fetal-personhood-laws-roe-abortion/>.

⁴¹ Form I-918, Part 3, 1.a, version dated December 6, 2021, <https://www.uscis.gov/sites/default/files/document/forms/i-918.pdf>.

⁴² *Supra* note 31, If/When/How, *Abortion Laws FAQ*. See also National Conference of State Legislatures (NCSL), *State Abortion Laws in the Absence of Roe v. Wade* (June 24, 2022), <https://www.ncsl.org/research/health/state-abortion-laws-in-the-absence-of-roe-v-wade.aspx> (cataloguing the state law provisions criminalizing abortion as of June 2022).

⁴³ Cyrus Mehta, *Crime Without Punishment: Have You Ever Committed A Crime For Which You Have Not Been Arrested?*, The Insightful Immigration Blog, July 30, 2012, http://blog.cyrusmehta.com/2012/07/crime-without-punishment-have-you-ever_29.html.

the question is one that practitioners representing immigrant survivors should exercise great care in answering.

As noted above, abortions occurring prior to *Dobbs* cannot be prosecuted under newly enacted restrictions, and most current restrictions exempt persons having abortions from criminal prosecution. Although the Biden administration has issued an Executive Order reaffirming the importance of reproductive rights, the lengthy pendency of U visa petitions means that the scope of abortion criminalization could change, and a future administration could take a different approach before adjudication is final.⁴⁴ However, practitioners should not answer this question affirmatively in the anticipation of these changes, as doing so could subject their clients to additional and invasive inquiries by USCIS without cause.

Anyone concerned about the impact of abortion restrictions on their clients may contact If/When/How's [Repro Legal Helpline](#). Advocates may also *refer their clients directly* to the helpline, which provides advice and information in both Spanish and English, and has interpreter services available for all languages, along with a website in English, Spanish, and Simplified Chinese with know-your-rights information.

8. Is having an abortion in a restricted state a ground of inadmissibility?

No. There is no ground of inadmissibility that corresponds to the having or seeking of an abortion in a state that restricts abortion. DHS has not pursued removal or inadmissibility charges against anyone who obtained an abortion after *Dobbs*. Moreover, the Biden administration has issued an Executive Order pledging to protect access to abortion and affirming abortion as a right, suggesting that DHS is unlikely to interpret the violation of abortion restrictions in this way.⁴⁵ **There is currently no basis for asserting that abortion constitutes a ground of inadmissibility.** As the legal landscape continues to evolve in states where abortion is restricted, you should consult experts on reproductive rights and the intersection of criminal and immigration law, including those cited in this advisory and referenced below, to determine the immigration consequences of abortion-related convictions.

⁴⁴ See *supra* n. 18.

⁴⁵ *Id.*

Having an abortion in any state or country should not be grounds for discretionary denial of relief. **If you are concerned about whether to include information about abortion in your client’s application, please do not hesitate to reach out to ASISTA for technical assistance.**

Additional information and resources:

National Immigration Law Center,
[Know Your Rights: Abortion Access for Immigrants](#)
(translated into 10 languages)
Includes an additional list of resources

[Guttmacher Institute](#)
Up to date research and data on reproductive rights

ReproLegal Helpline ([If/When/How](#)):
A free, confidential source for legal advice and information on self-managed abortion. Visit [ReproLegalHelpline.org](#) or call 844-868-2812.
(en Español, 简体中文).

National Latina Institute for Reproductive Justice:
<https://www.latinainstitute.org/>

This project was supported by Grant No. 15JOVW-21-GK-02240-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice.