



# Global Justice Center

Human Rights Through Rule of Law

Global Justice Center's Submission

to

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Call for contributions: Racism and the right to health

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## Contact Information

Elena Sarver

Legal Advisor

Global Justice Center

11 Hanover Square, 6th Floor

New York, NY 10005

P 212.725.6530

F 212.725.6536

[www.globaljusticecenter.net](http://www.globaljusticecenter.net)

[esarver@globaljusticecenter.net](mailto:esarver@globaljusticecenter.net)

The Global Justice Center (GJC) is an international human rights organization, with consultative status to the United Nations, dedicated to advancing gender equality through the rule of law. We combine advocacy with legal analysis, working to ensure equal protection of the law for women and girls.

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**The following is responding specifically to question 1 regarding the main ongoing manifestations of racism, and related forms of discrimination enabled by racism prevalent in the United States in the area of the right to health broadly including in underlying determinants of health, health outcomes and access to health care.**

The United States (US) is experiencing a national crisis in reproductive health care and its disproportionate impact on women and pregnant people of color. This response discusses three sites of gendered racial discrimination in the US: the shackling of pregnant prisoners, abortion restrictions, and the criminalization of pregnant people and pregnancy outcomes.

Shackling of pregnant persons in prisons and detention centers

The US has the highest incarceration rate in the world (664 per 100,000 people in 2021)<sup>1</sup> and incarceration is marked by extreme racial disparities.<sup>2</sup> Though the US incarcerates more women than any other nation in the world, the distinct human rights abuses women suffer in prison receive relatively little attention. The barbaric practice of shackling pregnant prisoners, including during labor, delivery, and postpartum recovery, is one such abuse. Though shackling has been recognized as a human rights violation by successive UN bodies,<sup>3</sup> the dehumanizing practice persists and federal efforts to end it have had limited impact. A 2018 study of perinatal nurses in the US found that among those who worked with incarcerated pregnant patients, 82.9% reported that their incarcerated patients were shackled “sometimes” to “all the time.”<sup>4</sup>

Because Black women are nearly twice as likely to be incarcerated as white women, they are also disproportionately subjected to shackling. Moreover, the practice is a direct descendent of the subjugation and confinement of Black women during slavery, as well as in the racist post-Civil War carceral systems that have influenced modern US prison policies.<sup>5</sup>

As a vestige of slavery, shackling is a form of racial discrimination against Black women. It is also dangerous and a violation of their right to health. Shackling can delay timely medical interventions during labor and delivery and dangerously limits an individual’s ability to move during delivery.<sup>6</sup> It can also worsen pre-existing mental health conditions including post-traumatic stress disorder and depression and can cause postpartum depression. Leading US medical organizations, including the

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<sup>1</sup> Emily Widra and Tiana Herring, *States of Incarceration: The Global Context 2021*, PRISON POLICY INITIATIVE (September 2021), <https://www.prisonpolicy.org/global/2021.html>.

<sup>2</sup> Black Americans are incarcerated in state prisons at nearly five times the rate of white America. See Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT (October 13, 2021), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

<sup>3</sup> See CAT/C/USA/CO/2 (2006), CAT/C/USA/CO/3-5 (2014), A/HRC/31/57 (2016), CCPR/C/USA/QPR/5 (2019), CCPR/C/USA/CO/3/Rev.1 (2006).

<sup>4</sup> Lorie S. Goshin et. al., *Perinatal Nurses’ Experiences With and Knowledge of the Care of Incarcerated Women During Pregnancy and the Postpartum Period*, 48 J. OBSTETRIC, GYNECOLOGIC, & NEONATAL NURSING 1, 27-36 (2019).

<sup>5</sup> Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 Calif. L. Rev. 1239-1311 (2012).

<sup>6</sup> Alison Smock, *Childbirth in Chains: A Report on the Cruel but not so Unusual Practice of Shackling Incarcerated Pregnant Females in the United States*, 3 TENN. J. OF RACE, GENDER, & SOCIAL JUSTICE 112-142 (2014).

American College of Obstetricians and Gynecologists<sup>7</sup> and the American Medical Association,<sup>8</sup> acknowledge the severe negative health impacts of shackling and strongly oppose the practice.

### Abortion restrictions

Barriers to abortion access in the US have increased dramatically in the past decade and are likely to expand even more as the US Supreme Court may soon rescind federal protections for abortion. 26 states severely restrict access to abortion care, meaning that nearly 40 million women of reproductive age (58% of the total number) live in states with medically unnecessary regulatory barriers to abortion, including, but not limited to, parental notification laws, burdensome and costly restrictions on providers, mandatory ultrasound regulations, and biased counseling requirements.<sup>9</sup> These barriers entrench racial inequality and cause disproportionate short-term and long-term health disparities for women of color.

Denial of access to abortion has particularly negative health consequences on women of color. The US is the deadliest place in the industrialized world for people to give birth, and the most recent data shows the maternal mortality rate worsened between 2019 and 2020. For Black women, the maternal death rate is nearly three times that of white women.<sup>10</sup> Restricting access to abortion is likely to increase these risks and lead to devastating health implications, including death; a recent study estimated that a total ban on abortion in the US will lead to a 21% increase in the number of pregnancy-related deaths overall and a 33% increase among Black women.<sup>11</sup>

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<sup>7</sup> *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*, American College of Obstetricians and Gynecologists, Committee Opinion 830 (July 2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>.

<sup>8</sup> American Medical Association, Policy H-420.957 on Shackling of Pregnant Women in Labor, <https://policysearch.ama-assn.org/policyfinder/detail/shackling?uri=%2FAMADoc%2FHOD.xml-0-3700.xml>.

<sup>9</sup> See Guttmacher Institute, *State Bans on Abortion Throughout Pregnancy* (as of May 3, 2022), <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>. See also, Guttmacher Institute, *State Abortion Policy Landscape: From Hostile to Supportive*, <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive>.

<sup>10</sup> Hoyert DL. Maternal mortality rates in the United States, 2020. NCHS Health E-Stats. 2022. DOI: <https://dx.doi.org/10.15620/cdc:113967>; In Our Own Voice: National Black Women's Reproductive Justice Agenda, Addressing America's Black Maternal Health Crisis, [https://blackrj.org/wp-content/uploads/2020/04/6217-IOOV\\_Maternal\\_trifold.pdf](https://blackrj.org/wp-content/uploads/2020/04/6217-IOOV_Maternal_trifold.pdf); The Commonwealth Fund, *Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries* (Nov 18, 2021), <https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries>; Amy Roeder, *America is Failing its Black Mothers*, Harvard Public Health (Winter 2019), [https://www.hsph.harvard.edu/magazine/magazine\\_article/america-is-failing-its-black-mothers/](https://www.hsph.harvard.edu/magazine/magazine_article/america-is-failing-its-black-mothers/).

<sup>11</sup> Amy Roeder, *The negative health implications of restricting abortion access*, Harvard T.H. Chan School of Public Health (Dec. 13, 2021), <https://www.hsph.harvard.edu/news/features/abortion-restrictions-health-implications/> (citing Amanda Jean Stevenson; *The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant*. *Demography* 1 December 2021; 58 (6): 2019–2028. doi: <https://doi.org/10.1215/00703370-9585908>); Lisa B Haddad and Nawal M Nour, *Unsafe abortion: unnecessary maternal mortality*, *Reviews in obstetrics & gynecology* vol. 2,2 (2009): 122-6, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/> (“Evidence demonstrates that liberalizing abortion laws to allow services to be provided openly by skilled practitioners can reduce the rate of abortion-related morbidity and mortality.”). See also, *Am. Coll. of Obstetricians & Gynecologists v. FDA*, 472 F. Supp. 3d 183, 214–15 (D. Md. 2020) (discussing the impact of restricting abortions for disadvantaged social groups).

Abortion restrictions also perpetuate racial discrimination. When people cannot obtain abortion care, they incur social, financial, and physical costs that are difficult to bear, and are particularly challenging for already marginalized people, especially women of color and LGBTQ+ people. The legal status of abortion can define the extent to which pregnant people are able to complete their educations, participate in the workforce, and play a role in public and political life.<sup>12</sup>

### Criminalization of pregnant people based on their pregnancy or pregnancy outcomes

The restrictive abortion regime in the US has created an environment in which pregnant people, and particularly Black pregnant women, are *already* policed and criminally punished for behavior during pregnancy and for pregnancy outcomes. Prosecutors use a vast array of criminal laws to penalize pregnant people for engaging in behavior that produces—or creates a risk of producing—a negative birth outcome.<sup>13</sup> Some states have subjected pregnant people to criminal punishment and civil constraints for doing things that would be perfectly legal if done by a person who was not pregnant—including falling down steps<sup>14</sup> or attempting suicide.<sup>15</sup> Others pursue people for so-called ‘fetal abuse’ using charges such as murder, manslaughter, feticide, child abuse, child endangerment, and chemical endangerment.<sup>16</sup>

ntenable situations – traveling for care, carrying a pregnancy to term, or self-managing an abortion and potentially facing criminalization.

Roe was never enough for our clients and our communities to have the resources they need to decide if, when, and how to define or create their families.

With the US Supreme Court poised to overturn constitutional protections for abortion, the threat that pregnant people will face criminal sanctions for pregnancy outcomes and behavior during pregnancy will dramatically increase. And because the criminal legal system in the U.S. already disproportionately polices women and girls of color, this is the population that will shoulder the

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<sup>12</sup> Amy Roeder, The negative health implications of restricting abortion access, Harvard T.H. Chan School of Public Health (Dec. 13, 2021), <https://www.hsph.harvard.edu/news/features/abortion-restrictions-health-implications/>. One recent study on the effects of abortion access on Black women’s participation in the workforce indicated an increase in participation by 6.9 percentage points. (Anna Bernstein, MPH & Kelly M. Jones, PhD, The Economic Effects of Abortion Access: A Review of the Evidence, Institute for Women’s Policy Research Center on the Economics of Reproductive Health, [https://iwpr.org/wp-content/uploads/2020/07/B379\\_Abortion-Access\\_rfinal.pdf](https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfinal.pdf)).

<sup>13</sup> The National Association of Criminal Defense Lawyers has reported that over 4,450 crimes in the federal criminal code and tens of thousands of state criminal laws exist that could subject a wide range of individuals to criminal penalties when the constitutional right to abortion is overturned. National Association of Criminal Defense Lawyers, *Abortion in America: How Legislative Overreach Is Turning Reproductive Rights Into Criminal Wrongs* (2021), <https://www.nacdl.org/Document/AbortioninAmericaLegOverreachCriminalizReproRights>.

<sup>14</sup> Iowa Police Almost Prosecute Woman for Her Accidental Fall During Pregnancy . . . Seriously., ACLU Me. (Feb. 11, 2010, 5:04 PM), <https://www.aclumaine.org/en/news/iowa-police-almost-prosecute-woman-her-accidental-fall-during-pregnancyseriously> [<https://perma.cc/WMB9-YTKT>].

<sup>15</sup> Jessica Mason Pieklo, *Legal Wrap: Finally Some Justice for Bei Bei Shuai*, Rewire News Grp. (Aug. 6, 2013, 9:14 AM), <https://rewire.news/article/2013/08/06/legal-wrap-finally-some-justice-for-bei-bei-shuai/>.

<sup>16</sup> National Association of Criminal Defense Lawyers, *Abortion in America: How Legislative Overreach Is Turning Reproductive Rights Into Criminal Wrongs* (2021), <https://www.nacdl.org/Document/AbortioninAmericaLegOverreachCriminalizReproRights>.

brunt of increased surveillance and criminalization.<sup>17</sup> These prosecutions and the threat of such prosecutions infringe on pregnant people of color's right to health because they deter women from accessing healthcare for fear of criminal sanction.<sup>18</sup> This includes prenatal care, treatment for substance misuse, and care during miscarriage. For pregnant people suffering from substance abuse, remarkably, the state is responding with prosecution rather than social services and healthcare.

**The following is responding specifically to question 2 regarding who are the most affected people and why.**

The national crisis in reproductive health care in the US has a disproportionate impact on women and pregnant people of color, resulting in disparities in the provision of and access to health services. In line with the previous response, this response also discusses three sites of gendered racial discrimination in the US: the shackling of pregnant prisoners, abortion restrictions, and the criminalization of pregnant people and pregnancy outcomes.

With respect to shackling, the population of incarcerated women is growing at twice the rate for men,<sup>19</sup> and women belonging to racial minorities are disproportionately represented in this population. For example, in 2019 the incarceration rate for Black women was 83 per 100,000 people, over 1.7x the rate for white women (48 per 100,000).<sup>20</sup> Latinx women were incarcerated at a rate of 63 per 100,000.<sup>21</sup> Native women make up 2.5% of incarcerated women in the US, despite being only 0.7% of the total US female population.<sup>22</sup>

In terms of abortion restrictions, most abortion patients in the US are people of color.<sup>23</sup> The human rights impacts of anti-abortion regulations fall disproportionately on women of color, not only because this population experiences a greater need for abortion care, but also because structural racial inequalities in the US impact how persons of color experience motherhood, health care, the economy, and the criminal legal system.

Regarding the issue of criminalization of pregnancy and pregnancy outcomes, though the data is limited, between 2006 and 2020, there were nearly 1,300 criminal investigations of pregnancy outcomes in the US.<sup>24</sup> While these arrests and prosecutions are happening across the nation, officials

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<sup>17</sup> National Association of Criminal Defense Lawyers, *Abortion in America: How Legislative Overreach Is Turning Reproductive Rights Into Criminal Wrongs* (2021),

<https://www.nacdl.org/Document/AbortioninAmericaLegOverreachCriminalizReproRights>.

<sup>18</sup> See Amnesty International, *Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA*, 23 (Sept. 23, 2017) <https://www.amnesty.org/en/documents/amr51/6203/2017/en/>.

<sup>19</sup> Bonnie Sultan and Mark Myrent, *Women and Girls in Corrections*, Justice Research and Statistics Association (Nov. 2020), <https://www.jrsa.org/pubs/factsheets/jrsa-factsheet-women-girls-in-corrections.pdf>.

<sup>20</sup> *Incarcerated Women and Girls*, THE SENTENCING PROJECT (November 24, 2020), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

<sup>21</sup> *Incarcerated Women and Girls*, THE SENTENCING PROJECT (November 24, 2020), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

<sup>22</sup> Leah Wang, *The U.S. criminal justice system disproportionately hurts Native people: the data, visualized*, PRISON POLICY INITIATIVE (October 8, 2021), <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/>.

<sup>23</sup> See Guttmacher Inst., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, at 1 (2016), <https://perma.cc/9H2V-3VVY> (“Thirty-nine percent [of abortion patients] were white, 28% were black, 25% were Hispanic, 6% were Asian or Pacific Islander, and 3% were of some other race or ethnicity.”).

<sup>24</sup> NAPW, *Arrests and Deprivations of Liberty of Pregnant Women, 1973-2020* (Sept. 2021), [bit.ly/arrests1973to2020](https://bit.ly/arrests1973to2020).

have mostly targeted and charged Black and Brown women.<sup>25</sup> Amnesty International has also documented that drug testing of pregnant women is applied selectively, often based on discretionary “risk” factors such as low income, an indicator that frequently applies to women of color.<sup>26</sup>

While these examples are by no means exhaustive, they indicate that women and pregnant people of color are the population disproportionately affected by racism and discrimination in the area of right to health.

### **The following is responding specifically to question 3.**

#### Disproportionate impact of conscience-based refusals on racial minorities

Federal laws in the United States that enable healthcare workers and institutions to refuse to provide reproductive care on ‘conscience’ and/or ‘religious’ grounds disproportionately deny or limit access to reproductive healthcare for racial minorities. For example, in the US, racial minorities are disproportionately dependant on Catholic-run medical facilities<sup>27</sup> and these institutions only provide care that aligns with a ‘catholic ethos’ which excludes care such as abortion, voluntary sterilization and contraception.<sup>28</sup> The disproportional impact on racial minorities is even clearer from state-level data. In New Jersey, women of color comprise 53% of women of reproductive age, but represent 80% of births at Catholic hospitals.<sup>29</sup> Likewise, in Maryland, 75% of births in Catholic hospitals are to women of color, compared to 48% of births in non-Catholic hospitals.<sup>30</sup> Similarly pronounced racial disparities in rates of Catholic hospital births are seen in Maine, Delaware, New Mexico, Massachusetts, New Hampshire, and Tennessee.<sup>31</sup>

Moreover, this inequitable effect of conscientious objections can also be inferred from the disproportionately high rates of poverty among people of color as compared to white people.<sup>32</sup> The US Census Bureau reported that in 2020, the poverty rate of white non-Hispanic individuals was 8.2%. In comparison, the poverty rate for Black individuals was 19.5%, and 17% for Hispanic (any race).<sup>33</sup> Individuals experiencing poverty are more likely to live in under-resourced areas where access to

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<sup>25</sup> See Amnesty International, *Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA*, 23 (Sept. 23, 2017) <https://www.amnesty.org/en/documents/amr51/6203/2017/en/> [hereinafter Amnesty International, *Criminalizing Pregnancy*]. See also, MICHELLE GOODWIN, POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD 109-110 (2020); Aziza Ahmed, *Floating Lungs: Forensic Science in Self-Induced Abortion Prosecutions*, 100 B.U. L. REV. 1111, 1116, 1121, 1124 (2020); Cortney E. Lollar, *Criminalizing Pregnancy*, 92 Ind. L.J. 947, 949, 998 (2017).

<sup>26</sup> *Id.* Amnesty International, *Criminalizing Pregnancy*.

<sup>27</sup> Bearing Faith: The Limits of Catholic Health Care for Women of Color, at 12-13. (describing how, in 19 states, women of color are more likely than white women to give birth at hospitals bound by these policies.)

<sup>28</sup> Bearing Faith: The Limits of Catholic Health Care for Women of Color, at 12-13.

<sup>29</sup> Bearing Faith: The Limits of Catholic Health Care for Women of Color, at 14.

<sup>30</sup> Bearing Faith: The Limits of Catholic Health Care for Women of Color, at 15.

<sup>31</sup> Bearing Faith: The Limits of Catholic Health Care for Women of Color, at 16-21.

<sup>32</sup> Chelsey Yang, The inequity of conscientious objection: Refusal of emergency contraception, 27(6) Nursing Ethics 1408, 1415 (2020), <https://doi.org/10.1177/0969733020918926>.

<sup>33</sup> <https://www.census.gov/content/dam/Census/library/visualizations/2021/demo/p60-273/Figure9.pdf>

providers who do not engage in religious refusals is limited.<sup>34</sup> These individuals are also more likely to be unable to afford transportation to alternative pharmacies or medical providers upon refusal.<sup>35</sup>

### Impact of abortion restrictions on persons with migrant status

State-based restrictions have put additional strain on access to abortions for migrants living in the United States. For example, around five million immigrants live in Texas<sup>36</sup> and the state's restrictions on abortion have caused several medical facilities to stop providing abortion care.<sup>37</sup> As a result, the Rio Grande Valley (RGV) has only one medical facility that performs abortions.<sup>38</sup> The population of RGV is around 93.5% Hispanic; in Brownsville, RGV's largest metropolitan area, nearly one in four residents was born outside of the United States as of 2018.<sup>39</sup> Further, because of the September 2021 Texas law banning abortions after six weeks (Senate Bill 8, or SB 8), patients are forced to seek care out of state, but due to border patrol checkpoints, undocumented or under-resourced individuals are unable to travel to out-of-state providers.<sup>40</sup> Even before SB 8, Hispanic patients residing in Texas were unlikely to seek abortions out of state; despite Hispanic residents receiving over 20,000 abortions in 2020, only 196 left the state for the procedure – or 0.9% of Hispanic patients.<sup>41</sup> In the same year, 2.7% of white patients and 3.3% of Black patients left the state for the procedure.<sup>42</sup>

SB 8 has also eliminated access to abortion for unaccompanied minors in immigration detention.<sup>43</sup> While minors seeking abortions can be transferred to facilities in another state where the procedure is

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<sup>34</sup> Chelsey Yang, The inequity of conscientious objection: Refusal of emergency contraception, 27(6) Nursing Ethics 1408, 1415 (2020), <https://doi.org/10.1177/0969733020918926>.

<sup>35</sup> Chelsey Yang, The inequity of conscientious objection: Refusal of emergency contraception, 27(6) Nursing Ethics 1408, 1415 (2020), <https://doi.org/10.1177/0969733020918926>.

<sup>36</sup> American Immigration Council, *Immigrants in Texas* (2020), [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_in\\_texas.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_texas.pdf).

<sup>37</sup> Neelam Bohra, *Fearful of being sued under new law, three of four San Antonio abortion facilities stop offering the Procedure*, The Texas Tribune (Sept. 7, 2021), <https://www.texastribune.org/2021/09/07/texas-abortion-law-san-antonio/>.

<sup>38</sup> *Population Data for Region: Rio Grande Valley*, RGV Health Connect (Mar. 2022), <https://www.rgvhealthconnect.org/demographicdata?id=281259&sectionId=935>. See also, Stephania Taladrída, *The Rio Grande Valley's Abortion Desert* (Dec. 18, 2021), <https://www.newyorker.com/news/dispatch/the-rio-grande-valleys-abortion-desert>.

<sup>39</sup> *Population Data for Region: Rio Grande Valley*, RGV Health Connect (Mar. 2022), <https://www.rgvhealthconnect.org/demographicdata?id=281259&sectionId=935>. See also, New American Economy, *New Americans in Cameron County* (Aug. 27, 2020), [https://research.newamericaneconomy.org/wp-content/uploads/sites/2/2020/08/COVID\\_CameronCounty-.pdf](https://research.newamericaneconomy.org/wp-content/uploads/sites/2/2020/08/COVID_CameronCounty-.pdf).

<sup>40</sup> Stephania Taladrída, *The Rio Grande Valley's Abortion Desert* (Dec. 18, 2021), <https://www.newyorker.com/news/dispatch/the-rio-grande-valleys-abortion-desert>. See also, Shefali Luthra, *After new law, a look inside one of South Texas' last abortion clinics*, The 19th (Sept. 27, 2021), <https://19thnews.org/2021/09/new-law-inside-south-texas-abortion-clinic/>.

<sup>41</sup> Texas Health and Human Services, *2020 Selected Characteristics of Induced Terminations of Pregnancy (excel)* (June 1, 2022), <https://www.hhs.texas.gov/about/records-statistics/data-statistics/itop-statistics>.

<sup>42</sup> Texas Health and Human Services, *2020 Selected Characteristics of Induced Terminations of Pregnancy (excel)* (June 1, 2022), <https://www.hhs.texas.gov/about/records-statistics/data-statistics/itop-statistics>.

<sup>43</sup> Shefali Luthra, *Pregnant undocumented minors, many of them rape survivors, no longer have access to abortions in Texas*, The 19th (Oct. 18, 2021), <https://19thnews.org/2021/10/undocumented-minors-can-no-longer-access-abortions-in-texas/>.

legal, the waiting period associated with administrative process to transfer the minor increases the risk of complications related to receiving the abortion.<sup>44</sup>

Additionally, pregnant persons in Texas face restricted care for miscarriages due to another Texas law (Senate Bill 4 or SB 4) barring the use of certain drugs for abortion after seven weeks of pregnancy. The law's enumerated drugs include those recommended for treating early pregnancy loss and ectopic pregnancies.<sup>45</sup> Doctors in Texas have reported pharmacy hold-ups and refusals to dispense these drugs, as well as delays in treatment until there is no possibility of a viable pregnancy, as direct results of SB 4.<sup>46</sup>

**The following is responding specifically to question 6 regarding examples of public health financing that show manifestations of ongoing or past racism and related discrimination, at the local and global levels that impact racialized people.**

US domestic abortion restrictions

In the United States, Title X of the Public Service Health Act and the Hyde Amendment provide examples of public health funding restrictions that show manifestations of ongoing racism and related discrimination, particularly against pregnant persons of color.

*Title X*

Title X is the only federal program in the United States dedicated exclusively to providing family planning services.<sup>47</sup> Administered through grants to clinics providing family planning services, Title X serves as a critical mechanism for many low-income individuals to access medical care who would otherwise be ineligible for other federal programs with strict eligibility requirements.<sup>48</sup> Notably, funding from Title X has never been permitted to fund abortion as a method of family planning, and under restrictions passed in 2019, projects were not allowed to provide abortion referrals and were not required to provide pregnant patients with counseling on options beyond prenatal care.<sup>49</sup> In 2021, the Biden administration repealed the 2019 restrictions and restored Title X to its previous

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<sup>44</sup> Shefali Luthra, *Pregnant undocumented minors, many of them rape survivors, no longer have access to abortions in Texas*, The 19th (Oct. 18, 2021), <https://19thnews.org/2021/10/undocumented-minors-can-no-longer-access-abortions-in-texas/>.

<sup>45</sup> Charlotte Huff, *In Texas, abortion laws inhibit care for miscarriages*, NPR (May 10, 2022), <https://www.npr.org/sections/health-shots/2022/05/10/1097734167/in-texas-abortion-laws-inhibit-care-for-miscarriages>.

<sup>46</sup> Charlotte Huff, *In Texas, abortion laws inhibit care for miscarriages*, NPR (May 10, 2022), <https://www.npr.org/sections/health-shots/2022/05/10/1097734167/in-texas-abortion-laws-inhibit-care-for-miscarriages>.

<sup>47</sup> Global Justice Center. & The Leitner Center. for International Law and Justice, *Reproducing Patriarchy* 5 (2020), [http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy\\_FINAL-1.pdf](http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy_FINAL-1.pdf).

<sup>48</sup> Global Justice Center. & The Leitner Center. for International Law and Justice, *Reproducing Patriarchy* 15 (2020), [http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy\\_FINAL-1.pdf](http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy_FINAL-1.pdf).

<sup>49</sup> Global Justice Center. & The Leitner Center. for International Law and Justice, *Reproducing Patriarchy* 8 (2020), [http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy\\_FINAL-1.pdf](http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy_FINAL-1.pdf).



requirements, but rebuilding the program will take time.<sup>50</sup> The restrictions on Title X funding continue to exacerbate these disparities in reproductive health outcomes.<sup>51</sup>

While Title X and its funding restrictions are facially neutral, there is an outsized impact on people of color who rely on Title X clinics.<sup>52</sup> People of color are overrepresented in comparison to the general US population.<sup>53</sup> Overall, these clients are more likely to be Hispanic (27% of clients) or non-Hispanic Black (26%).<sup>54</sup> Moreover, “Title X providers overwhelmingly serve individuals who are female and low-income, and also disproportionately serve the uninsured and underinsured, people of color, non-English speakers, LGBTQ individuals, people in rural areas, people with disabilities, and young people.”<sup>55</sup> Specifically, 24% of Black women rely on Title X programs, including reproductive health care services.<sup>56</sup>

### *Hyde Amendment*

The Hyde Amendment prohibits federal funds from being used to pay for abortion services.<sup>57</sup> Since 1976, Hyde has been annually renewed by Congress as an attachment to the appropriations bill for the Department of Health and Human Services, and restricts abortion funding under a variety of federal programs, such as Medicaid and Medicare, among others.<sup>58</sup> As a result, the populations that rely on these public programs, such as low-income individuals under Medicaid, cannot use their health insurance for abortion care costs.<sup>59</sup> Disproportionate numbers of women of color are insured

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<sup>50</sup> Ruth Dawson, *After Years of Havoc, the Biden-Harris Title X Rule Is Now in Effect: What You Need to Know*, The Guttmacher Institute (Dec 14, 2021), <https://www.guttmacher.org/article/2021/12/after-years-havoc-biden-harris-title-x-rule-now-effect-what-you-need-know>.

<sup>51</sup> Global Justice Center & The Leitner Center for International Law and Justice, *Reproducing Patriarchy* 29 (2020), [http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy\\_FINAL-1.pdf](http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy_FINAL-1.pdf).

<sup>52</sup> Global Justice Center & The Leitner Center for International Law and Justice, *Reproducing Patriarchy* 26 (2020), [http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy\\_FINAL-1.pdf](http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy_FINAL-1.pdf).

<sup>53</sup> Global Justice Center & The Leitner Center for International Law and Justice, *Reproducing Patriarchy* 15 (2020), [http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy\\_FINAL-1.pdf](http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy_FINAL-1.pdf).

<sup>54</sup> Kate Welti, Jennifer Manlove & Jane Finocharo, *Title X Family Planning Clients Face Economic Challenges and Health Disparities*, *Child Trends* (Mar. 10, 2021), <https://www.childtrends.org/publications/title-x-family-planning-clients-face-economic-challenges-and-health-disparities>.

<sup>55</sup> Global Justice Center & The Leitner Center for International Law and Justice, *Reproducing Patriarchy* 14 (2020), [http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy\\_FINAL-1.pdf](http://www.leitnercenter.org/wp-content/uploads/2020/10/ReproducingPatriarchy_FINAL-1.pdf).

<sup>56</sup> *Key Facts About Title X*, National Family Planning & Reproductive Health Association (June 1, 2022), [https://www.nationalfamilyplanning.org/title-x\\_title-x-key-facts](https://www.nationalfamilyplanning.org/title-x_title-x-key-facts).

<sup>57</sup> Alina Salganicoff, Laurie Sobel & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services*, KFF (Mar. 5, 2021), [https://www.kff.org/report-section/the-hyde-amendment-and-coverage-for-abortion-services-issue-brief-2/#endnote\\_link\\_514846-1](https://www.kff.org/report-section/the-hyde-amendment-and-coverage-for-abortion-services-issue-brief-2/#endnote_link_514846-1).

<sup>58</sup> *The Hyde Amendment: A Discriminatory Ban on Insurance Coverage of Abortion*, The Guttmacher Institute (May 2021), <https://www.guttmacher.org/fact-sheet/hyde-amendment>. *See also*, Alina Salganicoff, Laurie Sobel & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services*, KFF (Mar. 5, 2021), [https://www.kff.org/report-section/the-hyde-amendment-and-coverage-for-abortion-services-issue-brief-2/#endnote\\_link\\_514846-1](https://www.kff.org/report-section/the-hyde-amendment-and-coverage-for-abortion-services-issue-brief-2/#endnote_link_514846-1).

<sup>59</sup> *The Hyde Amendment: A Discriminatory Ban on Insurance Coverage of Abortion*, The Guttmacher Institute (May 2021), <https://www.guttmacher.org/fact-sheet/hyde-amendment>. *See also*, Alina Salganicoff, Laurie Sobel & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services*, KFF (Mar. 5, 2021), [https://www.kff.org/report-section/the-hyde-amendment-and-coverage-for-abortion-services-issue-brief-2/#endnote\\_link\\_514846-1](https://www.kff.org/report-section/the-hyde-amendment-and-coverage-for-abortion-services-issue-brief-2/#endnote_link_514846-1).

through Medicaid, indicating a long history of systemic racism and inequality.<sup>60</sup> For example, “[i]n 2018, 31% of Black women and 27% of Hispanic women aged 15–44 were enrolled in Medicaid, compared with 16% of White women.”<sup>61</sup> These inequalities and harms are further compounded for poor women of color who cannot afford the high cost of an abortion and may be forced to continue their pregnancies, since compared to white women, they are 3-5 times more likely to face a pregnancy-related death.<sup>62</sup>

### US global abortion restrictions

US global abortion restrictions on foreign aid also show manifestations of ongoing and past racism and related discrimination. A central US global abortion restriction, the Helms Amendment has prohibited the use of foreign assistance for the performance of abortion “as a method of family planning” for nearly 50 years. The policy was implemented in 1973 following the US Supreme Court’s landmark ruling in *Roe v. Wade*, which determined a constitutional right to abortion in the US. As a result of this domestic loss, the anti-abortion movement sought to assert its power and control over a different population, one outside of the US.<sup>63</sup> The Amendment is named for the late Senator Jesse Helms, whose racist, bigoted, homophobic, misogynist views<sup>64</sup> were widely known and which underpin the policy. In practice, the Helms Amendment has been over-implemented<sup>65</sup> as a total ban on abortion, ignoring congressionally permitted exceptions in cases of rape, incest and life endangerment. It has also overridden<sup>66</sup> national legislation in countries receiving aid. Helms has a disproportionate impact on Black and brown women and girls in the Global South.<sup>67</sup> It also has

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<sup>60</sup> Herminia Palacio, *Congressional Hearing on the Hyde Amendment: Written Statement of Dr. Herminia Palacio*, The Guttmacher Institute (Dec. 8, 2020), <https://www.guttmacher.org/article/2020/12/congressional-hearing-hyde-amendment-written-statement-dr-herminia-palacio>.

<sup>61</sup> Herminia Palacio, *Congressional Hearing on the Hyde Amendment: Written Statement of Dr. Herminia Palacio*, The Guttmacher Institute (Dec. 8, 2020), <https://www.guttmacher.org/article/2020/12/congressional-hearing-hyde-amendment-written-statement-dr-herminia-palacio>.

<sup>62</sup> Marcella Howell, *Roe is not enough: Why Black women want an end to the Hyde Amendment*, The Hill (Jan. 22, 2021), <https://thehill.com/opinion/civil-rights/535022-roe-is-not-enough-why-black-women-want-an-end-to-the-hyde-amendment/>. See also, Herminia Palacio, *Congressional Hearing on the Hyde Amendment: Written Statement of Dr. Herminia Palacio*, The Guttmacher Institute (Dec. 8, 2020), <https://www.guttmacher.org/article/2020/12/congressional-hearing-hyde-amendment-written-statement-dr-herminia-palacio>. See also, Jessica Arons & Lindsay Rosenthal, *How the Hyde Amendment Discriminates Against Poor Women and Women of Color*, CAP (May 10, 2013), <https://www.americanprogress.org/article/how-the-hyde-amendment-discriminates-against-poor-women-and-women-of-color/>.

<sup>63</sup> Lienna Feleke-Eshete, *This Racist Policy Contributes To The Death Of Thousands Of Black And Brown Women And Girls, And You’ve Probably Never Heard Of It*, Blavity (Oct. 8, 2020), <https://blavity.com/this-racist-policy-contributes-to-the-death-of-thousands-of-black-and-brown-women-and-girls-and-youve-probably-never-heard-of-it?category1=opinion&category2=politics>.

<sup>64</sup> Michelle Goodwin, *It’s Time to Confront Senator Helms’s Sexist, Racist and Homophobic Legacy*, Ms. Magazine (Aug. 13, 2020), <https://msmagazine.com/2020/08/13/helms-amendment-its-time-to-confront-senator-jesse-helms-sexist-racist-and-homophobic-legacy/>.

<sup>65</sup> *Helms Amendment Hurts Millions of People Worldwide*, Planned Parenthood Action Fund (June 1, 2022), <https://www.plannedparenthoodaction.org/communities/planned-parenthood-global/helms-amendment-hurts-millions-people-worldwide>.

<sup>66</sup> Kellie Moss & Jennifer Kates, *The Helms Amendment and Abortion Laws in Countries Receiving U.S. Global Health Assistance*, KFF (Jan. 18, 2022), <https://www.kff.org/global-health-policy/issue-brief/the-helms-amendment-and-abortion-laws-in-countries-receiving-u-s-global-health-assistance/>.

<sup>67</sup> Anu Kumar & Bethany Van Kampen, *The Global Gag Rule Is Just the First Step if We Want To Champion Reproductive Freedom for All*, Ms. Magazine (Jan. 28, 2021), <https://msmagazine.com/2021/01/27/biden-global-gag-rule-helms-hyde>

devastating consequences in conflict settings, such as Ukraine, Myanmar, Ethiopia, and the Democratic Republic of the Congo, where survivors of sexual and gender-based violence are unable to receive access to the health care services they need such as abortion.<sup>68</sup> For nearly five decades, the Helms Amendment has been causing harm around the world.

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<sup>68</sup> Michelle Onello & Elena Sarver, *The Fight to Secure U.S. Abortion Rights Is Global*, Ms. Magazine (May 24, 2022), <https://msmagazine.com/2022/05/24/us-foreign-policy-abortion-helms-amendment-global-gag-rule/>.