

SCHEDULED FOR ORAL ARGUMENT ON SEPTEMBER 26, 2018

**United States Court of Appeals
for the District of Columbia Circuit**

No. 18-5093

ALEX M. AZAR II, Secretary of Health and Human Services, *et al.*,
Defendants-Appellants,

v.

ROCHELLE GARZA, as guardian ad litem to unaccompanied minor JANE DOE,
on behalf of herself and others similarly situated, *et al.*,
Plaintiffs-Appellees.

*On Appeal from the United States District Court for the
District of Columbia No. 17-cv-02122-TSC.*

**BRIEF OF REPRODUCTIVE RIGHTS, HEALTH, AND JUSTICE
ORGANIZATIONS AND ALLIED ORGANIZATIONS AS
AMICI CURIAE IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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August 6, 2018

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Except for the following, all parties appearing before the district court and this court are listed in the Brief for Appellants, Appellees, and Amici.

The organizations listed in the Addendum did not participate in the district court below but will appear as *amici curiae* for Appellees before this Court.

The organizations listed in the Addendum do not have parent corporations and no publicly owned corporations own 10% or more of any of these organizations' respective stock.

Respectfully submitted this 6th day of August, 2018.

/s/ Jane Liu

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE	i
TABLE OF AUTHORITIES	iv
GLOSSARY	viii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. Access to Abortion Care is a Fundamental Right and Essential to the Realization of Human Rights and Reproductive Justice.	6
A. International human rights standards affirm an individual’s right to access abortion, and the reproductive justice framework can inform this Court’s analysis.	7
B. The U.S. Constitution protects the right of all women to terminate a pregnancy and requires meaningful access to abortion.	10
II. ORR Policies that Make Privacy and Access to Abortion Impossible as a Practical Matter Deprive the Janes of Their Fundamental Rights	13
A. The government is creating and actively maintaining policy barriers that deny the Janes access to abortion.	13
B. ORR disregards the health and dignity of Janes by violating their rights to privacy and healthcare decision-making	16
III. Denying Access to Safe and Legal Abortion Undermines the Health of Young Immigrants and Their Communities.	20
A. People of reproductive age need and deserve access to comprehensive reproductive healthcare options.	21
B. Immigrants and young people face unique barriers to reproductive health.	23

IV. Appellants’ Stated Interest in Promoting Potential Life is Incompatible with Government Policies That Undermine Healthy Pregnancies and Promote the Destruction of Immigrant Families.....24

CONCLUSION28

CERTIFICATE OF SERVICE31

CERTIFICATE OF COMPLIANCE.....31

ADDENDUM32

TABLE OF CITED AUTHORITIES

United States Cases

<i>Bellotti v. Baird</i> , 443 U.S. 622 (1979)	11
<i>Chi Thon Ngo v. I.N.S.</i> , 192 F.3d 390 (3d Cir. 1999).....	11
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<i>Mathews v. Diaz</i> , 426 U.S. 67 (1976).....	12
<i>Monmouth Cty. Corr. Inst. Inmates v. Lanzaro</i> , 834 F.2d 326 (3d Cir. 1987).....	15
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GLOSSARY

CBP:	U.S. Customs and Border Protection
CPC:	Crisis Pregnancy Centers
ICE:	U.S. Immigration and Customs Enforcement
ORR:	Office of Refugee Resettlement
UN:	United Nations

INTEREST OF AMICI CURIAE

Amici are reproductive rights, health, and justice organizations and allies. “Reproductive justice” refers to a movement, a mission, and a theoretical framework. Women of color in the United States (“U.S.”) founded and lead the reproductive justice movement, which works toward a world where all people can realize their human and constitutional rights related to reproduction, bodily autonomy, and family formation, without discrimination. As a framework, reproductive justice centers women of color, transgender, and nonbinary people, while focusing attention on the social, political, and economic conditions that inhibit or enable people to exercise their human rights to have children, not to have children, and to parent in safe and healthy environments. Because *Amici* believe that all people should have access to abortion and the power to make decisions regarding their own bodies, *Amici* have an interest in this case. *Amici* respectfully urge the Court to reject Appellants’ arguments and uphold the fundamental human rights at stake here by affirming the district court’s ruling.

A full list of signers appears in the Addendum.¹

¹ No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici*, their members, or their counsel made a monetary contribution to this brief’s preparation or submission. By email, counsel for the parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

All people have an inherent right to self-determination, bodily autonomy, and dignity. Decisions about whether and when to have children are deeply personal expressions of individual agency, implicating core liberty, privacy, and dignity interests. Both international human rights law and U.S. constitutional law recognize a woman's fundamental right to make decisions about pregnancy and to choose abortion. A human rights and reproductive justice analysis of the issues involved in this case demonstrates that Appellants' actions violate unaccompanied immigrant minors' fundamental rights by effectively denying access to abortion altogether.

The question before this court goes to the heart of reproductive justice: whether the government can intimidate and coerce individuals who decide to end their pregnancies and veto their right to access abortion care. Plaintiffs in this case, ("the Janes"), are unaccompanied immigrant minors in the custody of the Office of Refugee Resettlement ("ORR"). Through explicitly anti-abortion policies enacted and enforced by ORR, the federal government exploits its power over the Janes by impermissibly controlling their reproductive decisions.

Appellants' abortion policies effectively ban access to the procedure and apply to every pregnant minor in ORR custody. The government's claim that it merely objects to "facilitating" abortion is disingenuous — the obstacles standing

between the Janes and the reproductive healthcare they seek are created and enforced by government policy.

ORR's policies demonstrate an alarming disregard for the Janes' lives, health, humanity, and dignity. Contrary to Appellants' assertions, ORR's policies and practices place the physical and mental health of young immigrants at risk. By forcing disclosure of the Janes' health information, subjecting them to biased and medically inaccurate counseling, and refusing to permit them to attend abortion-related health appointments, ORR subjects the Janes to a stigmatizing web of obstacles and then vetoes their decisions, denying them a choice in the outcome of their pregnancies and therefore their lives.

Denying access to safe and legal abortion care imperils the health of immigrant youth in ORR custody, coerces them into carrying pregnancies they do not want, and goes against their best interests. Like all people of reproductive age, immigrant youth have reproductive healthcare needs. Access to accurate information and comprehensive health services is essential to preserving their health, dignity, and bodily autonomy. Appellants' offensive references to "abortion tourism" and blanket refusal to allow young immigrants access to a legal healthcare procedure exposes their willingness to use reproductive coercion to punish immigrants. Moreover, the government's asserted interest in promoting birth and potential life is inconsistent with its mistreatment of detained pregnant

women here and irreconcilable with other federal policies that harm pregnant immigrants and children.

Human rights norms and the U.S. Constitution demand that immigrant youth — like all people within U.S. borders — have access to abortion. Here, ORR's actions place a substantial and unconstitutional burden on that fundamental right.

ARGUMENT

Since the country's founding, immigrants and communities of color in the U.S. have been excluded from social, economic, and political power. Laws and policies have helped maintain inequalities and authorize reproductive oppression. Forced sterilization of women of color,² blocked access to healthcare infrastructure,³ and many other reproductive injustices constrain immigrants' and

² See Elena R. Gutiérrez, *Fertile Matters: The Politics of Mexican-Origin Women's Reproduction* 35–54 (2008) (discussing the forced sterilization of Mexican-origin women in Los Angeles); Sally J. Torpy, *Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s*, 24 *Am. Indian Culture & Res. J.* 1 (2000); Alexandra Minna Stern, *Sterilized in the Name of Public Health*, 95 *Am. J. Pub. H.* 1128 (2005); Kathryn Krase, *History of Forced Sterilization and Current U.S. Abuses*, *Our Bodies, Ourselves* (Oct. 1, 2014), <https://www.ourbodiesourselves.org/book-excerpts/health-article/forced-sterilization/>.

³ See, e.g., 8 U.S.C. § 1613 (welfare reform in 1996 added a five-year ban on accessing public benefit programs for "qualified" immigrants); Jessica Arons & Madina Agénor, *Ctr. for Am. Progress, Separate and Unequal: The Hyde Amendment and Women of Color* (2010) <https://cdn.americanprogress.org/wp->

women of color's exercise of bodily autonomy. Controlling policies are not just confined to historical examples but continue today as consequences of a broader political and socio-economic system that reflects and reinforces inequality. In response to ongoing human rights abuses, a group of Black women founded the reproductive justice movement, community, and framework in the 1990s. The reproductive justice framework contextualizes human rights standards in the U.S. and analyzes the ways in which laws, policies, and systems inhibit health and dignity.

Human rights provide a foundation for promoting reproductive justice. Reproductive rights are fundamental human rights, grounded in the interrelated rights to life, health, equality, privacy, information and education, as well as freedom from discrimination, violence, and torture or ill treatment. They include the right to make decisions about one's life and family, to access necessary reproductive health services, and to decide whether and when to have children.⁴

[content/uploads/issues/2010/12/pdf/hyde_amendment.pdf](https://www.nilc.org/wp-content/uploads/2010/12/pdf/hyde_amendment.pdf) (discussing the Hyde Amendment's targeting of women of color and the consequential harm from banning abortion funding); National Immigration Law Center, *A Quick Guide to Immigrant Eligibility for ACA and Key Federal Means-Tested Programs* (2018) <https://www.nilc.org/wp-content/uploads/2015/11/imm-eligibility-quickguide-2015-09-21.pdf> (categorically, certain groups of immigrants are ineligible to access government programs).

⁴ International Covenant on Civil and Political Rights, arts. 2(1), 3, 6(1), 17, Dec. 16, 1966, 999 U.N.T.S. 171.

Human rights belong to all people, including the Janes in this case and others like them. The U.S. government has an obligation to protect, respect, and fulfill these human rights, which are universal and extend to everyone within its territory, regardless of nationality.⁵

Here, this Court has an opportunity to affirm reproductive rights and justice by upholding the right of all people in the U.S. to decide if and when to birth and parent.

I. Access to Abortion Care is a Fundamental Right and Essential to the Realization of Human Rights and Reproductive Justice.

International human rights law and the U.S. Constitution recognize that a woman's access to reproductive healthcare, including abortion, is essential to her liberty, health, and well-being, and to her ability to shape her family and future.⁶ Human rights standards protect the dignity and self-determination of all people, and the ability to effectuate one's decisions regarding pregnancy is essential to

⁵ See Felipe González Morales (Special Rapporteur on the Human Rights of Migrants), *Rep. of the Special Rapporteur on the Human Rights of Migrants*, ¶ 19, U.N. Doc. A/HRC/38/41 (May 4, 2018) [hereinafter *Rep. of SR on HRM*].

⁶ This brief uses the term "woman" and the pronouns "she," "her," and "hers" because U.S. constitutional law and international human rights standards refer to "women" when referencing abortion. However, *Amici* acknowledge that people of diverse genders experience pregnancy, including some gender non-binary people and transgender men, and believe the right should be understood to encompass equal access for these individuals as well.

advancing those core values. Likewise, the liberty protected by the U.S. Constitution encompasses a woman's right "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992) (quoting *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972)).

Jane Doe, Jane Moe, Jane Poe, and Jane Roe are unaccompanied immigrant minors who have been subjected to obstruction, coercion, and invasions of privacy at the hands of the federal government because they sought to terminate an unwanted pregnancy while in ORR custody. This treatment has denied the Janes their right to access abortion, in violation of constitutional law and human rights standards. If permitted to continue, the government's actions will harm other Janes in ORR custody.

- A. International human rights standards affirm an individual's right to access abortion, and the reproductive justice framework can inform this Court's analysis.

International human rights law and the decisions of human rights experts and treaty monitoring bodies provide sources of persuasive authority that can assist this Court's analysis of the issues raised in this case. The U.S. has ratified core international human rights treaties that impose legal obligations related to

healthcare access, reproductive rights, privacy, non-discrimination, and the rights of immigrants, migrants, and young people.⁷

As treaty monitoring bodies and other human rights experts appointed by the United Nations (“U.N.”) Human Rights Council have noted, reproductive rights are critical to gender equality. For instance, the U.N. Working Group on the issue of discrimination against women in law and in practice determined that a woman or girl’s right to “make autonomous decisions about her own body and reproductive functions” is fundamental and “a precondition for the enjoyment of other rights.”⁸ The U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment also noted that the denial of legally available

⁷ The U.S. ratified the International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171, the International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. Treaty Doc. 95-18, 660 U.N.T.S. 195 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. 100-20, 1465 U.N.T.S. 85. The U.S. has signed but not yet ratified other treaties that safeguard rights implicated in this case, including the Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, the International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, and the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. Under International law, the U.S. has an obligation to refrain from actions that would defeat the object and purpose of treaties it has signed, even if the treaties have not been ratified. *See*, Vienna Convention on the Law of Treaties, art. 18(a), May 23, 1969, 1155 U.N.T.S. 331.

⁸ Rep. of the Working Group on the Issue of Discrimination Against Women in Law and in Practice, ¶ 35, U.N. Doc. A/HRC/38/46 (May 14, 2018).

health services, including abortion, constitutes mistreatment that “can cause tremendous and lasting physical and emotional suffering, inflicted on the basis of gender.”⁹

Human rights experts have also found that migrant women and girls are especially vulnerable to discrimination.¹⁰ In assessing the United States’ human rights record specifically, international human rights experts have expressed alarm over U.S. policies that create barriers to reproductive healthcare and those that harm immigrant communities.¹¹ For example, in 2014, the Committee on the Elimination of Racial Discrimination recommended that the U.S. take measures to fulfill its treaty obligations by ensuring undocumented immigrants effective access to adequate healthcare services.¹² In 2015, the U.N. Working Group on the issue of

⁹ *Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez*, ¶ 46, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013). The U.N. Committee Against Torture, charged with implementation of the Convention Against Torture, has also expressed concerns about restricted access to abortion. *See* Comm. Against Torture, *Considerations of Reports Submitted by States Parties Under Article 19 of the Convention*, ¶ 23, U.N. Doc. CAT/C/PER/CO/4 (July 25, 2006).

¹⁰ *See* Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 26 on Women Migrant Workers*, ¶ 17 U.N. Doc. CEDAW/C/2009/WP.1/R (Dec. 5, 2008) [hereinafter CEDAW Gen. Rec. 26].

¹¹ *Rep. of SR on HRM, supra* note 4, at ¶ 86.

¹² Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, ¶15(a), U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014). Additionally, in 2015, a Universal Periodic Review of the U.S. human rights record was

discrimination against women in law and in practice conducted an official mission to the U.S. and found that “immigrant women face severe barriers in accessing sexual and reproductive health services.”¹³ The Working Group expressed particular concern for immigrant women and minors in detention centers,¹⁴ and also recommended that the U.S. government take steps to ensure that women can exercise their existing Constitutional right to terminate a pregnancy.¹⁵

B. The U.S. Constitution protects the right of all women to terminate a pregnancy and requires meaningful access to abortion.

Consistent with the human rights norms outlined above, over four decades of U.S. Supreme Court precedent recognizes and affirms a woman’s fundamental right to access abortion prior to viability. *See Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016); *Gonzales v. Carhart*, 550 U.S. 124 (2007); *Casey*, 505 U.S. 833 (1992); *Roe v. Wade*, 410 U.S. 113 (1973).

conducted through the U.N. Human Rights Council, raising concerns about the treatment of detained immigrants in the U.S., as well as immigrants’ inadequate access to healthcare in general. *Rep. of the Working Group on the Universal Periodic Review*, ¶¶ 176.252–54, .329–30, and .335–38, U.N. Doc. A/HRC/30/12 (July 20, 2015).

¹³ *Rep. of the Working Group on the Issue of Discrimination Against Women in Law and in Practice on Its Mission to the United States of America*, ¶ 68, U.N. Doc. A/HRC/32/44/Add.2 (Aug. 4, 2016).

¹⁴ *Id.* ¶ 80.

¹⁵ *Id.* ¶ 90(g).

This right, like other liberties protected under the Fifth and Fourteenth Amendments, applies to all “persons.” U.S. CONST. amends. V & XIV; *see also Garza v. Hargan*, No. 17-5236, 2017 WL 9854555 (D.C. Cir. Oct. 20, 2017) (Millet, J., dissenting). Protections under the Fifth and Fourteenth Amendments do not apply solely to those with socio-economic means, *see, e.g., Whole Woman’s Health*, 136 S. Ct. at 2302 (quoting district court’s conclusion that challenged restrictions “erect a particularly high barrier for poor, rural, or disadvantaged women”); nor only adults, *see, e.g., Bellotti v. Baird*, 443 U.S. 622, 633 (1979) (recognizing that minors “[are] not beyond the protection of the Constitution”); nor only those who have been granted immigration status within the United States. *See e.g. Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.”).¹⁶

¹⁶ Contrary to claims made by the Texas, Arkansas, Louisiana, Michigan, Nebraska, Ohio, Oklahoma, and South Carolina states attorneys general, Plaintiffs’ immigration status does not affect their substantive due process rights—including their right to terminate a pregnancy. The Fifth Amendment offers constitutional protection to any “person” physically present in the United States. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (“the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Kwai Fun Wong v. United States*, 373 F.3d 952, 972–73 (9th Cir. 2004) (“[N]on-admitted aliens... are undeniably ‘persons’ entitled to constitutional protection.”); *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 396 (3d Cir. 1999) (“[A]n excludable alien is a ‘person’ for purposes of the Fifth

The U.S. Supreme Court has unequivocally held that a woman has the right “to choose to have an abortion before viability and to obtain it without undue interference from the State.” *Casey*, 505 U.S. at 846. In evaluating the constitutionality of any restriction on abortion access, courts apply the undue burden standard, under which a restriction is invalid if the burdens it imposes are greater than the benefits it actually confers. *Whole Woman’s Health*, 136 U.S. at 2309–10; *Casey*, 505 U.S. at 877–79. When it comes to bans on abortion, however, the Supreme Court has already done the weighing, making clear that *no* government interest can justify a ban, including its interest in potential life. *Casey*, 505 U.S. at 846 (“Before viability, the [government’s] interests are not strong enough to support a prohibition of abortion[.]”). The government cannot “prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.” *Id.* at 879; *see also id.* at 871 (“The woman’s right to terminate her pregnancy before viability is the most central principle of *Roe v. Wade*. It is a rule of law and a component of liberty we cannot renounce.”).

Amendment”); *see also Plyler v. Doe*, 457 U.S. 202, 212 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

Finally, denying access to a right effectively denies the right altogether.¹⁷

ORR's policies and practices functionally ban abortion for the Janes, denying them the right to abortion in contravention of U.S. constitutional law and human rights norms.

II. ORR Policies that Make Privacy and Access to Abortion Impossible as a Practical Matter Deprive the Janes of Their Fundamental Rights.

ORR's pattern and practice of disclosing the Janes' personal health information and refusing to allow them to attend abortion-related health appointments makes it impossible for the Janes to maintain their privacy or exercise their constitutional right to end a pregnancy. When the government effectively curtails the ability to exercise a right, as ORR's ban has done for the Janes, the right becomes illusory and meaningless.

A. The government is creating and actively maintaining policy barriers that deny the Janes access to abortion.

Contrary to Appellants' assertion that they have merely chosen not to "facilitate" abortion, the government actions challenged in this case do not involve

¹⁷ See Rachel Suppe, *A Right in Theory but Not in Practice: Voter Discrimination and Trap Laws as Barriers to Exercising a Constitutional Right*, 23 J. Gender, Soc. Pol'y & L. 107, 132 (2014) (discussing how reproductive rights "like the right to vote, can be denied by a debasement or dilution of the weight of the citizen's right just as effectively as an outright prohibition on that right").

its failure to make the procedure easier for Janes to obtain. Rather, the Janes seek relief from the government's active interference in their healthcare decision-making.

As an initial matter, the government made a policy decision to detain the Janes and to construct a web of regulations and protocols that prevent them from leaving shelters for medical appointments, if ORR believes that those appointments will include abortion. In Jane Doe's own words, "they have not allowed me to leave to get an abortion."¹⁸ This decision functions as a ban on abortion for all Janes in ORR's custody.

The Janes in this case overcame significant hurdles while pursuing their right to access abortion, including raising private funds, obtaining a judicial bypass, and finding providers. Although the Supreme Court in *Harris v. McRae* held that the government "need not remove [obstacles] not of its own creation," it made clear that the "government may not place obstacles in the path of a woman's exercise of her freedom of choice." 448 U.S. 297, 316 (1980). ORR's refusal to allow Janes to attend pre-arranged appointments for which they plan to pay, places

¹⁸ *After a Month of Obstruction by the Trump Administration, Jane Doe Gets Her Abortion*, ACLU (Oct. 25, 2017) <https://www.aclu.org/news/after-month-obstruction-trump-administration-jane-doe-gets-her-abortion> [hereinafter *Jane Doe Gets Her Abortion*].

a determinative obstacle in the Janes' way, and inflicts a final, undue burden on their right to access abortion.

As the Janes' experiences demonstrate, young people in immigration custody who choose to end a pregnancy are systematically blocked from exercising that right because government officials have engineered immigration policies and detention programs in ways that create and justify added barriers to abortion access. However, the government may not "entirely eliminate" or effectively eliminate the option for an abortion for people in its custody. *Roe v. Crawford*, 514 F.3d 789, 797 (8th Cir. 2008) (holding as unconstitutional policy prohibiting prisoners from obtaining abortion except where necessary for the health of the mother and where prisoner was granted express approval); *see also Monmouth Cty. Corr. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 341, 351 (3d Cir.1987) (striking as unconstitutional requirement that prisoners seeking abortion secure a court-ordered release on their own recognizance to receive that care).

Appellants suggest that Janes in ORR custody may overcome ORR's abortion ban and "end their custody," Appellants' Br. at 42 by helping to "promptly identify a sponsor," Appellants' Br. at 3, or by returning to their home country and abandoning any potentially viable immigration claims. However, Appellants' disingenuous arguments ignore the realities of the sponsorship process and the reasons that young people leave their homelands in the first place. As the

District Court observed, sponsorship is “typically a lengthy, complex process” and “ORR makes the final decision on whether to approve a particular sponsor.” Op. at 26–27. Further, many immigrant youth risk their lives migrating to a foreign country because they face even greater risks in their homeland. Requiring them to carry unwanted pregnancies to term or else return to the conditions they fled denies them a choice in the outcome of their pregnancy.

Finally, the government’s fear that respecting the human and constitutional rights of Janes will incentivize future immigration — offensively described as “abortion tourism,” Appellants’ Br. at 60 — ignores the complex realities of immigrants’ lives and cannot justify violations of their core rights. Human rights abuses should never be the means by which the government accomplishes its foreign policy goals.

B. ORR disregards the health and dignity of Janes by violating their rights to privacy and healthcare decision-making.

The idea that immigrants and people of color cannot be trusted to make responsible reproductive choices and are undeserving of access to U.S. health services permeates discussion of abortion policy. Stigmatizing narratives that criminalize immigrants and women of color are bolstered by Appellants, who use the words “illegal” and/or “illegally” on twelve different occasions while arguing

for their right to deny immigrant youth in ORR custody access to healthcare that is legally available to everyone else. At a moment when immigrants' rights and reproductive rights are under renewed attack, it is no coincidence that the government is using young immigrant bodies as vehicles to defy and challenge established constitutional law. The most politically, socially, and economically powerless are almost always the first to experience the erosion of fundamental rights.

ORR's policy response to pregnant Janes strips young immigrants of autonomy over their bodies and life trajectories, transferring that decision-making power to one man — Scott Lloyd, the Director of ORR. ORR requires that employees at federally funded shelters notify the agency “immediately of any request or interest on any girl's part in terminating her pregnancy.” Appellants' App. at 242. Shelter employees are prohibited from “taking any action that facilitates an abortion without direction and approval from the Director of ORR,” Scott Lloyd. *Id.* Thus far, Mr. Lloyd has denied every Jane's request for abortion access that has come before him. This includes denying the request of a young woman who was contemplating self-harm. *Id.* at 130.

Appellants have permitted the ideology of ORR's leadership to supersede the autonomy and best interests of the Janes, to whom ORR owes a duty of care. In a memo regarding a sexual assault survivor's request for abortion, Mr. Lloyd

acknowledged that, “a pregnancy that results from a rape is itself a continuous reminder of the attack.” Though Mr. Lloyd personally found this the “most difficult case,” he nevertheless concluded that ORR should deny the young woman access to abortion. *Id.* at 132. All Janes have a right to make their own decisions about continuing or ending a pregnancy, regardless of their reasons or circumstances. But as the memo indicates, ORR decision-makers are substituting their own judgments, enforcing an unconstitutional ban on abortion, and applying it universally. Moreover, they are aware that this ban undermines the autonomy, safety, and mental health of the Janes to a devastating degree.

Accordingly, ORR has established a series of obstacles that coerce, discourage, and delay Janes who attempt to obtain an abortion. The Janes’ efforts to overcome these obstacles are exercises in futility, given that Mr. Lloyd provides no criteria for his decision-making and ORR nevertheless denies access.

A key element of this strategy includes requiring pregnant Janes who seek abortion care to submit to “options counseling” from a provider on a pre-approved list of anti-abortion entities, often called “crisis pregnancy centers” or “CPCs.” *Id.* at 242. CPCs exist primarily to deter individuals from obtaining abortions and offer neither neutral counseling on abortion nor comprehensive medical care. Additionally, many CPCs have been found to disseminate medically inaccurate

information.¹⁹ While in ORR custody, Jane Doe was forced to visit a CPC and submit to “counseling” against her decision to seek abortion. Jane Doe recognized the coercion inherent in this policy, explaining that “[p]eople I don’t even know are trying to make me change my mind.”²⁰ Yet even after completing this requirement, ORR denied Jane Doe access to the abortion care she chose.

ORR also disclosed the Janes’ pregnancy status to parents and sponsors against their will. In one known case, this led to threats of physical abuse from a Jane’s mother and sponsor. Appellants’ App. at 130. ORR imposes such parental notification, counseling, and consent requirements even where the law does not and regardless of ORR’s intention to obstruct access. For example, Jane Doe obtained a judicial bypass of her state’s parental consent requirement, yet ORR informed Jane’s mother over her objection, and still refused to let Jane go to her abortion appointment. *Id.* at 244. In forcing these disclosures, ORR violates the Janes’ privacy and deprives them of the right to decide with whom they share deeply personal information.

¹⁹ See Amy G. Bryant & Erika E. Levi, *Abortion Misinformation From Crisis Pregnancy Centers in North Carolina*, 86 *Contraception* 752 (2012); Joanne D. Rosen, *The Public Health Risks of Crisis Pregnancy Centers*, 44 *Persp. on Sexual and Reprod. Health* 201 (2012),

²⁰ *Jane Doe Gets Her Abortion*, *supra* note 18.

ORR's practice of disclosing the Janes' private information allows the agency to leverage shame, stigma, and fear against young immigrants in its custody who attempt to assert control over their own bodies, while discouraging other Janes from even trying. After experiencing this intimidation, Jane Doe stated, "[n]o one should be shamed for making the right decision for themselves. I would not tell any other girl in my situation what they should do. That decision is hers and hers alone."²¹ For ORR, however, there are no negative consequences to this policy, and — short of a lawsuit — no mechanism by which the Janes might seek redress. If the threat of disclosure causes a Jane to relinquish her request for abortion, ORR's policy will have succeeded. If a Jane persists in requesting access to abortion despite that disclosure, ORR can still exercise its veto. Ultimately, this coercive government policy strips each Jane of control over the trajectory of her own life story.

III. Denying Access to Safe and Legal Abortion Undermines the Health of Young Immigrants and Their Communities.

By denying the Janes access to safe and legal abortion care, ORR risks the physical and mental health of young people in its custody while denying them any choice in the matter. Like all people of reproductive age, the Janes have

²¹ *Id.*

reproductive healthcare needs. Access to accurate, unbiased health information and comprehensive healthcare services is essential to preserving their health, dignity, and bodily autonomy. ORR's actions exacerbate the hardships the Janes are already facing and perpetuate a legacy of reproductive coercion and discrimination that positions women, young people, immigrants, and people of color as undeserving of healthcare and self-determination.

- A. People of reproductive age need and deserve access to comprehensive reproductive healthcare options.

Regardless of immigration status, all people of reproductive age have a right to access comprehensive and evidence-based reproductive healthcare services. This includes access to accurate health information and an opportunity for pregnant people of all ages to make decisions about their pregnancy and medical care. The legal and practical availability of both prenatal care and abortion care is essential to a pregnant person's ability to exercise their right to have children or not have children, free from coercion.

Appellants argue that Jane Doe and Jane Roe cannot represent a class consisting of all pregnant minors in ORR custody, because some of those pregnant minors will choose to continue their pregnancies. Appellants' Br. at 27. Appellants describe two distinct classes of pregnant Janes, those who are "abortion seeking,"

id. at 28, and those who do not request abortions and “may strongly oppose abortions.” *Id.* at 29–30. This binary distinction obscures the central issue of choice and contradicts the complex lived experiences of immigrants, women, and young people.

Every pregnancy entails personal decisions about the pregnant person’s health, relationships, and future, and every Jane should have a meaningful opportunity to consider those factors and decide whether to continue or terminate a pregnancy—knowing that either decision is a real option she can act upon. Removing a prohibition on abortion access, like the one ORR imposes, does not harm people who ultimately decide to birth, though recognizing that the decision was truly theirs may strengthen confidence in that choice. On the other hand, maintaining a ban on abortion access for all pregnant Janes will cause real harm to those who do not wish to be pregnant.

Research shows that abortion restrictions that block access altogether can “prevent the achievement of life plans and goals.”²² Like all people, the Janes have their own unique visions for the future. Jane Doe dreams of “becoming a nurse,

²² Terri-Ann Thompson & Jane Seymour, Ctr. For Reprod. Rts. & Ibis Reprod. Health, *Evaluating Priorities: Measuring Women’s & Children’s Health & Well-Being Against Abortion Restrictions in the States* 23 (2017), <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USP-A-Ibis-Evaluating-Priorities-v2.pdf> [hereinafter *Evaluating Priorities*].

and one day working with the elderly.”²³ Just as importantly, she knows that she is “not ready to be a parent.”²⁴ Not only do women denied abortion care risk the futures they dream of, they are also at increased risk of experiencing poverty, physical health impairments, and intimate partner violence.²⁵ Moreover, pregnancy entails significant health consequences, which intensify over the course of the pregnancy. The risk of death from childbirth is approximately 12.5 times higher than the risk of death after a legal abortion.²⁶ Pregnant people must be able to decide how they want to manage those risks and must have the option to access medical providers and abortion procedures.

B. Immigrants and young people face unique barriers to reproductive health.

Youths’ access to health resources and information can be profoundly influenced by the cultural attitudes of adult gatekeepers, including policymakers, parents, and providers. Even in contexts outside of government custody, young people and immigrants encounter significant barriers to healthcare. Many of these barriers result from stereotypes, discrimination, and inequalities in social,

²³ *Jane Doe Gets Her Abortion*, *supra* note 18.

²⁴ *Id.*

²⁵ *Evaluating Priorities*, *supra* note 22.

²⁶ Nat’l Acads. of Scis., Eng’g & Med., *The Safety and Quality of Abortion Care in the United States* (2018), <https://www.nap.edu/read/24950/chapter/4#75>.

economic, and political power. ORR's incursions into the Janes' personal autonomy directly affect immigrant youth in ORR's custody, while also reinforcing messages of inequality that negatively impact immigrant communities beyond the sphere of federal custody.²⁷ As immigrants who are both young and unaccompanied, the Janes faced many obstacles and overcame them — only to face added coercion at the hands of the government.

IV. Appellants' Stated Interest in Promoting Potential Life is Incompatible with Government Policies That Undermine Healthy Pregnancies and Promote the Destruction of Immigrant Families.

Government policies have long used reproductive capacity as a site of control and punishment. ORR's treatment of the Janes must be understood in the context of that history, which continues to deny immigrant women the ability to make autonomous choices about their bodies, futures, and the well-being of their families. Across many different agencies, current government policies disregard the welfare of immigrant families.

For instance, Immigration and Customs Enforcement ("ICE") creates conditions of confinement that undermine healthy pregnancies and prevent women

²⁷ Lisa Sun-Hee Park, *Entitled to Nothing: The Struggle for Immigrant Health Care in the Age of Welfare Reform* 15 (2011) (discussing how immigration enforcement mechanisms create for non-detained immigrant communities "a liminal state of perpetual insecurity").

who want to birth from getting the care they need. ICE policy issued in 2016 recognized the risks that detention poses to pregnant people and discouraged it, except in specific and “extraordinary circumstances.”²⁸ Nevertheless, ICE recently shifted to a policy of increased detention²⁹ and is detaining and shackling pregnant women.³⁰ While detained by ICE, pregnant immigrants are routinely denied appropriate medical care and humane conditions. In a complaint against the Department of Homeland Security filed by the ACLU and others, multiple women shared stories about being mistreated while pregnant in ICE detention.³¹ One

²⁸ See *Identification and Monitoring of Pregnant Detainees*, U.S. Immigration and Customs Enforcement (issued Aug. 15, 2016), https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf

²⁹ See *Identification and Monitoring of Pregnant Detainees*, U.S. Immigration and Customs Enforcement (issued Dec. 14, 2017; made public March 29, 2018), <https://www.ice.gov/directive-identification-and-monitoring-pregnant-detainees>; Alan Gomez, *ICE to Hold More Pregnant Women in Immigration Detention*, USA Today (March 29, 2018, 3:10 PM), <https://www.usatoday.com/story/news/nation/2018/03/29/ice-hold-more-pregnant-women-immigration-detention/469907002/>.

³⁰ Emma O'Connor & Nidhi Prakash, *Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed*, BuzzFeed (July 9, 2018, 2:44 PM), <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump>.

³¹ Letter from ACLU et al. to Cameron Quinn, Officer for Civil Rights and Civil Liberties, Dep't of Homeland Sec., and John Roth, Inspector General, Dep't of Homeland Sec. (Nov. 13, 2017), https://www.aclu.org/sites/default/files/field_document/revisedcomplaintcrcl_oigprgnantwomenicecustody11.13.17.pdf.

woman who miscarried in ICE custody earlier this year was informed by her doctor that the detention conditions were a contributing factor. She described the experience as “a punishment I will never forget.”³²

Abuse and neglect of immigrant youth by U.S. Customs and Border Protection (“CBP”) has also been reported.³³ Government documents obtained through the Freedom of Information Act reveal physical and psychological assaults against immigrant children, including pregnant girls and young mothers. In one incident, a pregnant girl recounts how border patrol agents taunted her and others, “saying we came to contaminate the U.S. with our babies.”³⁴

Beginning in May 2018, families and immigration attorneys began reporting a “zero-tolerance” policy enforced by CBP and ICE that separated children from their parents upon apprehension at the border. While parents were held in federal facilities awaiting prosecution for illegal entry,³⁵ children were kept in makeshift

³² *Id.*

³³ U. Chicago Int’l Hum. Rts. Clinic, ACLU San Diego & Imperial Counties Border Litig. Project & ACLU Border Rts., *Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection* (2018), <http://bit.ly/acluihrc>.

³⁴ *Id.* at 17.

³⁵ In addition to family separation, CBP also reportedly has a common practice of turning asylum seekers away from ports of entry and then charging these individuals with illegal entry – a misdemeanor criminal charge. *See, e.g.* Robert Moore, *At the U.S. Border, Asylum Seekers Fleeing Violence Are Told to Come Back Later*, Wash. Post (June 13, 2018, 6:00 AM),

“shelters” along the border and elsewhere. Firsthand accounts describe children of all ages held in fenced-in cages, often uncomforted, and with no knowledge of where their parents are or if they will be reunited. Reportedly, during June 2018, approximately 50-70 families were forcibly separated *per day*.³⁶ In response to multiple court orders, the government began reunifying children with their parents. However, it has also sought judicial permission to hold children in detention indefinitely.³⁷ In addition to calling the family separation policy “unconscionable,” the U.N. High Commissioner for Human Rights made clear that detention, in any capacity, is *never* in the best interest of a child, regardless of their immigration status.³⁸

https://www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe_story.html?utm_term=.00089b912b45; *see also*

Complaint for Declaratory and Injunctive Relief, *Washington v. United States*, No. 2:18-cv-00939 (W.D. Wash. June 26, 2018).

³⁶ Complaint for Declaratory and Injunctive Relief at 3, *Washington v. United States*, No. 2:18-cv-00939 (W.D. Wash. June 26, 2018).

³⁷ Ex Parte Application for Relief from Flores Settlement Agreement, *Flores v. Meese*, No. 2:85-cv-04544-DMG-AGR (C.D. Cal June 21, 2018).

³⁸ Opening Statement and Global Update of Human Rights Concerns by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at 38th Session of the Human Rights Council (June 18, 2018),

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23206&LangID=E>; Office of the UN High Commissioner for Human Rights, Press Briefing Note on Egypt, United States and Ethiopia (June 5, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23174&LangID=E>.

Reproductive coercion is a powerful form of punishment and an entirely inhumane policy choice. Across multiple federal agencies, government immigration policies — and the individuals who enforce them — dehumanize immigrants and their families while allowing human rights abuses to flourish. By depriving immigrants of the ability to control their own bodies or protect their own children, the government asserts complete power over detained immigrants. Far from respecting life, the government’s mistreatment of pregnant people and its intentional separation of families demonstrates how little value the government ascribes to immigrants’ lives. By altogether denying access to abortion, ORR advances this legacy and forces Janes to continue pregnancies in an environment where pregnant immigrants are denied healthcare, inhumanely detained, and forcibly separated from their children. This context demonstrates that ORR policies do not further a respect for life. Rather, they collectively function to punish immigrant women who hope to build a home in the United States.

CONCLUSION

Reproductive justice, human rights, and the U.S. Constitution demand that immigrant youth — like all people within U.S. borders — have access to the

reproductive healthcare they need and desire, including abortion. The actions of ORR place a substantial burden on that fundamental right, undermining the privacy, dignity, and bodily autonomy of immigrant youth in ORR custody. *Amici* urge the court to uphold the Janes' human and constitutional rights, for the reasons set forth above and in the brief of Appellees, as well as for the reasons that Jane Doe has so eloquently stated herself: “[t]his is my life, my decision. I want a better future. I want justice.”³⁹

³⁹ *Jane Doe Gets Her Abortion*, *supra* note 18.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2018, the foregoing document was serviced via electronic filing on all counsel of record in this case.

/s/ Jane Liu

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Certificate of Compliance

In compliance with Rule 29(a)(5) of the D.C. Circuit Court of Appeal, this brief contains 6,434 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6). This brief has been prepared in a proportionally spaced type face using Microsoft Word in 14-point, Times New Roman font.

/s/ Jane Liu

JANE LIU

ADDENDUM

ADDENDUM: LIST OF AMICI

Advocates for Youth ("Advocates") is a national reproductive and sexual health/rights organization that centers the needs and voices of young people, while upholding our core organizational values: Rights, Respect, and Responsibility. We believe that young people have the right to accurate and complete sexual health information, confidential reproductive and sexual health services, and a secure stake in the future. Young people deserve respect - valuing young people means involving them in the design, implementation and evaluation of programs and policies that affect their health and well-being. Society, including the US government, has the responsibility to provide young people with the tools, access, and services they need to safeguard their sexual health. The US Government's attempt to deny young immigrant women the abortion care they need highlights the intersection of reproductive rights with economic, immigrant and youth justice - and also the need for the US government to uphold fundamental human rights.

In 1881, the **American Association of University Women** ("AAUW") was founded by like-minded women who had defied society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Program, AAUW supports choice in the determination of one's reproductive life and increased access to health care and family planning services, as well as the civil and human rights of all immigrants.

Black Women for Wellness ("BWW") is a woman-centered, community-based, education and advocacy organization working to empower Black women and girls to attain healthy lives and families. BWW strives to build healthy communities through education, empowerment, and advocacy. Addressing reproductive health disparities is a high priority for the organization.

California Latinas for Reproductive Justice ("CLRJ") is a statewide organization committed to honoring the experiences of Latinas/xs to uphold our dignity, our bodies, sexuality, and families. We build Latinas'/xs' power and cultivate leadership through community education, policy advocacy, and community-informed research to achieve reproductive justice. CLRJ is the only

Latina organization in California holistically addressing Latinas' health and well-being and serves as a bridge between public policy and the 7.5 million Latinas in California who comprise over a third of the state's female population and make up 2.28% of the US population. Latina/o/xs unequivocally believe that abortion should be an option for women. Nearly seven in ten agree that while they may not choose an abortion for themselves or their partners, they would protect that right and not take the decision away from women. CLRJ is dedicated to defending the health, rights, and dignity of all people, upholding their right to self-determination, dignity, and respect of their decision-making, including decisions around abortion.

Founded in 2003, the **Center for American Progress** ("CAP") is an independent nonpartisan policy institute dedicated to improving the lives of all Americans through bold, progressive ideas as well as strong leadership and concerted action. Through our Women's Health and Rights Program, CAP works to ensure that all women, regardless of age, race/ethnicity, socio-economic status, or sexual orientation, have the rights, resources, and agency to make healthy, autonomous decisions about their bodies and sexualities. This work is part of a comprehensive program aimed at identifying and pursuing policies to promote the economic stability, health, and overall well-being of women and their families. CAP recognizes that access to the full range of reproductive health care services, including access to abortion, is critical to ensure that all women can participate fully in the economic mainstream, exercise the legal rights to which they are entitled, and determine their own future without government interference or obstruction.

The **Center for Reproductive Rights** ("CRR") is a global human rights organization that uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to respect, protect, and fulfill. In the United States, the Center focuses on ensuring that all people have access to a full range of high-quality reproductive health care. Since its founding in 1992, the Center has been involved in nearly all major litigation in the U.S. concerning reproductive rights, including as lead counsel for the plaintiffs in *Whole Woman's Health v. Hellerstedt*. The Center has a vital interest in ensuring that all individuals have equal access to reproductive health care services.

The **Desiree Alliance** is a lifelong advocacy group supporting reproductive rights, health, and justice. We resist any and all attempts to diminish the reproductive rights that are being taken away from us through bad laws, archaic policies, and

political censorship. Our organization continues the fight for all sex workers to obtain sexual and reproductive services without stigma, shame, and carceral consequences. We collaborate and stand with organizations working in overlapping struggles for the rights of sexual and gender minorities, sexual rights in general, reproductive rights and human rights.

Founded in 1990, **Hispanic Federation** (“HF”) is one of the nation’s leading Latino nonprofit membership organizations with 100+ member organizations. Through headquarters in New York, and offices Washington D.C., Connecticut, Florida, and Puerto Rico, and a program footprint in 20 states with significant Latino and immigrant populations, HF works to support Hispanic and immigrant families and strengthen Latino institutions in the areas of education, health, immigration, civic engagement, economic empowerment, and the environment. Federal immigration law and policy continues to be a top priority for the Latino community. HF believes our immigration policies must respect the dignity of the individual, end the criminalization of Hispanic immigrants and asylum-seekers, and most of all, reflect our nation’s commitment to human and civil rights.

Human Rights Watch (“HRW”), established in 1978 is a non-profit organization and the largest U.S.-based international human rights organization, which investigates and reports on violations of human rights and humanitarian law in some 90 countries worldwide, including the United States. By exposing and calling attention to human rights abuses committed by state and non-state actors, HRW seeks to bring public pressure on offending governments and others to end abusive practices. HRW has filed amicus briefs before various bodies, including U.S. courts, other national courts and international tribunals. In June 2009, Human Rights Watch published the report *Detained and Dismissed: Women’s Struggles to Obtain Health Care in United States Immigration Detention*, which details the challenges women in immigration detention face in accessing gynecological and obstetric care, including abortion services. Human Rights Watch has also published multiple reports related to the poor state of health care in immigration detention, including a June 2018 report entitled *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention*. Human Rights Watch has a substantial interest in ensuring that children in immigration detention have access to comprehensive healthcare services, including abortion care.

Ibis Reproductive Health is an international nonprofit organization with a mission to improve women's reproductive autonomy, choices, and health worldwide. Our core activity is clinical and social science research on issues receiving inadequate attention in other research settings and where gaps in the evidence exist. Our agenda is driven by women's priorities and focuses on increasing access to safe abortion, expanding contraceptive access and choices, and integrating HIV and comprehensive sexual and reproductive health services. We partner with advocates and other stakeholders who use our research to improve policies and delivery of services in countries around the world.

If/When/How: Lawyering for Reproductive Justice ("If/When/How") is a national, non-profit organization that trains, networks, and mobilizes law students and legal professionals to work within and beyond the legal system to champion reproductive justice. Reproductive justice will exist when all people have the ability to decide if, when, and how to create and sustain families with dignity, free from discrimination, coercion, or violence. Achieving reproductive justice requires a critical transformation of the legal system, from an institution that often perpetuates oppression to one that realizes justice. Ensuring that all young people, regardless of race, socio-economic standing, or immigration status, have a meaningful choice about bodily autonomy and are not foreclosed from making important reproductive decisions is a key step in that process.

In Our Own Voice: National Black Women's Reproductive Justice Agenda is a national Reproductive Justice organization focused on lifting up the voices of Black women at the national and regional levels in our ongoing policy fight to secure Reproductive Justice for all women and girls. Formed in 2014, In Our Own Voice is a national-state partnership with eight Black women's organizations: Black Women for Wellness, Black Women's Health Imperative, New Voices for Reproductive Justice, SisterLove, Inc., SisterReach, SPARK Reproductive Justice NOW, The Afiya Center and Women With A Vision. As a Reproductive Justice organization, we believe that women have the human right to control our bodies, our sexuality, our gender, our work, and our reproduction. That right can only be achieved when all women and girls have the complete economic, social, and political power and resources to make healthy decisions about our bodies, our families, and our communities in all areas of our lives. The goals of In Our Own Voice are: (1.) To establish a leadership voice for Black women on reproductive rights, health and justice policy at the national level; (2.) To build a coordinated

grassroots movement of Black women in support of abortion rights and access, including ending the onerous funding restrictions, contraceptive equity and comprehensive sex education; (3.) To lay the foundation for ongoing policy change at the national and state levels that impacts the lives and wellbeing of Black women and their families; and (4.) To engage and motivate Black women as a traditionally underrepresented group to use their voting power in the American electorate.

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) is the nation’s oldest and largest legal organization working for full recognition of the civil rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and people living with HIV through impact litigation, education, and policy advocacy. Lambda Legal has an interest in this case not only because many members of the LGBT community need and use abortion services, and share an interest in preservation of the constitutionally protected right to abortion, but because the landmark cases vindicating lesbian and gay individuals’ constitutional guarantees of liberty and equality share a common doctrinal foundation with the Supreme Court’s jurisprudence protecting procreative decision-making, access to contraception, and abortion.

LatinoJustice PRLDEF champions an equitable society by using the power of the law together with advocacy and education. Since being founded in 1972 as the Puerto Rican Legal Defense and Education Fund, LatinoJustice has advocated for and defended the constitutional rights and the equal protection of all Latinos under the law, and has engaged in and supported law reform civil rights litigation across the country combatting discriminatory policies in numerous areas including gender-based discrimination, sexual harassment of Latina immigrants, and those which purport to limit a woman’s right to reproductive freedom of choice including abortion.

Legal Voice is a non-profit public interest organization that works in the Pacific Northwest to advance the legal rights of women and LGBTQ people through public impact litigation, legislation, and legal rights education. Since its founding in 1978 (as the Northwest Women’s Law Center), Legal Voice has advocated for the judicial and legislative recognition of pregnant persons’ rights, including their rights to make decisions about their pregnancies, to be protected from workplace discrimination, to informed consent and bodily autonomy, and to be free from shackling if they are incarcerated and pregnant or in labor. In addition, Legal Voice

has participated as counsel and as amicus curiae in cases involving the constitutional and statutory rights of immigrants to freedom from gender-based violence and to reproductive autonomy. Legal Voice works to end punitive and unjust policies and practices that undermine the humanity and legal rights of all pregnant people.

Founded in 1929, **LULAC** is the country's oldest and largest Hispanic civil rights organization and our mission is to advance the economic condition, educational attainment, political influence, housing, health and civil rights of the Hispanic population of the United States. With approximately 132,000 members throughout the United States and Puerto Rico, and 1,000 councils nationwide, LULAC's programs, services and advocacy address the most important issues for Latinos, meeting the critical needs of today and the future. LULAC believes that access to health services, regardless of age, immigration status or sexual orientation, is a human rights issue that deeply impacts the life of Latino families in the U.S.

NARAL Pro-Choice America is a national advocacy organization, dedicated since 1969 to supporting and protecting, as a fundamental right and value, an individual's freedom to make personal decisions regarding the full range of reproductive choices through education, organizing, and influencing public policy. NARAL Pro-Choice America works to guarantee every person the right to make personal decisions regarding the full range of reproductive choices. Recognizing a person's right to privacy, dignity, and bodily autonomy and ensuring that all people in the United States—including immigrant youth—have access to comprehensive reproductive health care is crucial to that mission.

The **National Abortion Federation** ("NAF") is the professional association of abortion providers. Its mission is to ensure safe, legal, and accessible abortion care, which promotes health and justice for women. NAF's members include nearly 400 private and non-profit clinics, Planned Parenthood affiliates, women's health centers, physicians' offices, and hospitals. Together NAF members care for more than half the people who choose abortion in the U.S. and Canada each year. NAF members adhere to NAF's evidence-based Clinical Policy Guidelines (CPGs), which set the standards for quality abortion care. Through its supporting organization, the NAF Hotline Fund, NAF also operates a toll-free hotline, which was established in 1979 to help people access unbiased information and referrals to NAF member providers offering safe, high-quality abortion care. The Hotline receives thousands of calls each week from patients, their partners, families, and

friends. It offers factual information about pregnancy and abortion; confidential, nonjudgmental support; referrals to quality abortion providers in the caller's area; limited financial assistance for abortion care; help in understanding state abortion restrictions; and case management for women with special or unique needs.

National Advocates for Pregnant Women (“NAPW”) is a non-profit legal advocacy organization that works to advance and defend the constitutional and human rights of pregnant women. NAPW believes that there is no point in pregnancy when a woman loses her civil rights and advocates for policies that protect the health and welfare of pregnant women, mothers, and their families. Pregnant women and girls, like all other constitutional persons in the United States, have a right to medical decision-making and to access healthcare.

The **National Asian Pacific American Women's Forum** (“NAPAWF”) is the only national, multi-issue Asian American and Pacific Islander (AAPI) women's organization in the country. NAPAWF's mission is to build a movement to advance social justice and human rights for AAPI women, girls, and transgender and gender non-conforming people. NAPAWF approaches all of its work through a reproductive justice framework that seeks for all members of the AAPI community to have the economic, social, and political power to make their own decisions regarding their bodies, families, and communities. Our work includes advocating for the reproductive health care needs of AAPI women and ensuring AAPI women's access to reproductive health care services, including abortion care services.

The **National Council of Jewish Women** (“NCJW”) is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW endorses and resolves to work for “the protection of every female's right to reproductive choices, including safe and legal abortion, medically accurate information, access to contraception, and the elimination of obstacles that limit reproductive freedom.” Consistent with our Principles and Resolutions, NCJW joins this brief.

The **National Institute for Reproductive Health** (“NIRH”) is a non-profit advocacy organization working to build a society in which everyone has the freedom and ability to control their reproductive and sexual lives. NIRH promotes

its mission by galvanizing public support for access to reproductive health care, including abortion and contraception, and supporting public policy that ensures that all women regardless of their immigration status have timely, affordable access to the full range of reproductive health care in their communities.

National Latina Institute for Reproductive Health (“NLIRH”) is the only national reproductive justice organization dedicated to advancing health, dignity, and justice for the 28 million Latinas, their families, and communities in the United States. Through leadership development, community mobilization, policy advocacy, and strategic communications, NLIRH works to further affordable access to comprehensive healthcare for all Latinxs, of all ages and immigration statuses. NLIRH believes that the human right to healthcare is essential to ensuring that all people can shape their lives and futures with dignity.

The **National Network of Abortion** (“NNAF”) funds is a non-profit organization that builds power with members to remove financial and logistical barriers to abortion access by centering people who have abortions and organizing at the intersections of racial, economic, and reproductive justice. With over 70 member organizations across the United States and abroad, NNAF is working to make sure every reproductive decision, including abortion, is supported and free from coercion, and advocates for all people to have the power and resources to care for and affirm their bodies, identities, and health for themselves and their families—in all areas of their lives so that as we shift the conversation about abortion, it will become a real option, accessible without shame or judgment.

The **National Partnership** is a nonprofit, nonpartisan organization located in Washington, D.C., dedicated to promoting public policies that expand opportunity for women and improve the well-being of our nation’s families. We work to foster a society in which workplaces are fair and family friendly, discrimination is a thing of the past, women’s reproductive health and rights are secure, everyone has access to quality, affordable health care and every person has the opportunity to achieve economic security and live with dignity. Through education, outreach and advocacy, the National Partnership is an effective advocate for millions of women and families. The National Partnership is committed to advocating for high-quality, patient-centered reproductive health care that is free from political interference, and we fight to protect and expand access to abortion care for all people.

The **National Women’s Law Center** (“NWLC”) is a non-profit legal advocacy organization that has worked since 1972 to protect and advance the progress of women and their families in core aspects of their lives, including income security, employment, education, and reproductive rights and health, with an emphasis on the needs of low-income women and those who face multiple and intersecting forms of discrimination. NWLC works to ensure that every woman has meaningful access to the full range of reproductive health care, including prenatal care, contraception, and abortion.

New Voices for Reproductive Justice (“New Voices”) is a Human Rights and Reproductive Justice advocacy organization with a mission to build a social change movement dedicated to the full health and well-being of Black women, femmes, and girls in Pennsylvania and Ohio. Since 2004 the organization has served over 75,000 women of color and LGBTQIA+ people of color through community organizing, grassroots activism, civic engagement, youth mentorship, leadership development, culture change, public policy advocacy and political education. New Voices defines Reproductive Justice as the human right of all people to have full agency over their bodies, gender identity and expression, sexuality, work, reproduction and the ability to form families. Recently, in November of 2017, New Voices was instrumental in persuading Pittsburgh City Council to pass a Will of Council calling for equitable access to a full range of reproductive health services and repeal of the federal Hyde Amendment. This call to action exemplifies crucial recognition of the fact that equitable access to comprehensive reproductive healthcare, including the right to access abortion healthcare, is fundamental to the health and well-being of our families and communities, especially for women of color who continue to be disproportionately harmed by restrictive, coercive barriers to comprehensive care.

The **Oklahoma Coalition for Reproductive Justice** (“OCRJ”), founded as a 501©4 in 2010, is a statewide grassroots coalition of organizations and individuals focusing on the advancement of reproductive health, rights and justice in Oklahoma. OCRJ peruses its mission through legislative advocacy, community outreach and education, and litigation. We believe that reproductive justice includes the right to have or not to have a child and respect for families in all their forms. It supports access to sexual education, contraception, abortion care and pregnancy care as well as to the resources needed to raise children in safe and healthy circumstances, with good schools and healthcare and other elements

necessary for bright futures regardless of immigration status. It encompasses respect for all individuals, their partners and families, and for sexuality and for gender differences.

Planned Parenthood Federation of America (“PPFA”) is the oldest and largest provider of reproductive health care in the United States, delivering medical services through more than 600 health centers operated by 55 affiliates. Its mission is to provide comprehensive reproductive health care services and education, to provide educational programs relating to reproductive and sexual health, and to advocate for public policies to ensure access to health services. PPFA affiliates provide care to approximately 2.4 million individuals each year. An estimated one out of every five women in the United States has received care from PPFA. In particular, PPFA is at the forefront of providing high-quality reproductive health care to individuals and communities facing serious barriers to obtaining such care— especially individuals with low income, individuals in rural and other medically underserved areas, immigrant populations, and communities of color.

The **Reproductive Justice Clinic at New York University School of Law**, a law school clinic run under the umbrella of Washington Square Legal Services, Inc., is a group of professors, practitioners, and student advocates working to ensure that all women are secure in their constitutional and human rights to bodily integrity and autonomy, have access to the resources to decide whether and how to have children, and are able to make those decisions in safe and sustainable communities free of discrimination, coercion, and violence. The Clinic pursues litigation and policy advocacy in partnership with leading organizations, with a focus on supporting women and communities that face serious deprivations of their constitutional and human rights as a result of intersectional forms of discrimination, including immigrant women and women of color more generally. The Clinic actively files amicus curiae briefs in seminal reproductive justice and human rights cases.

SisterReach, founded October 2011, is a Memphis, TN based grassroots 501c3 non-profit supporting the reproductive autonomy of women and teens of color, poor, rural women, LGBT+ folx, gender non-conforming people (GNC) and their families through the framework of Reproductive Justice. Our mission is to empower our base to lead healthy lives, raise healthy families and live in healthy communities. We provide comprehensive reproductive and sexual health education

to women and teens, and advocate on local and state levels for public policies which support the reproductive health and rights of all women and youth.

SisterSong is a Southern based, national membership organization. Our purpose is to build an effective network of individuals and organizations to improve institutional policies and systems that impact the reproductive lives of marginalized communities. Formed in 1997 by 16 organizations of women of color from four mini-communities (Native American, African American, Latina, and Asian American) SisterSong has been a leading voice in the reproductive justice movement for more than 20 years. As reproductive justice leaders, we recognize that we have the right and responsibility to represent ourselves and our communities, and the equally compelling need to advance the perspectives and needs of women of color. We work to strengthen and amplify the collective voices of indigenous women and women of color to achieve reproductive justice by eradicating reproductive oppression and securing human rights.

The **Southwest Women's Law Center** is a non-profit policy and advocacy Law Center that was founded in 2005 with a focus on advancing opportunities for women and girls in the state of New Mexico. We work to ensure that all women have access to reproductive healthcare and information to help ensure that women can adequately care for themselves and their families. The Southwest Women's Law Center has been a strong advocate of women's reproductive rights for over 13 years. Accordingly, the Law Center is uniquely qualified to comment on the decision in *Azar v. Garza*.

The **Women's Law Project** ("WLP") is a non-profit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. Founded in 1974, WLP is dedicated to creating a more just and equitable society by advancing the rights and status of all women through high-impact litigation, advocacy, and education. Throughout its history, WLP has played a leading role in protecting and advancing reproductive rights in Pennsylvania. We provide legal representation to all of the free-standing abortion providers in Pennsylvania. We also represented plaintiffs in the landmark U.S. Supreme Court decision affirming the constitutional right to abortion, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). WLP believes that all people should have access to abortion care regardless of their gender, race, class, or immigration status.