



# IMPACT OF THE OVERTURNING OF ROE V. WADE ON IMMIGRANTS

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On June 24, 2022, the Supreme Court issued its opinion in [Dobbs v. Jackson Women's Health Organization](#), overturning the landmark decision [Roe v. Wade](#), and holding that there is no constitutional right to an abortion. Justice Alito, writing for the majority, first held that abortion is not implicitly protected by any constitutional provision, including the Due Process Clause. The opinion further states that although the Due Process Clause protects some rights that are not specifically enumerated in the Constitution, those rights must be "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." Because abortion was not a recognized legal right until the latter half of the 20<sup>th</sup> century, according to the majority, and was until then often punishable as a criminal offense, the court reasons that it cannot fall into the category of activities protected by the Due Process Clause. The opinion also addresses whether the right to obtain an abortion "part of a broader entrenched right that is supported by other precedents". The Court concludes that overturning *Roe* would not upset other precedential decisions that involve fundamental rights not specifically mentioned in the Constitution, like [Griswold v. Connecticut](#) (contraception), [Obergefell v. Hodges](#) (same-sex marriage), and [Lawrence v. Texas](#) (same-sex sexual conduct), because abortion involves a unique moral question not implicated in other cases – the destruction of "potential life". Finally, the Court held that the doctrine of *stare decisis* does not require the preservation of *Roe* because this doctrine is not an "inexorable command" and other landmark Supreme Court cases have overturned prior precedential decisions.

On the other hand, according to [one commentator](#), ending the forced sexual

and reproductive servitude of black girls and women who were forcibly brought into the country was a critical part of the passage of the 13th and 14th Amendments, which sought to protect them from forced pregnancies and provide them privacy and freedom. The opinion in *Dobbs* will likely not be the last word as present and future generations of activists will seek to continue to restore women's rights to privacy and bodily autonomy.

Until then, the *Dobbs* decision will have a devastating impact on the countless women in the United States who will no longer have access to safe and legal abortions, and the demise of *Roe* also carries worrying implications for other precedential Supreme Court decisions, including those that concern the rights of immigrants. Though the majority asserted that overturning *Roe* would not undermine other decisions involving fundamental rights due to the unique moral question posed by the right to abortion, Justice Thomas in his concurring opinion recommended that "in future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*."

[\*Plyler v. Doe\*](#), which held that children of undocumented immigrants have the right to receive a K-12 education in the United States, escaped Justice Thomas' mention, but has much in common with decisions like *Roe* and *Obergefell*. The Court in *Plyler* stopped short of calling education a "fundamental right", focusing instead on the Equal Protection Clause argument that undocumented children would suffer undue hardship due to circumstances outside their control if they were denied access to an education. According to Justice Burger's dissenting opinion, once the Court established that undocumented children are not a suspect class and that education is not a fundamental right, the Court's analysis should have considered whether the legislative classification bore a rational relationship to a legitimate state purpose. Under this rational-basis level of scrutiny, Justice Burger opined that it would not be irrational for a state to conclude that it owes a lesser responsibility to undocumented individuals. He further reasoned that because unlawfully present individuals have no right to be here, the state may reasonably, and constitutionally, elect not to provide them with governmental services at the expenses of those who are lawfully in the state. In the final part of his dissent, Justice Burger remarked at how the majority's opinion effectively set social policy and impermissibly usurped Congress' policymaking role.

The idea that *Plyler* could be the next landmark decision that is threatened is

not purely speculative. Governor [Greg Abbott](#) of Texas has already indicated that he would like to see *Plyler* to be revisited in the aftermath of *Roe*'s demise. On the other hand, Abbott's attempts to get *Plyler* overruled will not be a slam dunk even under the Supreme Court's current composition since providing undocumented children access to public education was not based on substantive due process but equal protection.

In addition to leaving open the possibility for other fundamental rights cases to be overturned, the Court's decision in *Dobbs* will also have a disproportionately severe impact on certain immigrant women who need access to an abortion. The decision will undoubtedly cause the most harm to the women who have the least financial resources available for reproductive care. According to some [sources](#), immigrant women who seek abortions are often lower-income and less likely to have medical insurance than U.S. citizens who seek the same care. While no states currently have abortion laws in place that attempt to prosecute residents who travel to another state to seek an abortion, a now-blocked [Missouri law](#) would have allowed individuals to sue anyone who assisted a woman in crossing state lines to seek an abortion. If similar state laws follow, a criminal conviction of this type could render non-citizens inadmissible to the United States and consequently ineligible for a host of immigration benefits, including visas and permanent residence, as well as leaving individuals vulnerable to being placed in removal proceedings.

Even where traveling across state lines to obtain an abortion does not carry the possibility of criminal convictions, this option will not be available to incarcerated women, including those in immigration detention facilities. Of the thirteen states that have "trigger laws" in place that immediately banned or restricted abortion upon the overturning of *Roe*, seven, including Idaho, Oklahoma, South Dakota, Wyoming, Kentucky, Arkansas and Mississippi, have some of the country's highest rates of incarcerated women. [Reports](#) of women in immigration detention facilities being denied access to abortions, or receiving delayed or insufficient reproductive care, were already rampant. After the Court's decision in *Dobbs*, it is likely that women with the least freedom to seek reproductive care will suffer even more.