

December 8, 2022

Dear President Biden,

We the undersigned civil and human rights, civil liberties, and reproductive health, rights, and justice organizations write to express our concern that existing forms of federal assistance to state and local law enforcement will be used to support state and local surveillance and investigations of reproductive health activities. We urge you to take steps to prevent this.

Your Administration has expressed its strong commitment to protecting access to reproductive health care, including abortion, in the wake of the Supreme Court’s decision in *Dobbs v. Jackson Women's Health Organization*. The White House has declared that it is “committed to doing everything in his power to defend reproductive rights and protect access to safe and legal abortion.”<sup>1</sup> As part of its effort to defend access to abortion and other reproductive health care, federal resources should in no way aid or supplement states’ criminal investigations of reproductive health decisions. Several states have already taken action to prevent their own state resources from being used in such a matter.<sup>2</sup>

Following the *Dobbs* decision, concerns about the surveillance of individuals’ reproductive lives have heightened. Data confirm that law enforcement surveillance disproportionately impacts communities of color<sup>3</sup>—the same communities who continue to face significantly more hurdles in accessing reproductive care, including abortion.<sup>4</sup> We are extremely concerned about the harmful effects of constantly evolving abortion bans compounded by increased surveillance throughout the country. Individuals’ health care activities are highly sensitive, and everyone—regardless of their identity, experiences, or circumstances—should be able to undertake them without being subject to invasive surveillance.<sup>5</sup>

The federal government already provides invasive surveillance and investigative assistance to state and local law enforcement. For example:

- The federal government provides digital forensic services at 17 Regional Computer Forensic Laboratories across the country, many located in states that now ban abortion. Federal staff help state and local law enforcement unlock personal electronic devices, retrieve data from damaged devices, extract from devices data the user attempted to delete, format digital information, and engage in forensic analysis so digital data can be most useful to investigators.<sup>6</sup> The FBI Computer Analysis and Response

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<sup>1</sup> The White House, “FACT SHEET: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services,” July 8, 2022. <https://tinyurl.com/yw8vwu72>.

<sup>2</sup> E.g., Susan K. Livio and Matt Arco, *NJ.com*, “N.J. enacts protections for out-of-state residents seeking abortions as it becomes a ‘safe haven,’” July 1, 2022. <https://www.nj.com/politics/2022/07/nj-enacts-protections-for-out-of-state-residents-seeking-abortions-as-it-becomes-a-safe-haven.html>; see also, Kristen Hwang, *Cal Matters*, “Newsom signs abortion protections into law,” September 27, 2022. <https://calmatters.org/health/2022/09/california-abortion-bills/>.

<sup>3</sup> See, Alvaro Bedoya, *Slate*, “The Color of Surveillance,” January 18, 2016. <https://slate.com/technology/2016/01/what-the-fbis-surveillance-of-martin-luther-king-says-about-modern-spying.html>; see also, Nicol Turner Lee & Caitlin Chin, “Police surveillance and facial recognition: Why data privacy is imperative for communities of color,” April 12, 2022. <https://www.brookings.edu/research/police-surveillance-and-facial-recognition-why-data-privacy-is-an-imperative-for-communities-of-color/>.

<sup>4</sup> Kiara Alfonseca, *ABC News*, “Why abortion restrictions disproportionately impact people of color,” June 24, 2022. <https://abcnews.go.com/Health/abortion-restrictions-disproportionately-impact-people-color/story?id=84467809>

<sup>5</sup> See, e.g., House of Representatives Concurrent Resolution 89, May 12, 2022. <https://www.congress.gov/bill/117th-congress/house-concurrent-resolution/89/text?r=1&s=1>

<sup>6</sup> Jake Laperruque, The Center For Democracy & Technology, “Cracking Down on Federal Aid for Reproductive Health Surveillance: Regional Computer Forensic Labs,” September 8, 2022. <https://cdt.org/insights/cracking-down-on-federal-aid-for-reproductive-health-surveillance-regional-computer-forensic-labs/>; see also, Riana Pfefferkorn, *The Hill*, “Federal government will help states punish abortion — using our phones,” July 1, 2022. <https://thehill.com/opinion/criminal-justice/3543721-federal-government-will-help-states-punish-abortion-using-our-phones/>.

Team (CART) similarly provides digital forensic support to state and local law enforcement across the nation.<sup>7</sup>

- The National Domestic Communications Assistance Center (NDCAC) provides significant support to state and local law enforcement in acquiring private communications and related data. It offers access to a mass database with information on thousands of communications apps and services and information about how to demand data from them. It provides templates to demand sensitive information, such as geofence warrants, and real-time services for analyzing and exploiting technical data to advance investigations. NDCAC hosts 150,000 visits to its law enforcement portal each year, serving over 24,000 law enforcement clients, and its technical tools are downloaded over 8,000 times annually.<sup>8</sup>
- Fusion centers operate across the country stockpiling, cataloging, and sharing a huge range of sensitive information about individuals. Through these centers, federal, state and local law enforcement officials share location information purchased from data brokers, data from automated license plate readers and cell phone tracking techniques, and records regarding use of utilities, motor vehicles, cell phones, and social media. Social media monitoring and Suspicious Activity Reporting (sometimes prompted from unreliable sources) are a significant source of information for fusion centers. The federal government is a major funding source for fusion centers, and it provides fusion centers with access to valuable databases and information sharing tools, such as the Homeland Secure Data Network, the Federal Bureau of Investigation Network, the Homeland Security Information Network, and FBI Criminal Justice Information Services.<sup>9</sup>

We worry that this already harmful use of resources could be coopted by state and local law enforcement to surveil, investigate, and prosecute individuals for their reproductive health decisions or for their provision of reproductive health services, with a disproportionately harmful impact on communities of color. The U.S. has a long history of heavily surveilling and restricting the reproductive lives and bodily autonomy of communities of color, particularly of Black women and girls--consequences of which continue to this day.<sup>10</sup> As communities of color face disproportionate harms because of this history of heavier surveillance and policing,<sup>11</sup> we are especially concerned that the criminalization of abortion will only further deepen those harms. Strong action by the Administration would help ensure that these federal resources do not facilitate state and local law enforcement investigations and prosecutions of people involved in abortion care in states where that care is now unlawful.

Your Administration has already identified how surveillance and collection of sensitive and revealing digital data could be exploited to undermine access to reproductive health care. In a July speech you warned, “when you use a search engine or the app on your phone, companies collect your data, they sell it to other companies, and they even share it with law enforcement. There’s an increasing concern that extremist governors and others

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<sup>7</sup> The FBI describes CART as the “go-to force in the FBI for providing digital forensic services for both agency investigations *and local, state, and federal partner investigations*. See, The Federal Bureau of Investigations, “Piecing Together Digital Evidence,” January 8, 2013. <https://www.fbi.gov/news/stories/piecing-together-digital-evidence> (emphasis added); see also Jake Laperruque, The Center For Democracy & Technology, “Cracking Down on Federal Aid for Reproductive Health Surveillance: The Computer Analysis Response Team,” October 18, 2022. <https://tinyurl.com/CDTCART>.

<sup>8</sup> Jake Laperruque, The Center For Democracy & Technology, “Cracking Down on Federal Aid for Reproductive Health Surveillance: The National Domestic Communications Assistance Center,” September 16, 2022. <https://tinyurl.com/CDTNDCAC>

<sup>9</sup> Jake Laperruque, The Center For Democracy & Technology, “Cracking Down on Federal Aid for Reproductive Health Surveillance: Fusion Centers,” October 5, 2022. <https://tinyurl.com/CDTFusionCenters>.

<sup>10</sup> Dorothy E. Roberts, “Killing the Black Body: Race Reproduction, and the Meaning of Liberty,” 1997.

<sup>11</sup> Susan Nembhard and Lily Robin, Urban Institute, “Racial and Ethnic Disparities throughout the Criminal Legal System,” August 2021. <https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>.

will try to get that data off of your phone.”<sup>12</sup> Your Administration and federal agencies have a responsibility to take action that ensures federal aid does not enable or support reproductive health surveillance.

We urge the Administration to enact policies, practices, and procedures to ensure that federal resources will not be used in any surveillance, investigation, or prosecution of those who seek, provide, or assist in abortion care or other reproductive health care services. These policies must include barring any federal assistance from being used for the purposes of abortion-related surveillance, investigation, or prosecution by state or local law enforcement agencies where abortion care services are criminalized. We are eager to provide support and assistance in advancing this goal, and look forward to the opportunity to work with you further on this important issue.

Sincerely,

Advocacy for Principled Action in Government  
Advocates for Youth  
American Atheists  
American Civil Liberties Union  
American Humanist Association  
Amnesty International USA  
ASISTA Immigration Assistance  
Center for Democracy & Technology  
Center for Policing Equity  
Center on Privacy & Technology at Georgetown Law  
Center for Reproductive Rights  
Civil Rights Corps  
Defending Rights & Dissent  
Demand Progress Action  
Emory CDIC Internal Medicine Advocacy  
Electronic Frontier Foundation  
Electronic Privacy Information Center (EPIC)  
Fight for the Future  
Georgia Health Professionals for Reproductive Justice  
Government Information Watch  
Health Not Prisons Collective  
Human Impact Partners (HIP)  
Human Rights Watch  
Ipas  
League of Women Voters of the United States  
NAACP Legal Defense and Educational Fund, Inc. (LDF)  
NARAL Pro-Choice America  
National Birth Equity Collaborative  
National Center for Lesbian Rights  
National Health Law Program

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<sup>12</sup> The White House, “Remarks by President Biden on Protecting Access to Reproductive Health Care Services,” July 8, 2022. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/07/08/remarks-by-president-biden-on-protecting-access-to-reproductive-health-care-services/>

National Institute for Reproductive Health  
National Juvenile Justice Network  
National Network to End Domestic Violence  
National Partnership for Women & Families  
National Urban League  
National Women's Health Network  
National Women's Law Center  
New America's Open Technology Institute  
Organization for Identity and Cultural Development  
Physicians for Reproductive Health  
Population Connection Action Fund  
Positive Women's Network-USA  
Pregnancy Justice  
Project On Government Oversight  
Reframe Health and Justice  
Reproductive Health Access Project  
Restore The Fourth  
Rhia Ventures  
RHITES (Reproductive Health Initiative for Telehealth Equity & Solutions)  
SIECUS: Sex Ed for Social Change  
Surveillance Technology Oversight Project  
UltraViolet Action  
Upturn  
White Coats for Black Lives

CC: Attorney General Merrick Garland; Secretary Alejandro Mayorkas