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Kim: Welcome back to #SistersInLaw with Joyce Vance, Barb McQuade, and me, Kimberly Atkins Stohr. Jill is away this week, but we miss her and she will be back soon. You guys know the gift giving season is here, and I can't think of a better gift than one of the many things you can find at the SistersInLaw merch store. We are restocked on everything just in time for the holidays. I'm probably not jonesing for a T-shirt at this moment when the temperatures are starting with the numbers two or three, but those hoodies are warm and comfy, I can attest. So go check it out right now at politicon.com/merch.

And we do have a show to do. Today we'll be talking about Biden's pardon and all the reaction to it. We will be talking about the DOJ's investigation finding big problems with the Memphis Police Department. And we will talk about arguments at the Supreme Court in a challenge to Tennessee's ban on gender-affirming care for trans youths.

But before we get to all that serious stuff, the wildest thing is happening right now in my household, which is these little chew antlers, which Snickers really loves. I bought her one a couple of months ago and she loved it and she chewed it. And she didn't even make a dent in it, so there's no way she ate it whole, but it just disappeared, we couldn't find it. We thought maybe it fell behind the couch or something. We looked all around, couldn't find it, and I thought, "Fine, I'll just get her another one." Because it does keep her occupied and she does get anxiety and chewing is good for her. And then the second one disappeared in days. So I'm like, "Okay, she's totally hiding them somewhere." We have torn the house. The house has been cleaned from top to bottom. We've torn this house apart looking for these antlers. And it costs 30 bucks a piece too.

Barb: Oh, wow.

Kim: That's not the point, but I'm like, "I'm going to find these antlers even if I'm going to find them and I'm going to donate them to a shelter." Because she's not getting them back. But I just thought it was... Snickers is probably sitting thinking, "These dumb humans will never find this thing." So I just thought, is there something like if one of your kids or pets or something hid something weird in your house or if there have been some other household mysteries that are particularly funny to you?

Barb: Oh, yeah.

Kim: Barb, I'll start with you.

Barb: Oh, yeah. Oh, yeah. Well, not like that. And I know Snickers knows what's going on.

Kim: She totally does, she sees me looking.

Barb: Snickers is chuckling when you're looking all-

Kim: Exactly.

Barb: Like, "Sucker." We had something kind of similar when our kids were young. All four of them did this when they were young, but one in particular, when kids first learn how to walk, they usually walk before they can talk. And so at eye level for a toddler picking something up and then moving it somewhere else and then being unable to tell you about it is kind of commonplace. And so our number two child walked really early. Most babies walk about, I think 12, 13 months. He was walking eight months. I used to say, "He's the shortest person on the planet who is walking." But he would pick up my keys, which I typically leave on top of my purse in our back hall by our mudroom or the remote control that we would typically have on a little coffee table in the living room. And walk around the house with it and we'd find it in places like the garbage can or a drawer, all kinds of crazy places.

So we really had not only did we have to keep an eye on him like baby gates by the stairs and all the typical things-

Kim: Right.

Barb: ... but all the little household things they would pick up and throw away. And then one last thing, the funniest thing with the remote control, also, he would hold it up to his ear and mouth like it was a phone because he had seen us with these devices and did not understand the difference between the remote control and the telephone.

Kim: He's like, "I got something to say too. I may not be able to talk yet, but I got to tell people."

Barb: Yeah. Exactly. [inaudible 00:04:34].

Kim: That's really funny.

Barb: Yeah. [inaudible 00:04:35].

Kim: Or maybe he thought you all were watching too much TV.

Barb: Maybe. There you go. Maybe so. "Pay attention to me."

Joyce: Oh my goodness.

Kim: What about you, Joyce.

Joyce: I love that, Barb. It reminds me that when our oldest was about that same age, he would hide stuff in his diaper, which sometimes had mixed results. It was like the joys of parenthood abounded. But I just did a spit take with my coffee. Did you see? I saw your reaction. Robert, bless his heart, he was such a sweet baby. We don't really have people who hide stuff in our house, but my cat, Harry, my main [inaudible 00:05:12] cat, who's now 18 years old, bless his heart, Harry used to be quite a hunter in his youth. And he would express his disapproval for Bob, who he apparently thought was not a good provider by bringing me offerings of food. He was like, "Mom's looking a little bit skinny. I'll go out and catch her a little squirrel or whatever and bring it to her."

And one time he brought a little chipmunk inside, but it was not dead. And he proudly laid it at my feet and it began to run through the house. And you guys, I am such a great wife. As Bob began to chase it to try to catch it so he could take it back outside, instead of offering assistance, I pulled out my little iPhone, I think it was my very first iPhone, and videotaped Bob chasing the chipmunk through the house. And he's so pissed. By the end of it, he turns around and he looks at me and he's like, "You know you could be helping." But I did not help, I videotaped, it's a family favorite.

Kim: Oh my gosh. I'm sure you play it each year.

Joyce: Every year, honey.

So there's a lot of turmoil in the world these days. We try to empower you our listeners with knowledge, but sometimes the stress gets to all of us, especially, when things are out of our control. That's why we are such big believers in the power of meditation with Calm. Calm can help you restore your sense of balance and peace when you're surrounded by chaos. And since I've started using it, it's been a while now, finding my center has been much easier. I was never great at meditating before Calm. Challenges and stresses feel more manageable instead of feeling like massive obstacles.

Kim: Calm is the number one app for sleep and meditation. It empowers you to calm your mind and change your life. Calm knows everyone faces unique challenges in their daily lives, and mental health isn't about a one size fits all solution. And that's why Calm offers a wide range of content to help you navigate life's ups and downs with programs like meditations that are designed to help you work through anxiety and stress, boost your focus, build healthier habits, and take better care of your physical wellbeing. One of my favorite things are walking meditations when I'm out walking Snickers or taking a hike. They really are focused on allowing you to still be aware of your surroundings, but still encompass that in the meditation. I find that really relaxing.

Barb: Yeah, I like these alternatives too to breathing exercises, which always convinced me that I'm going to stop breathing. But with Calm, there's lots of great stuff like Sleep Stories, Sleep Meditations, and Calming Music that will help you drift off to restful sleep quickly and naturally. It's so relaxing. It's the perfect end to a stressful day. But when you're feeling overwhelmed, we recommend you try their grounding exercises too. These short guided sessions use sensation, movement and breath work to help you relax and reset. Calm even has powerful expert-led talks designed to help you handle grief, improve self-esteem, care for relationships and more.

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Barb: Well, he said he wouldn't, and then he did. On Sunday, President Joe Biden pardoned his son, Hunter Biden, who was scheduled to be sentenced this week in one of his criminal cases. First, Joyce, let me ask you, you wrote about this pardon in your Substack Civil Discourse this week, and you had some interesting views about these charges. Let's start

there. Do you think that Hunter Biden was properly charged for the gun crimes and the tax crimes with which he was charged?

Joyce: Yeah, so I don't. That has been my considered opinion since he was first charged. I do not think Hunter Biden would've been charged with these crimes if his name was John Smith, right? And it's pretty easy to understand. So there are the two charges, the gun charge and the tax charge. The gun charge actually comes from a statute that federal prosecutors use all the time. It's a time that criminalizes possession of firearms by certain categories of people. And the one that we use it for is people with a prior felony conviction. It's sometimes used for people who don't have legal immigration status who are found in possession of firearms. Hunter Biden though was charged under the provision for people who are addicted to or who use illegal drugs and possess a firearm. Pretty easy to understand why prosecutors don't charge this very often. Something like 10% of the population acknowledges struggling with addiction. Lots of people have guns.

So you'd be using all the resources of the Justice Department to go after people who present little, if any threat to their communities. We can talk about guns, but there is a Second Amendment in this country. And so those sorts of charges are used almost never. And when they are, it's for someone who is really posing a danger to the community. Hunter Biden had this gun for a matter of days before it was disposed of. Charge would not have been brought if his last name wasn't Biden.

The tax charge is a little bit closer. This is a criminal charge for someone who didn't pay their taxes. But Hunter Biden in this situation did pay his back taxes and he paid penalties and fines. And almost always in that situation, a person who goes ahead and makes that payment when they're confronted is let off with those civil and administrative penalties. They are not inconsiderable, right? He had to really, I think, go back and pay everything he owed and then a great deal, including interest. And so it's unusual to see someone charged in this situation. Typically, the justice system says that they have made [inaudible 00:11:55], when they pay what they owe, they're no longer defrauding the public. I think all in the president was correct when he said, "This case was brought in an effort to break my son."

Barb: Yeah, I agree with you, Joyce. And let me chime in on that a little bit. You mentioned in the first instance about the gun charge being used only when you perceive someone to be dangerous. In my 20 years as a prosecutor, I recall using the charge exactly one time, and it was against someone we believed was very dangerous and was planning to commit a mass shooting. But we did have evidence that he had possessed a gun while using illegal drugs. And so we had a charge that we could use to arrest him and then get him into the criminal justice system, get him mentally evaluated for competency and get him the help, treatment, intervention, whatever it was we needed to protect the public. So it was a tool. And sometimes that strategy is called the Al Capone Theory of Prosecution. I'm going to use whatever charge I have to protect the public just as Al Capone was convicted of tax charges because it was difficult to prove that he had been involved in these gangland murders and kidnappings and other kinds of things. And same with regard to the tax charges.

And I know for our listeners, people might say, "Well, was he guilty or was he not guilty?" He's guilty. He was convicted by a jury and he entered a guilty plea to the tax case. But the point you are making, and the point I agree with is that most times

prosecutors are not going to use their scarce resources to go after such a low priority case. In my former office, we had the resources to bring about 1,000 cases a year. And for every case we took, that meant there's some other case we're not going to take. And so as a result, we had something we referred to as prosecution guidelines, and we said, ordinarily, before we're going to take a case, it has to meet this certain threshold or it has to be this kind of crime. And all of the agencies we worked with knew what our thresholds were. And so they knew we weren't going to take these kinds of cases, so they didn't investigate them in the first place.

I do want to say one other thing if you'll indulge me. And that is I am hearing this argument that judges already found that this wasn't selective prosecution or vindictive prosecution. Therefore, Joyce, you are wrong when you say he was targeted for political reasons. I would say those are apples and oranges because selective prosecution and vindictive prosecution are different from what we're talking about, which is an inappropriate exercise of discretion. Selective prosecution means I treated you differently from other people who are similarly situated. Now, can you find other cases where people were charged with this? Yes. And so he's going to fail there. Vindictive prosecution means I charged you only to retaliate against your exercise of some known legal right. Like you took an appeal and your sentencing got reversed, and so now you're back in court. And this time I'm going to seek a more serious sentence against you to get back at you and retaliate for your exercising your legal right.

That didn't happen here either. And so those motions were properly denied, but that doesn't mean that these charges were charged in the way anyone else would've been charged. So that's my view. What do you think about that selective versus vindictive prosecution point, Joyce?

Joyce: Yeah, I think it's a good one. I might be a little bit more aggressive than you on this one. I think I would've been willing, had there been convictions and had there been a normal administration about to come into power so that these cases went forward. I probably would've appealed on the selective prosecution theory. I don't think that Hunter Biden's lawyers were given access and discovery that they needed to make out those potential claims. And I think that there was a lot of indicia that that was the case. But leaving that aside for a minute, I agree with the apples to oranges points. These are legal defenses that have to be proven to a very high standard. That's not what this is about. This is about a common sense assessment that we can make from looking at the incredible laser beam focused on, it was Hunter Biden, Hunter Biden, Hunter Biden for months on Capitol Hill and in the news and in this guilty plea agreement that fell apart.

And it was really amazing how as soon as Joe Biden was no longer the nominee, all of a sudden it was like the Hunter Biden screen just disappeared.

Barb: Who's Hunter Biden?

Joyce: Yeah.

Barb: So interesting. Well, Kim, let me ask you about this particular pardon, because it sweeps far more broadly than just the gun and tax cases that we've been talking about. Not since Watergate, have we seen such a broad pardon? Where is Jill Wine-Banks when you need her?

Joyce: Right.

Kim: No kidding.

Barb: But tell us about this pardon and your view as to whether this is an overreach by Joe Biden.

Kim: Yeah, so this unlike how it's been made to seem on social media, this is actually a complex, complicated case in which there are big pros and cons on each side, I think. Yes, it's broader because I think the issue is, the concern is that Republicans have proven a propensity to use Hunter Biden as a whipping boy, and that he wants to protect him and his family from that on an ongoing basis. Basically, this is an effort to get Republicans to leave him alone, I think. But this is really complicated stuff, right? I struggle with this pardon because I have been spending the better part of my career, particularly, as a lawyer and also as a journalist, trying to support and protect the rule of law and the idea that laws apply to everyone.

And yeah, Hunter Biden pleaded guilty to one of these charges and was found guilty on another. And laws should matter, and I think just wiping them clean in this way, especially, when it's somebody who, yes, I echo everything that Joyce said. She's absolutely right, this prosecution would not have been brought, but for the fact that he's Hunter Biden. But he also gets this benefit because he's Hunter Biden, right? And so that's why for me... And I get it, this is complicated, the president wants to protect his son. He wants to keep Donald Trump from prosecuting political enemies or other people that he wants to go after. But at the same time, he did say that he wouldn't. And in that point, he was making a rule of law point then. So for him to back down after this loss, I just don't know that the president took enough time to explain clearly to the American people his reasoning for it and why he still believes in the rule of law, but that this is an exception.

And I think when that happens, things get cloudy in a way that we can't afford in this moment in time for our rule of law. So I think where I sort of settled is that Hunter Biden is now taken care of. What I would love to see from the president is him using his clemency power for good in other ways, which includes people who are facing harsh punishments that don't fit their crimes, people for whom it would be a great tool in them after they've paid their price for their crimes to reestablish their lives, people who don't have high name recognition like Hunter Biden. If Joe Biden in these final weeks of his presidency uses that power for them, that's important and that will be a great example of the criminal justice power of clemency. But I'm really torn on... I understand why he did it, but I still worry that it makes it harder for me and us to sit here and talk about how important the rule of law is.

Joyce: Mm-hmm. Yeah. So can I just say that I agree with what you said? I just want to put one little asterisk at the top for people who he may not be as familiar with the pardon power as we are, which is just this minor gloss. What Joe Biden did was within the law, the Constitution expressly gives him the ability to pardon people.

Kim: Totally is.

Joyce: I think it's just important to [inaudible 00:20:11], whether or not we think it was a good exercise of that power-

Kim: Exactly.

Joyce: ... he was well within his power, but-

Kim: Yes. The point I was making is not-

Joyce: The point you make [inaudible 00:20:19]-

Kim: ... the law as it applies to Joe Biden's ability to do this, of course he has, presidents have broad pardon power. I meant the fact that Hunter Biden, even if this was a selective prosecution, he committed these crimes. Yes, most people don't get treated this way when they do commit these crimes, but there was a crime that got committed. Usually, for clemency, people have to express contrition and say that they... Biden didn't really do this throughout the prosecution, he sort of-

Joyce: No. He contested it.

Kim: He didn't.

Joyce: Yeah.

Kim: And it doesn't necessarily meet those... They have to do their time, they have to express contrition and say... Those things didn't happen here. And that's why I said I wish Joe Biden had done a better job explaining it.

Joyce: Yeah. Absolutely.

Kim: Because those principles are important and that's what makes me wary, because I think a lot of people are taking this pardon to say, "Well, heck yeah, if Trump doesn't follow the rules, we shouldn't either." And I don't believe that.

Barb: Yeah, I think both legally and as a matter of, I don't know, judgment, it was the right call and the sweeping nature of it, because we've got a president coming in who has pledged to go after his political enemies.

Kim: Yep.

Barb: And how better to get back at Joe Biden than to go after Hunter Biden. And the reason for the breadth I think goes back from 2014 to 2024 is all of that investigation before Congress and by the special counsel about Hunter Biden's conduct with the Burisma Board in Ukraine and Ukraine and China and all. Now, they found nothing, they found no evidence despite very vigorous investigations. And so I don't think there's any there there. But a prosecutor could make Hunter Biden's life miserable just by investigating him. So I think that's why Joe Biden thought it was important to do this. But the one thing I really don't like, and here's where I think I agree with you, is for months he said he wouldn't do it.

Kim: Yeah.

Barb: No, no, no, no, no and then he does it. And I think that's a bad look politically. What do you guys think about that? I know you can't undo what you said in the past, but if there was ever any possibility you were going to do this, maybe circumstances have changed and that's why he thought it was necessary. Maybe he changed his mind, but I think the flip-flop is what feels really bad to me.

Kim: Yeah. I totally agree, which is why I wish he explained it more.

Barb: Yeah.

Kim: I think explanation would've gone so much farther, something beyond that simple statement that he made just to explain that reasoning because yeah, I agree with you totally.

Joyce: I agree too. Elie Honig, our friend, a legal commentator over at CNN, I thought pegged this right. He said, Joe Biden could have said from the get go, "Look, I'm looking at the issue, I'm examining it, I'm following it closely. I'm a big believer in the criminal justice system." And then we wouldn't be here. Let me just defend President Biden, something I don't always do, so I'll do it here. I think things changed. And the things that changed were Donald Trump's suggestion that he would nominate illegitimate candidates to lead the Justice Department and the FBI, people who have publicly said that they believe in the revenge prosecutions that Trump campaigned on. That I think is sort of a game changer.

Barb: Maybe it went something like this. We know this decision was made when the family got together over the weekend for Thanksgiving in Nantucket. Maybe Hunter Biden walked in, stumbled and bumped into Joe Biden and said to him, "Pardon me." And the president misunderstood what he meant. Okay, all right. Bad, very bad. So Kim raised the interesting point. Maybe the way Biden should be thinking about using his clemency power is to use it for mercy for other defendants, maybe without famous names, but who may be deserving of some mercy in the criminal justice system. Joyce, you may remember that when we were in government, President Obama had a clemency program focusing on nonviolent defendants in drug cases who were serving lengthy mandatory minimum sentences, and who would've been sentenced to something shorter under current law. Other advocates have argued that President Biden ought to go further and commute the death sentences of other defendants who are on federal death row. What do you think about that?

Joyce: Yeah, I'm a big proponent of that. I started working in this area actually before we were appointed as US attorneys, when the laws regarding sentencing crack cocaine changed, and I was the appellate chief in my office during the Bush administration. And for months, probably for eight or nine months, I had made a decision that we would consider each of those cases as they came up for requests for clemency or pardon, for commutation or pardon in the Appellate Division. And we sat down around a table and considered each of those candidates. Often speaking with the judge, with people who were impacted before writing recommendations. And I'll tell you the lesson that I learned from that process was that people who were given a second chance did really well. One of the arguments that was used against giving these people commuted sentences and

quote-unquote, early release that was in line with the new sentencing rules was, "Oh, they'll just go out and they'll rob a convenience store and hurt people to buy drugs." Well, guess what? They didn't.

The statistics suggested that they were really very appreciative of the second chance that they'd been given and moved forward. So during the Obama administration, as you say, we worked hard on pardons, it was a day one objective for the president. There's an Office of the Pardon Attorney that sits in the Justice Department. Petitions for a pardon are made to that office and they review them. And so I've taken up for President Biden earlier, now I will criticize. I think that his administration did not get engaged in this work early. There's a huge backlog. For instance, there are 3,000 people in federal prison who are there because they committed nonviolent possessory marijuana offenses. Those people, every one of them needs a good look for a pardon. Some of them may have other criminal history, they may have violent criminal history, they may have behaved in prison in ways that's disqualifying. But those people deserve serious consideration and others.

And I don't think this administration has done the work they could have done. There are still 30 plus days on the clock, and you can do a lot of work in that period of time. So I would tell the folks in the Pardon Attorney's Office, "Cancel your Christmas vacation and let's get on with doing justice."

Barb: Yeah. Unless anybody thinks this is just opening up the prison doors and letting out dangerous people. In the Obama administration, to qualify, people had to have served already 10 years in prison to qualify for the program. But they might've been sentenced to mandatory 40 years or mandatory life for a drug delivery case. And so those are some pretty harsh sentences that I don't know correlated to their objectives in protecting the public or deterring crime.

Joyce: We should say that this is not about saying that people were wrongly convicted, right? Those are people-

Kim: It's the opposite.

Joyce: ... who we're fairly convicted.

Kim: It's them saying that they accept responsibility for it.

Joyce: So you actually don't have to, although, often people would in their petitions, I actually... I won't bring up old sad history. There was a public corruption case in my district where the defendant got a pardon without what I thought was appropriate acceptance of responsibility. But we can quibble, the president has that power.

Kim: He does.

Joyce: It's about doing justice and mercy.

Kim: It's not required, but this is normally the process through which clemency applications are processed and these are the factors that are considered by the president and the folks who

work on clemency and justice on the way there. So I should say that yes, it's not a requirement, but it is something that is usually considered.

Joyce: And so Kim, it's fascinating. Every administration writes its own criteria. You would think that they would be static across administrations. Primarily, they are, but we don't know what it'll look like with the Trump administration coming in. And something that fascinates me is criminal justice reform is really one of the few areas where there's still bipartisan consensus. Maybe we'll see Donald Trump aggressively use the pardon power. I'm not going to be a fan when he pardons all of the January 6th rioters. But if he were to use it for some of these nonviolent offenses, where people have been significantly over sentenced, maybe that would be the small silver lining to what's about to descend on us.

Barb: All right. Well, I have one last question I want to ask you about President Biden's use of the pardon power. Recently, there was a column in The New York Times by Michelle Goldberg and the headline was Trump's FBI Pick Has an Enemies List. Biden Should Pardon Everyone on It. And so there are other commentators who are saying that President Biden should grant sweeping blanket pardons for some of Trump's critics like Liz Cheney and Jack Smith in light of Trump's vow to go after his political rivals. And what Michelle Goldberg was referring to is Kash Patel, who's been nominated to be the FBI director, wrote a book called Government Gangsters that has a list of what he calls members of The Deep State. And it has people like Jim Comey and Alexander Vindman. What are your thoughts about that each of you? Do you think that Joe Biden should do that to protect them? Or does that in some way suggest that they've done something wrong? What do you think?

Joyce: This is [inaudible 00:30:02], right? It's really [inaudible 00:30:03].

Kim: It's just so hard because it's like these are things that go against your gut, right? They go against your gut, but you understand where they're coming from. And it just makes me wonder how the heck did we get here? We know how we got here, but yeah, these are more hard questions. I think this Hunter Biden's pardon is an issue where you can put a lot of things in the pro and con lines. And this is heavy stuff, and I'm glad it's not my job to decide this.

Joyce: I'm in the middle of writing a column about this, I'm sort of working out my views in the process of writing. But I'll tell you one place where I land very firmly is this. We are having this conversation because Donald Trump has made it clear that he intends to pervert the criminal justice system and use it as a tool against his political enemies. And I think we should not get drawn so far into talking about the pardon that we forget that.

Kim: Yes.

Joyce: The pardon questions are difficult because there's some suggestion that accepting a pardon constitutes an admission of guilt. There are some people who will be unwilling to take pardons. Other people will be deeply and legitimately concerned about their safety and about their families and will seek pardons, I think it's very individualized. But we should always remember that we are here because of Donald Trump, not because these people did anything wrong. Amen.

Barb: Yeah, I think the fear, of course, is that this just kind of creates this precedent that on your way out of office, you just get this blanket pardon to everybody. But didn't Trump already kind of do that in the last administration when he pardoned Paul Manafort and Mike Flynn and Steve Bannon and all of those people. So Donald Trump has been a real disruptor in terms of justice norms. And I think when you're trying to navigate that kind of reality, it sometimes causes... it may call for different types of decisions than we've had before.

Well, we've all been victims of ID theft at one time or another, I venture to say. I know sometimes when I had jury trials with ID fraud, ID theft, one of the questions the judge would ask the jurors is how many people have been victimized by this? And it was almost every hand that would go up every time, because it really does hit all of us. We're glad that this podcast is brought to you by Aura because it's crazy out there. Hackers may have executed one of the largest data breaches in history, potentially compromising every single Social Security number. Another 2.9 billion plus records were stolen in an attack on National Public Data, a company that provides personal information to employers, private investigators, staffing agencies, and others conducting background checks. The stolen data includes full names, addresses, dates of birth, Social Security numbers, phone numbers, and even alternate names and birth dates. Even more alarmingly, reports suggest that the hacker group responsible put this information online for free.

Joyce: Well, that is sort of distressing, especially, as we enter the holidays with all of the holiday shopping. Look, if safeguarding personal information wasn't a priority before, these incidents serve as a critical wake-up call. And the risks to personal security have just never been more severe. That's why we're thrilled to be able to partner with Aura. Aura offers comprehensive protection by monitoring the dark web for users' phone numbers, emails, and Social Security numbers, and then it delivers real-time alerts if suspicious activity is detected. Additionally, in the event of a worst-case scenario, Aura provides up to \$5 million in identity theft insurance to give you and your family a robust safety net.

Kim: Aura goes the extra mile by scanning the dark web for your sensitive information and alerting you instantly if anything is found. So when ID theft strikes, don't panic. Aura's US-based, 24/7 fraud resolution team works around the clock to fix it fast and get you back on track. Aura truly is the complete online safety toolkit, thanks to credit and transaction monitoring, virus protection, a VPN, a password manager, parental controls, and much more. And for a limited time, Aura is offering our listeners a 14-day trial plus a check on your data to see if your personal information has been leaked online, all for free when you visit aura.com/sisters. That's aura.com/sisters to sign up for a 14-day free trial and start protecting you and your loved ones. Again, that's aura.com/sisters. Certain terms apply, so be sure to check the site for details and check our show notes for the link.

Well, we've previously talked about the horrific beating death of Tyre Nichols during a traffic stop in Memphis last year. Now, the Justice Department has completed an investigation and has revealed deep systemic problems within the Memphis Police Department far beyond the Nichols case. According to the report it released this week, the Memphis Police Department has used excessive force at a disproportionately high rate with Black people. So Barb, this comes after a six-month investigation that was started as a result of Nichols' awful death. Remind us what happened there, including the Scorpion unit that was in place there and what the DOJ had to say about it.

Barb: Yeah, well, you may remember, this was in the summer of 2023, Tyre Nichols was stopped in a traffic stop. And there was video of all of this, there was dash cam video. And he was driving incredibly recklessly, so the stop is not problematic. But what happened according to the report is when they first stopped him, they escalated the situation by using a taser on him when it seemed unnecessary. They saw that as excessive force. And then he ran from them. And when he ran, they chased him down. And not only did they use sufficient force to capture him, apprehend him, which they're allowed to do, they used excessive force to punish him. They kicked him, they punched him. And then when he was asking for his mother and needed help, we saw officers on camera just sort of milling around without rendering help to him. And he died three days later.

And so this led to this investigation and this finding that the Memphis Police Department uses excessive force and discriminates against Black people. And in particular, as you asked about this Scorpion unit, when I read about this unit, I thought, "How could people not know what a bad idea this is?" What could possibly go... So often you would see these... maybe you both have seen these things, these law enforcement task forces with some very aggressive sounding name. We're going to call ourselves Dragon, and it's some acronym for something. It really creates this image of machismo. And in this Scorpion unit, some of the things they said is this unit used what they call a saturation strategy, where they're just sort of driving all around the city. Their goal was to target drugs and guns and violent offenders. But their biggest goal and the measurement of success was their arrest numbers. So the statistics were how many people did you arrest? Not necessarily how much did you reduce crime?

And so they had an incentive to arrest as many people as they could. And they used force against unarmed people, excessive force, rather than trying to deescalate violence, they would often escalate violence. And so this unit was disbanded after Tyre Nichols' death. It reminds me of... Kim, you know your Detroit history. Remember during the 1967 Rebellion riots that we had in Detroit, there was a unit called S.T.R.E.S.S.

Kim: Yes.

Barb: And S.T.R.E.S.S., same thing, it's some acronym, we're going to stress the criminals. And it was this idea of a show of force occupying army. I think the idea is some sort of deterrence, but instead it becomes this us versus them mentality. Instead of being part of the community to protect public safety, it's all about we're going to beat up the bad guys. And it's just such a bad incentive. So that's what prompted this investigation, and that was the finding with regard to Tyre Nichols.

Joyce: Yeah, just call yourself criminal cops next time instead of Scorpions, right?

Barb: Right.

Joyce: [inaudible 00:39:19] Police Service. Protect and serve.

Kim: Honestly. Oh my gosh. So Joyce, we've talked about a lot of federal investigations into Police Department practices and consent decrees, but help us better understand the role of the DOJ Civil Rights Division here currently under the leadership of Assistant Attorney

General Kristen Clarke. What are you worried about in terms of what may happen when a new administration comes in?

Joyce: How long do you have? So look, I'm pretty worried about this. I'm a fan of the consent decree process, and I'll tell you why. But I'm old enough to remember that under Jeff Sessions, the Justice Department severely restricted enforcement of consent decrees. And if the new administration takes that same view, it means departments with substantial patterns and practices of discrimination will go unchecked. One of the big, largely unspoken reasons that the Civil Rights Division uses consent decrees, is it sort of a reminder to everybody, "Hey, we are here and we may not have the resources to do this in every police department across the country, but you'd best watch yourself and check yourself because if not, DOJ does have a profile here and we will come after you and look..." Go ahead, Kim.

Kim: Well, I was going to say, and it's important to say that a lot of these cities, it's called a consent decree. They will realize like, "Oh man, there's a problem here." And they often welcome this review and the recommendations as to how to make their police departments better. This isn't a punishment, it's a reform effort.

Joyce: It isn't-

Kim: Well, not everybody.

Joyce: It is and it isn't. But I think that's a good point and it's interesting when you know that, for instance, some of the cities that have had consent decrees, it's not all Ferguson, Missouri, it's Seattle, right? Which is not a place that we think of as a Bastion of Hate, but their Department had a consent decree. And so what happens is in cases where the Department can prove a pattern or practice of illegal conduct by a local or state agency, DOJ encourages, the operative verb here, the jurisdiction to enter into a formal agreement known as a civil consent decree, we just call them consent decrees. And it's actually entered as a court order and overseen by a judge. And it means that the jurisdiction has agreed to improve its practices. DOJ often will offer technical support or other financial resources to help the Department improve.

And so this insurance of independent judicial review and the approval for the decree means that the Department really has to uphold its obligation to fix the problems if necessary. The consent decrees allow for prompt remedial measures if the Department breaches. And so the amazing thing about this is because this is a civil standard, it is difficult to prove a criminal case even in a blatant, what I would call a blatant homicide like the death of Mr. Nichols, civil standard. When you sue a department for these pattern and practice issues, and that means that by and large state and local law enforcement, when they're encountered with this situation, they will go ahead and enter the consent decree because otherwise they're going to lose in court, it's going to be expensive, it's going to be embarrassing. Oh, look, DOJ is extending the hand. They get to look like the good guy and play a role in fixing their own program.

So I think unfortunately, depending on the pleasure of the next attorney general, this could all be gone. And by the way, it's not just police excessive force cases, the Civil Rights Division under Kristen Clarke has launched a really impressive portfolio of prison

cases, pattern and practice of discrimination in prison. Those cases too are jeopardized by this.

Kim: And I want to say when I said people, it's usually not the police departments and certainly not the police unions. When I say that we often see people after a consent decree in a city welcoming the effort, it's usually mayors, city councilors, people who have heard from those in their constituencies, elected officials who know that it is maybe not the best look to fight the DOJ when it comes to trying to fix discrimination in their police forces. I just want to be clear that what I was talking about.

Joyce: Yeah. You haven't lived until you've seen a police chief try to pretend he's happy about the consent decree, right?

Kim: Oh, 100%. No, no, no. No, it's not that, but there have been in situations. I would also do one minor correction to you as somebody who is from Missouri by marriage now. Ferguson is in Missouri, not Missoura.

Joyce: You're right.

Kim: Those are two different places.

Joyce: My mom was born in Missoura, and she said Missoura, but I have recently been told authoritatively that that is very old school, my mom's generation.

Kim: No, it's still true.

Joyce: Now it's Missouri, not Missoura.

Kim: No, no. Missoura still exists, it's just in the western part of the state. Ferguson-

Joyce: Oh, that's great.

Kim: ... is just outside St. Louis. That is Missouri, Kansas City and other places like Sedalia where my father-in-law is from. That's Missoura.

Joyce: This is an awesome geography lesson. I love this.

Kim: Yes, it is. Anyway, back to this case.

Joyce: No extra charge to our viewers for that.

Kim: Well, and one other quick point I want to make about the Memphis case is that I know some people will see this and say, "Well, the Memphis Police Department is, I think 50%, more than 50% Black, the officers and the police chief there is Black. How is this racial discrimination?" You all, it's in the system. If there is a system, which many, if not most police departments are based upon, that has institutional racism in it, even if the individual officers are the ones through which it is carried out, it's still racism. If police departments treat Black people, Black men different proportionally than they do everyone

else, it doesn't matter. It's because there is this longstanding idea that Black people, particularly, Black men create a bigger threat, are more dangerous than other people.

And remember, the use of force standard is subjective. It is based on an individual police officer. So if police officers treat Black people as more dangerous and are more likely to pull out a taser, a firearm, a baton, whatever, for them, it's still systemic, even if the entire police force is Black. That doesn't make the difference here and that's worth pointing out in this case. So I want to ask you guys one last question. One interesting thing I found in this report is that it said that prosecutors and judges told the DOJ, the police officers don't seem to understand the Constitutional limits on their authority. Holy mothballs, that is crazy. That was really shocking to me. What do you think the solution to that is? How can a police officer with the ability to use deadly force not know where the Constitution limits that officer's authority?

Barb: So I'll start this one. When I was a US attorney in the Eastern District of Michigan, we had a consent decree with the Detroit Police Department. And excessive force was one of the issues they had there. And when they really turned the corner, certainly, training is a big part of this. The reason this is illegal is because it violates the Fourth Amendment right against illegal searches and seizures. When you are taking someone's liberty, when you are beating them, you are seizing them, you are seizing their body. So training is certainly part of it so that people understand how much force you can use. And typically, you're allowed to use one level of force more than the suspect is using. But if a suspect is just engaging in verbal abuse, that's different from somebody who is posing a threat to yourself or to the public.

But I think the biggest thing that I saw, what really made a difference was leadership. When there was a police chief who cared about reform, they were able to get it done. There is a county sheriff I've worked with named Jerry Clayton, Sheriff of Washtenaw County, where Ann Arbor is. And he had a great phrase, he said, "Culture eats policy for breakfast." And so you could have policies and you could have training, but it was really all about culture. And having a good leader who expressed that culture, walked the walk and made sure people understood, we're not out there to bust heads, we are out there to keep the peace. And so de-escalation is the way we should approach our jobs, not immediate escalation with use of force.

Joyce: So they must teach police chiefs at training to say that culture eats breakfast for lunch every day. Because my chief, who I adored, A.C. Roper used to say that too. And I have the same response, Kim. I think this training is required, right? Barb, I forget what it is. Is it four months for a person to become an agent at Quantico to become an FBI agent? Training is short. In many police departments, officers are underpaid and need only have a high school education in order to get the job. So training does matter, right? Explaining Constitutional principles is important, but it's culture. And it has to be top down. If the people at the top of the organization are just doing it in a routine, check the box way, then you've got problems. It has to be a day in and day out commitment to a culture of service and an understanding that police officer's job is to protect the civil rights even of people when they're in an uncomfortable situation. That's something that has really been permitted to evaporate in law enforcement.

And I'm not being critical here because I get that police officers have difficult and dangerous jobs, but they have to do that job in a way that serves the Constitution and

people. And perhaps a big part of that is valuing their service and making sure that they have decent jobs with a decent paycheck.

Kim: There are lots of reasons to be excited for the holidays, but one you need to hear about is the sale at Honeylove. We are huge fans, and now is the perfect time to add to your wardrobe. I love lounging by the fireplace in their insanely comfortable leggings. I really like them. Honestly, I've been wearing them under my dress this week because in D.C. it has been frigidly cold and leggings are your friend. And they have a lot of other great seasonal options too. Comfort and confidence are a real treat, and the gift-giving season is the perfect excuse to enjoy both with Honeylove.

Joyce: Don't start a new year stuck in uncomfortable shapewear. Honeylove has revolutionized the shapewear game to give you incredible support and comfort. So say goodbye to uncomfortable underwire and bulky fabrics that trap heat. You'll love how Honeylove's supportive bonding eliminates the need for wire without sacrificing lift. I have to say, we don't talk about this stuff in public too often, but I've been super pleased with the garments that I have.

Barb: No, we don't, Joyce. No, we don't.

Joyce: Well, you never do. I'm a little bit more open to it, but I don't love it. But I will say being comfortable when you're dressed up is sort of liberating. Everything is made with fabric that's soft, so you'll want to leave your Honeylove on all day. And Kim's right, now that it's getting colder, it is really cold, it's 20 degrees in Alabama right now. Honeylove is perfect pairing for cozy winter sweaters. And thanks to targeted compression technology, you no longer have to feel like a stuffed sausage while you're wearing effective shapewear. You'll immediately feel and see the difference. This shapewear is the perfect base layer for holiday party outfits, and they have so much more to offer.

Barb: Well, I don't know about shapewear and stuffed sausage, but let's just say hypothetically, Joyce, I were someone willing to talk about undergarments-

Joyce: Wow, you're really opening up Barb.

Barb: Hypothetically, I might say that one of the great attributes of Honeylove is that for someone maybe I know with very narrow shoulders, Honeylove has the perfect kind of cross-style racerback bras that really work for someone with narrow shoulders. So get yourself the gift of comfort at a discounted rate. Honeylove is having a huge site-wide sale. And for a limited time only, our listeners get an additional 20% off with our exclusive link. Visit Honeylove.com/sisters and let them know we sent you when the survey asks. Indulge a little and give yourself the gift of comfort. Treat yourself to the best shapewear on the market. Shop Honeylove's holiday sale, and save an additional 20% off site-wide at Honeylove.com/sisters. Use our exclusive link to get 20% off at Honeylove.com/sisters to find your perfect fit. After you purchase, they'll ask you where you heard about them. Please support our show and tell them we sent you. It's time to ditch the wire for good thanks to Honeylove. The link is in our show notes.

Joyce: So you all, we are back to Supreme Court season, and on Wednesday, the Supreme Court heard oral argument in *Skrmetti*, a case about access to medical treatment for transgender

people. The issue involves a Tennessee law that limited treatment options for transgender youth even when they had parental consent. So Kim, let's make sure we understand the precise contours of this case, because I think in many ways it's been presented as something that it is not. The lawsuit doesn't challenge the entire law, correct?

Kim: That is correct. So the ban in Tennessee bans both medical care for minors only for gender affirming care. So things like hormone treatments, things like puberty blockers, medical care that would help youth adolescents, primarily, who are trans. And it also bans surgery. So gender reassignment surgery for minors is also banned. This challenge is only to the medical treatments, and there is a difference, a very important legal difference, a legal reason why the challengers took this path.

Joyce: What was the precise issue that the Supreme Court took up and who were the parties in the case?

Kim: Yeah, so the parties are, the challenge was originally [inaudible 00:54:25] by people in Tennessee, trans individuals, their parents, their families, who sued to challenge this law alleging that it is a violation of the Constitution's Equal Protection Clause because it discriminates on the basis of sex. Essentially, their argument is, in this case, this law as it applies, and this explains why they're only challenging the medical and not the surgical, it takes people and discriminates against them on the basis of sex. Which means a young person, for example, who is being treated for cancer and wants to use puberty blockers so that they can preserve their fertility after the cancer treatment would still be allowed to do so if they were not transgender. But if they're transgender, they cannot. And the challengers are saying, "Look, similar to how the Supreme Court ruled in a statutory case, which held that transgender people cannot be discriminated against under federal laws that prohibit against people for discrimination on the basis of sex, discrimination on basis of someone's sexual orientation falls under that."

So these challengers were saying, "Well, let's keep that same energy when it comes to a Constitutional claim like the one that they are saying so that they would not treat someone differently because they are not trans than when they're trans." Obviously, when it comes to the surgery, that argument doesn't hold, right? Because only trans people would be getting this, there's nothing to compare them to. But when it comes to medical treatments, it's clear that other people can have access to hormones, puberty blockers, all the things that are being used here. But they're only denying it to trans people, and that that violates the Constitution. It seems like a sound argument to me, but...

Joyce: It really does, and I think your explanation of it is really perfect because it helps us see how nuanced the lawsuit was, right?

Kim: Mm-hmm.

Joyce: Whether they agree or not, they sort of spot the argument about surgery, and they say, "But look, if a cisgender kid could get puberty blockers, then we can't deny those to trans kids and uphold equal protection principles." It seems straight up. And so this is the Tennessee law. Barb, it's not limited to just Tennessee, right? The Supreme Court's decision when it comes down, it's going to impact a number of other states too.

Barb: Yeah, I think there are something like 26 states that have laws prohibiting transgender medical care. And so if the Supreme Court is to say, "Hands off, there is no Constitutional right to this. Each state gets to decide its policy and its laws on these things." Then that means all of those 26 states will be able to enjoy that same protection. And I think we could even see other states who didn't know what the status was or who are watching decide that they too want to have these kinds of laws. So I think it's going to apply to Tennessee, to the 26 states involved, and maybe we start to see some others decide to be more aggressive in this area once the lay of the land becomes a little bit clearer.

Joyce: Yeah. So Kim, let's talk about the lay of the land. We both listened to the argument and we've both suggested that it made a lot of sense, the government's argument. But based on the argument itself and what you heard from all of the justices, not naming any names, but Sam Alito, how do you expect this case is going to come out?

Kim: Yeah, I expect that this law will be appealed. I think it'll either be 6-3 or maybe [inaudible 00:58:11] with Amy Coney Barrett doing some sort of concurrence descent type of thing that she tends to do. But I think the law will be upheld. It's really interesting because that statutory case and just a little bit of law school for listeners, when you have a challenge to a statute, which means a law that was passed by Congress or a state legislature, that gets a different analysis than a challenge based on a Constitutional right. So there was a case called Bostock, which we've talked about, in which the Supreme Court, in an opinion written by Justice Neil Gorsuch said that Title VII, the federal law, a statute that prohibits discrimination in the workplace based on gender also applies to LGBTQ folks if you're discriminating against them because they're LGBTQ.

Because essentially, if somebody who, let's say you have a person who is treated differently than another person, and the only difference is their gender identity, that is gender, right? And I think that that was the right decision. So this is basically testing that in the same way under an Equal Protection challenge, but the same idea in a Constitutional challenge here. Neil Gorsuch did not say a single word during the entire argument, including when Sam Alito during arguments basically swatted away that precedent like it was just a little annoyance, like it was some sort of fly. And Gorsuch, I think if there was an argument to be made saying, "Well, no, let's consider a little bit more how this decision based on a statute might apply in this case, at least the rationale." That would've been the time to do it. His silence to me spoke volumes that that isn't where his head is at.

Also, one of the things that happened during this argument, and you guys, it's on the Supreme Court's website if you want to listen to it yourselves. But really most important thing that say, Justice Brett Kavanaugh seemed to want to clarify is just, "No matter how this case comes out, we'll still be able to ban trans kids from playing sports in school, right?"

Joyce: Yeah. That was the most painful part of the whole argument, right? Was when he asked that. And I'm like, "That is not the issue in this case."

Barb: No, but you know what he's all about. He always wants to remind you, "I coach my daughters in basketball."

Kim: Yes.

Barb: "I love women. I am not a sexist. I don't abuse women."

Kim: "But I don't want trans, I will be happy to throw trans kids under the bus when it comes to playing sports in schools." So I don't expect him to be the most sympathetic to the arguments being made in this case. So yeah, I don't think the outcome will be what I would like.

Joyce: This should be a clear Equal Protection decision because of the strategic choice that the plaintiffs made to take surgery off the table here. It's just I can't wait to watch them contort themselves to screw these kids over. I can, I hope that they won't, but boy, it's going to be bizarre to watch this one evolve.

Kim: And I can't wait for Justice Jackson's dissent because she very poignantly pointed out that there is not a lot of difference between this and the miscegenation laws that were in place before *Loving v. Virginia*. That's laws that outlawed marriage between people of different races because this law is not about, as Tennessee claims protecting children and making sure that they are not harmed from the unknown consequences of these treatments. No, it's to protect the people who are not trans kids so that they feel better about themselves. The same way that these miscegenation laws were meant not to protect people like me, who, gosh, I could face such terrible things in the world by being married to somebody who was outside of my race. It was to the other people who didn't want to see people like me and my husband. It was meant to protect them. And this is the exact same thing, and I cannot wait for her, she's going to spit fire.

Joyce: So I have to ask you a question on that basis. If you could only have one shero in the room, would it be Justice Jackson or would it be Solicitor General Elizabeth Prelogar? You only get one.

Kim: Oh, yeah, throw Sonia Sotomayor, who's also [inaudible 01:02:35] fire in there. That's hard.

Barb: Well, I'll start and take Justice Jackson because I heard her say in a slightly understated way, "I'm a little concerned and nervous here when I hear you other justices saying, "Gee, maybe we shouldn't wade into matters involving medical care. That's beyond our ability to comprehend." Are you kidding me?"

Kim: No kidding.

Barb: [inaudible 01:02:58] willing to wade in on other things like abortion. No problem. [inaudible 01:03:03], no problem, but [inaudible 01:03:04].

Joyce: We are so lucky to have all of them as our shero.

Kim: I agree.

Joyce: I got to say-

Kim: We shouldn't choose between them.

Joyce: ... there are bad things in this era, but there are also some rays of light out there. So Barb, when do you think we're going to get a decision? And what's the state of play for young transgender people who are impacted by this law until that decision is handed down?

Barb: Yeah, unclear. There's sort of the cable television installers of the justice system. "We'll get you an opinion anytime between tomorrow and July 1st. So you need to just wait around at home because we'll be delivering it sometime in that range." So no telling. It's usually the real close ones, the 5-4s that come out late, late like that, late June, July. And as Kim said, I am not sure we're going to see this one be that close. I think there will be some dissenters. I think we'll see at least three dissenters here. So I think as I said, really it could be anywhere between in a few weeks to many months down the road. But as you point out, the really tragic thing I think is the kids who are left in limbo during this time. We don't know how they're going to decide.

Meanwhile, if you're a family living in Tennessee or any one of these other 26 states where this care is banned, what are you thinking about, right? What do you do? How do you care for your child in a way that makes most sense within your family and within your doctor's care? Because now you don't get to make those decisions anymore, the state gets to tell you what you can and can't do. And so I think if you're in one of those states, you need to prepare yourself that this could be a ban that sticks. And if you're in a state where they don't already have such a law but might be inclined to pass one, you too might be [inaudible 01:04:53]. These are hard decisions. Should we move? Should we move our family? Should we go out of state to get this care? These are really just awful choices to force families to make.

Kim: The holidays are all about surprises, and today's sponsor, OneSkin is really taking that to heart. As the first company to target skin aging at the cellular level, OneSkin wants to give you the gift of healthy aging for free. Throughout December, you'll get a free travel-size product valued at up to \$42 with every order that's \$125 or more. The best part is you'll get a different gift each week. The difference between OneSkin's product and others on the market is that OneSkin is formulated with their proprietary OS-01 peptide. It's a peptide that its founders, four skin longevity scientists developed after testing 900 other ingredients, plus it's scientifically proven to switch off the aging, dysfunctional cells that cause lines, wrinkles, and thinning skin. And I just have to say one of the things I love about it most is just how good it feels. I'm not a scientist, but I do know that when I use the moisturizer and especially, the sunscreen, it not only feels really good and I know it's protecting my skin, but it blends in so well.

And as a Brown person, our Brown listeners know out there that when you put on sunscreen, it can sometimes make you look like faintly purple or metallic and this doesn't. So I was sold on that alone.

Joyce: The sunscreen really is great. Now, I do not turn purple or metallic, but I sometimes turn... I'm a Jewish girl with Mediterranean skin, I sometimes turn a little bit pasty white with sunscreen. And I really like this one. Whether you're on the hunt for the perfect gift or treating yourself, now is the time to try OneSkin. With every new purchase of \$125 or more this month, you'll receive a free travel size product and it changes each week. So I think I'm going to order every week from now until the holidays. There's always a

surprise gift waiting for you. For a limited time, save 15% with code sisters when you check out at OneSkin.co. This holiday season, invest in your skin's long-term health because healthy aging is really a gift.

I never get tired of the compliments I've gotten since I started using OneSkin. True Story, walked into the dermatologist for a skin check earlier this week, and the tech said, "Your skin looks so good, what are you doing?" And she wondered if I had gotten a peel. And I was like, "No, it's OneSkin." It's a confidence booster. And I think I know why I keep getting the compliments. Whether I'm out in the wind or warming up next to the heater, I use OneSkin's OS-01 FACE Topical Supplement to fight back against dryness. And that means my skin is ready for anything the elements throw at me. I really especially love that OneSkin's regimen has worked so fast and the formulas feel so good when you apply them. They're refreshing, and I am certain that you will be a big fan too if you try it.

Barb: Well, I am neither purple nor metallic, nor am I Mediterranean, but I do have pasty white skin because of my Irish ancestry, and OneSkin works for me too. It was founded and led by an all-woman team of skin longevity scientists. Oneskin is redefining the aging process with their proprietary OS-01 peptide, the first ingredient proven to help skin look, feel, and behave like its younger self. Get 15% off with code sisters at OneSkin.co. That's 15% off, OneSkin.co with code sisters. After you purchase, they'll ask you where you heard about them. Please support our show and tell them we sent you. Invest in the health and longevity of your skin with OneSkin. Your future self will thank you. You can find the link in the show notes.

Kim: Okay. Well, we now have reached to the point in our show which we love the most, which is answering questions from our audience. If you have a question, don't forget to drop it to us at SistersInLaw@politicon.com or tag us in the various socials. I am no longer talking to my ex, but I'm on Bluesky and Threads. I know you can find the rest of us in various socials too. And we will get through as many as we can. So up first this week, we have a question from Curious. I like the name. Curious asks, "Can Biden pardon the undocumented to protect them from deportation?" Ooh, that's a good question. Barb, what do you think?

Barb: Yeah, this is a great question and I think the answer is no, because the pardon power is about pardoning somebody for a crime against the United States. So that would be a federal offense. When it comes to deportation, those are typically handled as administrative matters. You are here without documentation which renders you deportable. Sometimes people are also charged with a crime for that. My former office never charged a crime simply for being here unless you had already been deported and had entered the country after an order of deportation and you had committed a violent felony or a crime of what's called moral turpitude. But it is not possible to pardon people from deportation. There are some things the president can do with his executive authority to defer deportations, as we've seen before with DACA and some other things, but that's not the kind of relief for which the pardon power is designed.

Kim: All right. And our next question is from Ben who asks, "Does the president have any ability to overturn or pardon a civil action from the federal court? Specifically, is Giuliani dragging his feet in hopes of a Trump rescue?" That's an interesting question too. Joyce, what do you think?

Joyce: Yeah, it really is a great question because these are the things that as lawyers we take for granted and don't always take the time to stop and explain properly. So Ben, thank you for the question. The Constitution gives the president the right to grant pardons in criminal cases. It does not apply to civil cases. So presidents have this very broad pardon power that we talked about. It even includes cases that are brought in Superior Court in the District of Columbia or military courts, it doesn't expand to impeachment. It does not include state cases, it's only for federal criminal cases. And it is not for civil cases any place. So Giuliani, if he is waiting for a civil pardon from Trump, has sort of lost his path. Maybe he has already done that anyhow, but he won't be finding any support from that quarter in regard to Shaye Moss and Ruby Freeman's very well-deserved judgment against him.

Kim: And our final question comes from Steve who asks, "I learned in high school civics class that the Constitution says all revenue bills have to originate in the House. Does that include tariffs?" Well, first of all, Steve, I love your civic education nerdiness. That warms my little nerdy heart. And the answer is it does include tariffs, but if the question is directed to ask whether Donald Trump has the power to levy the kind of tariffs he has promised to, the answer is yes. You are right that such revenue bills have to originate by Congress specifically in the House, and then it's passed to the Senate instead of the other way around before it's signed by the president. But in this case, there are several laws that are already in place that have delegated a lot of authority when it comes to tariffs to the Executive Branch through the Treasury Department.

We know this because many presidents have done it before. Donald Trump is not the first president to have levied high tariffs, he did that in his first term. Keep in mind that those tariffs were kept in, many of them, not all of them were kept in place by Joe Biden when he came into office. Clinton levied tariffs, Bush, they all did under federal law, that gives authority to the Executive Branch to do it. So if your question is really, can Trump put these tariffs on Mexico and China and Canada without a new action by Congress? The answer is yes.

Thank you for listening to #SistersInLaw with Joyce Vance, Barb McQuade, and me, Kimberly Atkins Stohr. Jill will be back soon. Follow #SistersInLaw on Apple Podcasts or wherever you listen. And don't forget to give us a five-star review. You may not think it helps, but it really does. It jiggers the algorithm to make sure that others find our show too. And definitely show some love to this week's sponsors, Factor, Calm, Aura, Honeylove, and OneSkin. Their links are all in the show notes and they are the reason we are able to bring you this podcast every week. So we really want you to support them. We will see you next week with yet another episode of #SistersInLaw.

He doesn't like surprises or his birthday, so this will be awesome. [inaudible 01:14:48].

Joyce: Really sounds like my husband.

Barb: I don't like surprises either. Don't ever surprise me. I don't like surprises. I like to plan to process.

Joyce: Some year when we have time, I'll tell you about Bob's surprise 40th birthday party roast, which included an appearance by the police officer who arrested him for drinking in public when he was 18 years old.

Barb: Oh, that's awful.

Joyce: Oh, it was awesome. He shook everybody's hand on the way in the door. We blew up the arrest report. It was outstanding.

Barb: Joyce, awful.

Joyce: He was a week away from retiring when I tracked him down and found him.

Barb: Remind me not to marry Joyce.

Joyce: Oh, it was so great.

Barb: Not doing it.

Joyce: It was so great.

Barb: Not doing it.

Joyce: My mother-in-law enjoyed it more than anybody else who was there.