

Joyce: Welcome back to #SistersInLaw with Kimberly Atkins Stohr, Jill Wine-Banks, Barb McQuade, and me, Joyce Vance. Before we start the show, big news for the knitters among our listeners but also for everybody else. The new #SistersInLaw ReSiStance Mini Tote is finally ready for order, and you all will love them. I've got my knitting in them, but I'm already thinking about a bunch of other usages, including taking your supplies along with you if you happen to make your way out to a little protest in a week or two. So I know you'll enjoy them. You'll find them at politicon.com/merch, but we are all excited to be picking up that vibe for summer.

Now, let's get onto the show where we'll discuss the start of opinions-palooza, the last month of the Supreme Court term where we will be hearing, I think, still just shy of 30 opinions left to come. Also, we'll be discussing the changes the Trump administration has made in its guidance to hospitals and doctors about when emergency abortion care has to be provided to stabilize or save a patient. And finally, we'll be discussing travel ban 2 because, yes, the Trump administration is at it again.

But before we dig into all of those topics, you all, it feels like everybody has been talking ever since it's started Thursday afternoon about the breakup, the bromance meltdown, between Donald Trump and Elon Musk. And we are taping Friday afternoon around 3:30 Eastern Time. I just wanted to get your take. This is really, in some ways, all everybody can talk about right now. Do you think it's important? Are you less interested? Kim, what are your thoughts?

Kim: Yeah. Just to the second part first, it's what grabs people's imagination. I can gripe all day that, "Oh, there are so many other things that are happening that are being just overshadowed by this news." But one of the things that I thought was wild was the travel ban. It's like remember the first time when the travel ban went into effect? It felt like the Earth's-

Joyce: We were at the airport, right?

Kim: ... access, yes, I felt like the Earth's access shifted. It was such a profound thing. And now it's like, "Oh. And also, by the way..." It didn't even really break through all the other news this week. So yes, that's unfortunate, but I think humans are what humans are and people have been waiting for the bromance to have its really nasty breakup for a while now. I guess I'm only surprised it took this long, but I think it's revealing a lot. I don't have much to say about it instead of it other than it's revealing a lot about both individuals, things that I think we already knew.

Joyce: Jill, what do you make of it?

Jill: Well, I agree completely with Kim. We knew all of this before, and yet it is like the accident you can't take your eyes off. No matter what you say intellectually, it's fascinating to watch this vicious bully childhood thing. They're like two-year-olds trading barbs and tweets and social media postings. It's disgusting. At the same time, I think it's good for our democracy to see this because it shows how shallow they are. It shows how unmotivated by any policy they are, that they're just going after each other for power.

And so I can't blame the media for focusing on this and it is a diversion from the fire hose of other things, but so is everything else. Every day there's at least two or three things that happen, and if you pick one of them to focus on, the next day, you forget about all three of them and go on the three from the next day. So I think we have to find a way to filter out all the noise and focus on the danger of things like travel ban 2 and everything else that's happening at the Supreme Court and in all the other policies that Trump is coming forward with.

Joyce: Barb?

Barb: Well, Joyce, you know me. I don't like to take pleasure in the misfortune of others. I would never do that.

Joyce: Well, here it comes.

Barb: Schadenfreude.

Joyce: Schadenfreude.

Barb: But I did see a headline in the New York Post that I would like to quote. It's more of a visual gag so I'll have to describe it, but it was the cover. It was a big heart with a crack through it. One side was Elon Musk and the other side was Donald Trump, and it said, "I hate my X," with ex spelled X. I'll just share that for the literary value, for what it's worth.

Joyce: I feel like the killjoy in the room because, really, I do, and I think we all need a couple of laughs at this point, and this is so full of just what goes around comes around. But you all, when people are getting a vicious divorce, it's the kids who get hurt. And I feel like right now, we are the kids, the whole country. We are the kids.

Jill: I just think maybe the kids will benefit from this breakup, so it may not be so bad.

Barb: Yeah, I'm very happy to see Elon Musk out of our government. He never belonged there in the first place. He's only there because of his money. It is oligarchy come to life, and we want policies that are what's best for the country, not what's best for Elon Musk.

Joyce: Well, let's just hope he's really gone instead of still having access through whatever kind of back doors they may have left and whatever DOGE is up to. I will just say I am more apprehensive and nervous about them, about this whole thing, than happy.

Jill: Summer's here. And if your happy place is a kitchen filled with loved ones, then it's time to treat yourself to an upgrade that makes every gathering a breeze. Imagine effortlessly creating picture-perfect summer meals with chic cookware that performs like a dream so you can truly enjoy your own parties, especially because the clean-up is a breeze.

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Kim: I hope the knife doesn't feel too much like an extension of your hand when I come to your house, Joyce. That might get-

Joyce: Edward Scissorhands.

Kim: Joyce Scissorhands. But in seriousness, when Gordon Ramsay trusts HexClad, you know you're going to get unparalleled quality. Plus with their lifetime warranty, you're investing in trusted pieces that will survive countless summer celebrations. So don't wait. Make hosting this summer elegant and effortless. Enjoy 10% off your HexClad order for a limited time with our exclusive link. Simply visit hexclad.com/sisters and discover how HexClad's revolutionary cookware and exquisite knives can transform your summer kitchen into a haven of stylish and stress-free entertaining.

Barb: Well, I am all about removing the stress in entertaining because summer is the season for effortless gatherings and delicious food, so why not treat yourself to the best cookware and knives to make it all a breeze. For a limited time only, our listeners get 10% off their order with our exclusive link. Just head to hexclad.com/sisters. Support our show and upgrade your summer kitchen at H-E-X-C-L-A-D.com/sisters. Make sure to let them know we sent you. Cheers to stylish and stress-free summer hosting with HexClad. The link is in our show notes.

Well, here we are in June nearing the end of the Supreme Court's term, and I swear these justices are behaving like procrastinating students, actually, that's unfair to students, waiting until the deadline to turn in their work. We're a week into June and they still have something like 30 cases left to decide. This is becoming a real trend. Well, we're going to talk about what's left on the docket, but first let's talk about what they did decide this week. They issued six opinions earlier this week and one of them was pretty significant. It was one that we'd been watching. It was in an employment discrimination case called Ames. First, can you tell us, Jill, about that case and what the court decided in the Ames case?

Jill: Sure, and the short answer is it decided that a straight white woman could get easy access to bringing a discrimination claim under Title VII, and the circumstances were that the lower court had said that because she was the majority and because it was highly unlikely that an employer would ever take on discrimination against a majority member, that she had to prove a higher standard before her case could go forward and meet a higher burden of proof. And the Supreme Court said no. The language of Title VII doesn't say that a majority member has to meet a higher burden. It says any person and she's a person. And so the standard should be the same that the circumstantial evidence didn't require that she show a context and pattern or practice of discrimination. And so it makes it easier for anyone in a majority position to claim that they have been discriminated against and proceed with a lawsuit against their employer.

Barb: Yeah, it's an interesting case because it does seem to suggest that everybody's on an equal footing and that traditionally discriminated against groups, women, minorities, the

LGBTQ community, are on an equal footing with anyone else who might be subjected to so-called reverse discrimination. Kim, I know you had some thoughts about this. This opinion was written by Justice Ketanji Brown Jackson, the court's only African American woman, and you had some thoughts about the assignment. What's your take on the case?

Kim: Well, okay. So before I get to that, I want to first say about this case that I don't quite... I'm going to quibble a little bit with the contextualization that this puts everyone on equal footing regardless of whether they're in a majority group or a traditionally historically marginalized group. It doesn't do that. This is a case not of a constitutional claim. This was a case about statutory construction. Basically what does Title VII, the statute that prohibits employment discrimination, what does it require for a plaintiff to prove their case? And in some circuits, what happened was the appeals courts ruled that, well, okay, well, this is about discrimination. So if it's a non-discriminated group bringing these cases, you have to show that there was a reason that you have to meet an additional bar to show that no, this really was discrimination and this isn't just an effort to undermine civil rights laws. So that's why it was there.

And what the Supreme Court did in a unanimous decision was say no based on the language. When you have a statutory construction case, they look to the language of the law and what it says. And what it says is the language of the law itself does not create a different bar based on what racial group or sex category or anything else that the statute covers, no matter which one you belong to. If you can show that that was the reason you were denied an unemployment opportunity or fired or faced some other adverse action, then that's it.

I don't think that that's wrong. And I think that was one of the cases that might have been narrower in its outcome in an effort to reach a unanimous decision. And the chief justice, when he's in the majority, assigns the case and who writes it. Do I wonder if there was a little shade about giving this not only to minority justice who was nominated based on a promise by a president to nominate a Black woman in order to say... I don't know him. So I can't say. That's just a question I'm asking myself to say from now on when this case is cited, which it will be a lot as Justice Brown Jackson is the one that cited in the briefing right from here on in, yeah. And also all of the decisions that came down this week leaned on the conservative side, and one was written by Sotomayor and one was written by Kagan. Those two were unanimous. So is Chief Justice Roberts being cute? Maybe, but that was just my thought. That's my question.

Jill: Can I add one thing that's slightly different? I thought we were going to talk more about it, but the next one is DIG. So I just want to add, I think it's really interesting, Kim, that you talk about narrowing the opinion. And I think it's interesting because when it's remanded, now that it's remanded back to the lower court, I'm not sure she's going to win on the facts.

Kim: Right.

Jill: So that'll be very interesting. This is not a merits decision.

Kim: Right. That's exactly right. They could have come to a decision that was broader that just would've been a win for her. She goes to trial and it's an easier standard. It's not. They did remand it back down to say to the lower courts, "Apply the standard as we've laid it out

here and try again." This may still be a really weak case, but it doesn't knock it out completely. That's a great point, Jill.

Barb: Yeah. Well, we'll keep an eye on how that case proceeds. In the meantime, there was another decision this week. Joyce, I know you were one of our sisters who found this case interesting, and it was in a case, a decision that's known as a DIG. First, tell us what is a DIG and what was the consequence in this instance?

Kim: Can you dig it, Joyce?

Joyce: I dig it, baby. This is the appellate nerd in me coming out, and now you guys will all have a great answer when this comes up on Jeopardy. DIG stands for dismissed as improvidently granted. And it just means that after granting cert, the Supreme Court changes its mind and decides the time isn't right to resolve the case so they dismiss it. They say, "We made a mistake. We improvidently granted it," because these are people who never come out and say they made a mistake.

But look, there's nothing nefarious going on here. Sometimes you get a DIG because the case might have other issues or complications that make it what lawyers call a poor vehicle for deciding the issue that the court wants to get to. There might be some kind of garden variety jurisdictional issue, and that might mean that the case isn't worthy of Supreme Court treatment, or the issues just might not be as well-developed as the justices thought when they took the case. So they want to let it percolate a little bit below in the lower courts before they get to it.

This week, the DIG came in Laboratory Corporation of America Holdings versus Davis, and it seemed almost inevitable after oral argument that this case would be dismissed as improvidently granted because the case has this interesting issue if you're a lawyer involving whether or not when you certify a class and a class action. You can include people who haven't suffered any real harm. But in oral argument, it turned out that that really wasn't the actual factual situation here with how the district court judge had certified the class. And so this is interesting because it doesn't happen very often and we see the court really declining to decide cases it shouldn't decide. Substantively, there's no real interest here.

Barb: All right, we're digging the DIG. So let's turn now to some of the cases that remain on the docket. As we said, there's something like 30 cases yet to be decided in the next few weeks. Which cases are you watching most closely? Jill, is there anything that you've got your eye on?

Jill: I tried to limit myself to one. I got down-

Barb: One. Just one. Only one.

Jill: I know. I got seven, but I will only mention one. And I think they're all really interesting, but I'm going to go with the idea of, one, the shadow docket, but particularly all the stuff the emergency appeals by Trump that are still pending on immigration issues. And I think I'm going to be watching all those because the trend seems to me that the Supreme Court

is going with, yeah, he's the king creating a unitary executive. And that's scaring me a lot. So I want to watch how all of those cases come out.

Barb: Okay. How about you, Kim?

Kim: Yeah, I agree with Jill that it's really hard to limit it to one. I think front of mind and top on my physical list of cases is Skrmetti, the challenge to Tennessee's ban on young people getting gender-affirming care. I just think however the court rules and the way it comes out, it's going to have such reverberations not just in the healthcare segment, but I think it can also be used as a basis for other efforts to discriminate against LGBTQ people, especially young people, especially trans people. That would just be such a dangerous precedent. So I am worriedly waiting for the resolution of that.

Barb: Yeah, okay. How about you, Joyce?

Joyce: So the reason Jill's list is so long is where you started, Barb, right? They keep all the big ones for the end.

Barb: Yeah.

Joyce: And so I think at this point, they're almost all really worthy of scrutiny. But I'm waiting on the Louisiana redistricting case, Louisiana V. Callais, because that's the one where we've got white voters who challenged the creation of a second Black opportunity district in the state.

Kim: Talk about reverse discrimination.

Joyce: No kidding, right? Louisiana, man, where they had managed to gerrymander so badly that Black people just simply had no opportunity to elect candidates of their choice.

So here's the argument though. The plaintiffs in this case, the white plaintiffs say that the new maps are unconstitutional because they take race into account. It's the same reverse discrimination argument that we're hearing in religion, and now we're seeing it done in voting here. And my initial reaction is, well, duh, that's the whole point of protecting the rights of minority groups from voter suppression by a powerful majority.

But the court is going to give this case a close look, and it's super interesting because there is a very similar Alabama case. Last term, Justice Kavanaugh was the swing fifth vote in that case. And he said he would not continue to vote for this sort of, I forget the term he used, Kim, you might remember, but he characterized it like interference on behalf of a minority. And he said he wouldn't do it forever because of societal changes. And so the question in my mind, Justice Kavanaugh, if you're listening is, do you really think that we're moving forward or do you understand that at least on voting rights, we're going backwards and we still need you in this majority?

Barb: Yeah. If there's one theme of this court in recent years, it's cutting back on all of the progress that I felt like has been made in the past, what 50 years of Supreme Court jurisprudence.

Well, Jill, you mentioned this idea of the shadow docket, and I want to talk about that because some of these remaining cases are on the court's emergency docket. The term shadow docket, I think, was coined by a law professor named Will Bode, but of course Steve Vladeck, another law professor, wrote a book about it called The Shadow Docket, and that's the emergency docket for cases that the court decides without the benefit of full briefing and oral argument.

And it makes sense. The court takes off for the summer and between sittings, they have this emergency docket. And traditionally it's been for things like a request for a stay to prevent an execution, to give the court time to review the case on the merits, and to preserve the status quo or issue a stay, stop something in the meantime on an emergency basis. But what we're seeing now is the court is handling a great deal many more cases on the shadow docket. And so just even aside from the cases that you're looking at, Jill, you mentioned some of the immigration cases that are up on the court's shadow docket, what's your view on that whole concept of the court's increased reliance on the shadow docket?

Jill: Well, you mentioned Steve Vladeck who wrote the book, and he believes that it's being used to move the court to the right. And it does seem like it is. I think it's terrible because we don't get the benefit of any kind of analysis, either in oral arguments by seeing the briefs of the parties or by the opinion. It's usually done in an unsigned and unanalyzed way so that we don't know exactly what's going on, why they're deciding the way they are.

And I think the benefit of the Supreme Court and its logical reasoning and careful language is lost when we have these decisions that make major policy decisions without that kind of analysis. So I think it's really sad that we've gone to this. And these are not emergencies. Obviously, an execution is something you either stop it or the damage is done and you can't undo it. So in these cases, that's just not the case. And Donald Trump is just applying every time he loses in a lower court, he's going straight to the Supreme Court. So I think he's terrible.

Barb: Although in their defense, there have been more emergencies. I think because of the chaotic way that Donald Trump wields power, he has had these executive orders. And in the middle of the night the court has had to step in to try to prevent things. It reminds me of did you see this interaction between Senator Josh Hawley and the law professor Kate Shaw the other day? There was a hearing on nationwide injunctions, and he said something like, "Isn't it true that President Trump has faced four nationwide injunctions in the history of the country than any other president before him?" And Kate Shaw responded, "Well, yes, it's true. Perhaps that's because he has issued so many lawless executive orders." So touche.

Jill: She was brilliant. It was wonderful to watch that.

Barb: Yeah. So Kim, what do you think about how the court has used the shadow docket this term? Is it a fair use of addressing emergencies, or is it instead more of a stealthy way of deciding cases without the benefit of daylight and public scrutiny?

Kim: I think both. I think in the one case, you and Jill are exactly right. When the president has issued executive orders at a pace that far outpaces anybody. FDR was Mr. Executive Order and Trump is ahead of him in terms of the orders. And a lot of them are done

quickly without good. And now these are executive orders, just the language of them sometimes is all garbled. So courts have to figure out exactly what that means in that you're seeing that and the Supreme Court is dealing with that.

On the other hand, you have cases like the one the Supreme Court is using. It emerges from an order. Well, yes, it does emerge from an executive order, the birthright citizenship one, which I think the constitutional question is clear. But instead, the Supreme Court decided to use it, keep it on the shadow docket, but they had arguments at least. But it still is shadow docket case that we're waiting for on how far nationwide injunctions go.

Barb: Which is a big case, a big issue.

Kim: Which will have massive implications, and that should not have been decided on the shadow docket. They could, if they really wanted to, they could have put it off to next term and put it on the regular docket. But nope, we're waiting for that to happen anytime as we record.

Barb: Yeah. Joyce, what do you think? I know you think about these things too. What do you see as maybe the long-term consequences of this shift toward more decisions made on the emergency docket or the shadows?

Joyce: So my views are very consistent with how the conversation has gone so far. The whole point of having a court system, it goes back to this notion of due process and the rule of law, having laws that are clear, everybody understands the law, everybody can follow the law, and there are really good reasons for the shadow docket. I live in a circuit that has a disproportionate number of death penalty cases. Those last minute appeals always go up on the emergency docket, which is just another word for the shadow docket, and that's the only way that those cases can be handled.

What's unfortunate here is that instead of letting cases fully percolate and develop and telling the Trump administration, "Look, we're not going to decide your issue off of the shadow docket. You can live with an injunction for a year. And by the time it gets up here, the issues will be fully developed and we'll make all of these decisions then." And there's just no reason, frankly, for them to handle this other in other ways. Here's the long-term implication. Often they decide these cases without a written opinion. We don't understand what their reasoning is. And then the court pretends like they're actual decisions and they want lower courts to apply them, or the court will sometimes reference its decisions as though there's a fully-blown rationale and it just really is not helpful for the development of a consistent body of law that everyone, the courts included, can understand.

Barb: Yeah. Well, it's an interesting trend and I think it's one that is not good for public transparency and the rule of law, but there's not really much check on that on the courts and the way they decide their cases other than, I guess, public sentiment. So well, I'm sure it will be here when these cases come out over the next few weeks, and we will update you as they come.

- Kim: Especially this time of year when it's way more sunlight than darkness, I make sure to wear sunscreen every day. That SPF is a healthy choice. And everyone should know that. But what if your sunscreen could do more than just block those UV rays? That's what the scientists at OneSkin wondered. So they made a whole family of mineral sunscreens that target UV rays, free radicals, and cellular aging. The best part, unlike other mineral SPF's that feel heavy and chalky and yucky, these feel like skincare. They're lightweight, they're breathable, and they're super hydrating.
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- Jill: And boy, do I agree with everybody about the sunscreen. But whether I'm out in Chicago's wind or basking on one of its very increasingly rare sunny days, I use two of OneSkin's OS-01 Face topical products. I use the OS-01 Face topical supplement to fight back against dryness and their sunscreen to protect me. The supplement makes your skin look fresh and leaves it ready for anything the elements throw at you, and the sunscreen feels really great while it's protecting you. I especially love that OneSkin's regimen works fast and the formulas feel amazing to apply. I know you're going to be a big fan too.
- Barb: Oneskin is the world's first skin longevity company. By focusing on the cellular aspects of aging, OneSkin keeps your skin looking and acting younger for longer. For a limited time, you can try OneSkin with 15% off using 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. Give your skin the scientifically proven gentle care it deserves with OneSkin. The link, as always, is in our show notes.
- Jill: After Roe took away reproductive healthcare for American women and allowed states to enact near total bans on abortion, President Biden focused on a way to help prevent pregnancy leading to death in emergency situations in states with those almost total bans. He turned to the Emergency Medical Treatment and Labor Act, known as EMTALA, and issued some guidance as to EMTALA's meaning after Roe. So Joyce, let's start with the basics. What was Biden's guidance?
- Joyce: Yeah. So the Biden guidance, and you all will probably remember we discussed this a lot on the podcast, but in 2022, as restrictions on abortion tightened after Dobbs, the Biden administration issued guidance on EMTALA, and it very simply clarified that hospitals that participated in Medicare that took federal dollars had a legal obligation to provide necessary stabilizing care to pregnant patients who presented in emergency rooms, and in some cases, that meant abortion. So the sticky point was that the guidance made it clear that federal law trumped state law. If you were in a state that had prohibited abortion, federal law still trumped as long as you were in the right kind of a facility. And most hospitals do take Medicare coverage so the guidance was pretty universal.

Jill: So Barb and Joyce is absolutely correct. We have talked about EMTALA. We did it when Idaho challenged it as conflicting with their strict anti-abortion law at the state level. The Supreme Court accepted cert and then punted. They dismissed it as improvidently granted-

Joyce: It did.

Jill: ... which we just discussed. Yes, it did.

Joyce: It did.

Jill: And that was last June. What was that and what is the issue of federal law preempting state anti-abortion laws?

Barb: It was about a year ago that we were talking about this case. This is one of the big cases that came out in June of 2024. So Idaho had passed this very restrictive abortion law making abortion illegal. Doctors could be prosecuted criminally for performing abortions. It had some rare exceptions for rape and incest and to save the life of the pregnant patient. The application by the Biden administration of EMTALA said, "We are preempting state court laws." The state laws said that no abortion could be performed in these situations. But as Joyce just laid out, what the Biden administration said is, "If you are accepting Medicaid funds, then if somebody presents in a hospital with an emergency situation, you must stabilize that patient." And so what Idaho sued about was to say, "Hey, feds, you can't tell us what to do. We've got this law in Idaho that says that we don't perform abortions. And you can't take away our Medicaid because we want to decide what our law is."

And so the case went to the Supreme Court. There was oral argument. And I listened to the argument. Based on the argument I heard, it really sounded like the Biden administration was very likely in good stead and was going to prevail on this concept you just mentioned, Jill, about federal preemption. That is the supremacy clause that if there's a conflict between federal law and state law, if there's a face off, then the federal law prevails. But rather than reach the merits of the case, they had this DIG, dismissed as improvidently granted. And I actually pulled out the language of that. It was one of these very short orders as we've talked about, a per curiam for the court. So we didn't get a lot of detail there, but we had some concurring and dissenting opinions in the case.

And so what we found out from that was that they thought that the situation had changed quite a bit since they first accepted the case on the ground. The law had actually changed a couple of times. And so they thought that it was important to send it back to the lower courts because Justice Barrett wrote that because of the significant changes in the law and in the facts and the party's positions, that it rendered the scope of the dispute unclear at best. So they sent it back to the lower courts to work that out.

But we had a dissent, a very strongly worded dissent from Justice Ketanji Brown Jackson, and also some strong words from other justices who concurred in the result. But Justice Jackson said, "Look, we need to decide this now because with all this uncertainty, that's where the danger comes in. People don't know what the law is." And so even though it preserved abortion rights for pregnant patients in the meantime, what Justice

Jackson said is, "We know the answer. Let's just decide it. We don't need to work out the minutia here. Let's just decide this because the supremacy clause says that federal law prevails over state law."

Jill: Yeah. And we'll get to that question a little bit about what is going to happen in the future. But before we get to that, Kim, how does this all relate to what I consider a suspicious dismissal by the plaintiff, an anti-abortion group, of their case in Catholic Medical Association versus the US Department of Health and Human Services? That was challenging the Biden guidance, which has now been rescinded. Was that decision to abandon the case just days before Trump announced the new guidance? Was that suspicious to you?

Kim: Well, I... Yeah. So this is a case that was brought by a group of purported religious doctors who said that Biden's guidance on EMTALA violated their religious freedom if it would force them to perform an abortion in a way that violates their religion. First of all, it would do no such thing. It just requires the facility to provide this service. It did not require a single person to perform an abortion if they did not want to perform. That's just not a thing.

But anyway, I read that it was actually the dates I saw that it was actually the same day, which honestly would make sense because if the guidance is rescinded, then the case is moved. There is no cause of action that they could be seeking. So I didn't see that so much, but they're of a piece. This is all a concerted effort to allow as many states with restrictive abortion bans as possible to make a claim into denying this kind of care, even in patients where it is needed.

It's also important to remember here, what we're talking about is guidance. It is not a law. It is not a regulation. What happens is when you have an administration, there are agencies that Congress has allowed to make rules, make regulations. Those are the things that are put in the federal register. The public has a chance to comment on them, goes through a whole rule-making process. And then once the rule is in place, then any administration that comes in, so long as that rule is active, can issue guidance just to give the policy of how those regulations are carried out. So that's what we're talking here. And those regulations can be put into place or rescinded just with a stroke of a pen from inside that agency. So that's what's happening at CMS with this thing.

EMTALA is the law. This is guidance that is focused on that. So I didn't understand how you bring a whole lawsuit against guidance anyway. That didn't seem to be the strongest thing, but I mean the rescission of the guidance that was there is really the functional ballgame we're talking about.

Jill: So yeah, this all goes to the chaos that has existed in this area and the fear that doctors have, that women have. You come in an emergency situation and you don't know whether you're going to get treated. Doctors don't know if they'll be arrested for doing a stabilization that includes an abortion. It's a really serious thing. So given everything we know about Trump and his base, it's not surprising that Biden's guidance was rescinded. So Joyce, what does the Trump administration guidance say? And it comes from Dr. Oz, which to me, it's hard for me to say that.

Joyce: Well, say no more.

Jill: I know. Okay.

Joyce: I've been trying to parse it and look, here's the deal. The new guidance is more political than it is medical. It rejects the Biden guidance and it says it doesn't reflect the policy of this administration, meaning the Trump administration, that EMTALA is still the law. They can't do anything to change that fact, and they acknowledge that they will continue to enforce it. So at least technically that means that they're still required to stabilize patients. The problem is the confusion that doing something like this generates. And as we know, the devil is always in the details when we're talking about abortion. Anytime you can inject confusion, it serves to make women less safe.

Jill: Yeah, exactly. And so Barb, the bottom line is does this new guidance really change anything? The law is the law. EMTALA is still in effect. And so states have to keep providing the services that it requires, right?

Barb: Yes, but I think Joyce hit the nail on the head. It's this legal uncertainty. So if you're a doctor in Idaho, you're supposed to be subject to EMTALA. If somebody presents in an emergency situation and an abortion is necessary to stabilize the patient, you should be able to perform an abortion to stabilize the patient. But if there is this fear out there that the Trump administration is going to say, "No, that's not our guidance," it gives the green light potentially to prosecutors who also want to curry favor with voters or with the Trump administration, or they are true believers who believe that all abortion is a sinful murder. These doctors could find themselves in the crosshairs of criminal prosecution.

And I think just that uncertainty may may cause chaos. It may cause doctors not to know what the law is, and it also may cause patients to not know what the law is, and that could lead to deaths through this uncertainty. I think somebody made this point earlier. The law is all about notice, fair notice and even-handed administration of the law. Just tell us what the law is so that we can comply. Talking out of both sides of your mouth on the one hand saying our guidance says it does not apply, and then CMS saying it does, it just creates confusion. And I worry that in that chaos, we are going to see patients die.

Jill: Yeah. And sometimes I think chaos is exactly the point of it all.

Barb: Doing laundry doesn't have to be a chore. You can make laundry day your favorite day of the week, all thanks to Italian Bergamot laundry detergent pods from Laundry Sauce. These powerful pods tackle stains while leaving your clothes with a long-lasting cologne quality scent. If you love working hard, staying sharp, and looking sharp, this scent is made for you. It kicks off with a sweet Italian bergamot, mandarin, and black currant leaves for a fresh energizing vibe. Then ginger and pink peppercorn bring a crisp, modern edge that keeps you feeling on top of your game. I'm getting hungry just talking about it.

Kim: Don't take a bite of anybody wearing you know what after you do the laundry, Barb.

Barb: That's right.

Kim: I know it's hard. As it all settles, vetiver, Philippine, elemi, and sandalwood add warmth and depth, while cypress keeps it clean and refined. And the finish, musk. Not that one. The good one. Amber woods and Indonesian patchouli give it a rich, sophisticated feel

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Jill: I usually only use scent-free products. I just don't usually like when you said cologne. I go, "I don't want that in my laundry." But this is different. All of the Laundry Sauce scents are amazing, including Indian Tuberose, one of my favorites, and a surprising one to me, which is Siberian Pine. They all contribute to a fresh green floral vibe. The result of with Laundry Sauce is elegant, intriguing, and just a little mysterious. Think old Hollywood glamour meeting a daring secret agent. And as the scent settles, it gets even better, leaving an unforgettable impression.

Joyce: I just ordered the new limited edition Peach Scent this morning. I'm with Jill. I'm not a big fan of scents in my cleaning supplies or in my detergent, but I'm just crazy about Laundry Sauce and I wanted to try Peach, so I jumped right in. For a limited time only, our listeners get 20% off an entire order when you use code Sisters at laundrysauce.com. That's 20% off your next order at laundrysauce.com with promo code Sisters. After you make your purchase, they'll ask where you heard about them. Please support our show just like I did and tell them we sent you. It's time to make laundry day the best day of the week. The link is in our show notes.

Kim: Well, looks like everything old is new again, including Donald Trump imposing a travel ban. Yes, that happened again. Yes, as I mentioned earlier, it seemed not to even make the top headlines. How crazy is that? It's really wild. But it is new and it is expanded, Barb. So what countries does the ban, which is set to go into effect on Monday, cover? And what's the reason Trump gave for imposing this ban?

Barb: Yeah, there's a number of countries that are listed. He's got them into a couple of different categories, and I think it's 19 countries altogether. So on the country's list, the list of people who are not permitted to enter the country whatsoever called it a full suspension by country. It's Afghanistan, Burma, Chad, Congo, Equatorial Guinea, Eritrea, Haiti, Iran, Libya, Somalia, Sudan, and Yemen.

And there's a justification for each country individually. So for Afghanistan, for example, it talks about how the Taliban makes it difficult to vet people who are coming from the country. With regard to Haiti, there's a reference to the fact that there is a high overstay rate among people who come from Haiti. And then there's a second classification that are partial suspension. That's Burundi, Cuba, Laos, Sierra Leone, Togo, Turkmenistan, and Venezuela. These have some exceptions for people to come into the country, but again, it's things like lacking an authority for vetting people who are coming to the country and a high rate of overstay.

So those are the basis. Those are the reasons that are given there. And that's in the White House fact sheet. But in his own quotes, what Donald Trump said was a part of it was to prevent and protect the country, the national security against, quote, his words, radical Islamic terrorism. Last time I checked, there weren't a lot of Islamic terrorists coming out of Haiti or Venezuela. It was also interesting that he said that the recent attack in Colorado, terrorist attack, underscores the need for this executive order. And of course,

Egypt, which is where the country of origin for the individual involved, who's been accused of that crime, is not on the list. So it seems a little loose with the logic.

Kim: Well, Jill, talk about that a little bit. It seems like there are a lot of contradictions, including that Egypt aspect to this. And is it just me or does it seem a little pre-textual? Because if you take out the majority Black and brown countries and you take out the majority Muslim countries, you got no travel ban.

Jill: Well, you're right, of course. And you contrast that with white South Africaners being welcomed into the country. And I think you might see a pattern here, but yeah, there are so many contradictions here. Barb mentioned of course that Egypt is not included, even though that is the home country of the Colorado terrorists, but there are plenty of others. They, for example, say overstays are big in, for example, as Bob mentioned, Haiti. On the other hand, Spain actually has a 10 or 20 times higher rate of overstays, but they aren't on the list surprisingly. So that undercuts that as a justification for putting people in.

And I think all of these, the vetting issue with Afghanistan, the Taliban, absolutely are a problem and they aren't cooperating, and that's right. And they did make an exception for the people who already have gotten visas, including the ones for the people who fought alongside us who were either interpreters or fighters during the war that we fought in Afghanistan. But it doesn't make any sense unless you look at the underlying goal.

And it's the same as it was in Trump number 1, where they just picked absolutely Muslim countries and said, "You can't come here." And it was clearly racist. Now, they've learned to accommodate because they had three actual travel bans announced in Trump 1. The first two were kicked out. The third one was upheld by the Supreme Court, and they are now using in Trump 2 the reasoning that the Supreme Court used and stating certain things that would justify naming these countries. So it's going to be a little trickier.

Kim: Yeah, so talk about that choice. Just because this is expanded, just because this seems to be pre-textual. I see Haiti, two things come top of mind. One is the fact that this is a war-torn and a natural disaster-torn country that needs a lot of help. And that one reason that people come here and overstay visas is because it's a war-torn and hurricane-torn nation, but it's also a country that Trump had a particular name for in his first term. And I'm thinking that's why it ended up on this list. But that doesn't increase the chances that it'll be struck down this time, Joyce?

Joyce: I think Jill is right. The ban has exceptions for legal permanent residents, for refugees, for current visa holders, and even for individuals whose entry this one is nebulous, serves us national interests. I think that they are wisely, I use that word advisedly in this context, taking advantage of the Supreme Court's decision in Trump 1. And I think that it will probably pass muster with the Supreme Court. But look, this is about politics, not policy. And I think that we should be clear eyed about the fact that this is an administration that likes to distract us and play hide the ball. And because this was such an inflammatory policy in the first go round, and because what they're doing now is within that safe harbor of the Supreme Court's earlier decisions, they're just trying to make you look.

Kim: So what have we learned here? What might be the implications of people who will not be able to come to the United States? And are we just becoming numb to this wackiness? Is

that part of the reason why it didn't break through this time the way it did? Are we normalizing bad stuff? What do you think?

Barb: I think there is part of that. In terms of the implications of this, I don't doubt that from time to time we need to make sure that we are being protected from terrorist threats or whatever it is. But so much of this to me, seems like performance art designed to show the public that President Trump is active and busy and getting things done. And he campaigned on this anti-immigration platform. And so, "Here I am. Look what I'm doing. I am banning people from all these countries." A big portion of these countries that are on the list are there because the countries have a high percentage of visa overstays. It's really, I think, a fallacy of logic to say just because someone else from country X overstayed their visa, everyone from country X is likely to overstay their visa. And if that's a problem, improve the visa enforcement, right?

So I think it's painting with a broad brush, and I think it is performative and an effort to get people to be able to say, "Look at all the great things Donald Trump has done to protect our country from the danger of unchecked immigration." But let's not forget, we're a nation of immigrants. We welcome people from all over the world. It's no coincidence in my view that these are from countries where the people are mostly Black and brown. We don't see Norway on the list or other countries. It is an effort, I think, to make America white again or keep America white. And it's all part of that culture war and that anti-immigrant sentiment that happens from time to time in this country throughout our history that I think is just the antithesis of who we are as a country.

And among the people we will never know who didn't come, but perhaps someone who would've come would've been a student who would go on to make scientific discoveries or medical discoveries or contribute to great literature or humanities. We'll never know what those people might've been able to bring to our country because we've closed the door to people from a number of countries for what seems to me, in my view, pre-textual reasons.

Jill: It's an interesting point, Barb. And one of the other issues is that they do not make a difference between different kinds of visas. So overstays of a tourist visa is one thing. Overstays of a refugee visa is a different matter, but they are claiming overstays in general and that's not a fair combination.

And I also was struck because I just saw a movie, actually it's a miniseries, called Legacy of Peace, which was about post-World War II in Switzerland, which was supposedly neutral. And one of the heroes of the movie had served at the border turning away Jews who were trying to get into Switzerland, women and children, and who suffers mental anguish for having done that. And I'm just wondering what's going to happen when you look at the people we are turning away from war-torn or climate change-wracked countries?

With summer temperatures rising, I am swapping out anything bulky and uncomfortable. We all want to do that and stay cool, supported, and comfortable. And that's where Honeylove's cutting-edge innovations come in. If you're still dealing with underwires and the pokes and undergarments that feel like body armor, it's time for a serious upgrade. Honeylove makes the best wireless shapewear that feels like a second skin. They're lightweight, breathable, and perfect for hot summer days and for cold ones too. Whether

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Kim: I love when good research goes into things that women need. It's sometimes too rare, but it's the ultimate experience too. When you want comfort, Honeylove's signature support comes from smart design, not stiff wires or bulky padding. It's all the shape and hold you want without any of the stuff you don't. Once you try it, you'll honestly forget you're even wearing a bra. So go ahead, ditch the discomfort. Say bye-bye to underwires and treat yourself to a summer of support, but the kind you deserve with Honeylove. For a limited time, you can get Honeylove on sale. Treat yourself to 20% off your entire order by heading to honeylove.com/sisters. Support the show and check them out because you really deserve it.

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Joyce: Well, we've made it through the week's news, but we have questions from our listeners about more. You all know that this is our favorite part of the show. We love your questions. They challenge us. They make us think. They let us expand our coverage into some additional topics. And so I hope that if you've got questions for us, you'll email them to us at sistersinlaw@politicon.com. Tag us on social media using the #sistersinlaw. And if we don't get to your questions during the show, keep an eye on our social media feeds because we'll try to go back in during the week and answer as many of your questions as we can.

The first one we have this week, and this is a really interesting one, Jill, this is for you from Charles. Charles asks, "Since the Trump regime has admitted liability," I like that by the way, Charles, regime, "has admitted liability for illegally deporting Kilmar Abrego Garcia to El Salvador with no prospect of return," ooh, there's an asterisk there, "can Abrego Garcia sue the government for damages?" So an update in this question, Jill. What's your answer?

Jill: Well, my answer was going to be yes, but. Now, it's yes, but but. And I'm not stuttering. It is two buts. So the answer is yes, because we do allow US citizens to sue the federal government for civil damages in certain situations. And we have a Federal Torts Claim Act, which allows the government to be sued. It's an act that waives sovereign immunity, which generally means you can't sue the sovereign. And boy, does sovereign have a different meaning nowadays than it used to because we didn't think we had an exact king. Now, we do. So that would've allowed it.

There's Biden's actions that can be brought in claims under the Civil Rights Act could have been brought. So that would be something that could happen. But, the first but is, you can't sue Trump because it is not because of the criminal immunity that has been bestowed on him by the Supreme Court last year. It's because of a case involving my favorite President, Richard Nixon. And in that case, which was Nixon versus Fitzgerald, the Supreme Court ruled that the President could not be sued for damages based on his official acts. And no doubt this would be considered an official act to have deported him, even though it's clearly an illegal act. But anyway, so that's the first but.

The second but is that you don't need to worry about that because da-da-da-da-da, he is being flown back to the US as we speak. But, there's another but, I guess there's a third but, but it's because he's been indicted in Tennessee for trafficking and so he is being brought back to stay trial. I don't know very much more than that. I don't know what the charges are or what trafficking he's supposedly involved in, but he'll get due process in a courtroom so that's a good thing. So Charles, thanks for asking that question and getting a longer answer than I bet you ever expected.

Joyce: It is so fascinating, right? Because no one is saying, let me underscore this, that Abrego Garcia is an angel. We're not saying that he gets due process because he's an angel. We're saying he gets due process because he's a human being. And in this country, all human beings are entitled to notice and an opportunity to be heard before the government can take action against them. So this is as it should be. If the government has a legitimate criminal case against Abrego Garcia, let them file it and he will go to court and face it. And if it's a good case, then presumably he'll be convicted. And if there are problems, he won't be. But this is what we expect for all people in this country, regardless of their immigration status.

Barb: And can I just chime in? Can I just chime in?

Joyce: Yeah.

Barb: All this time they said, "You know what? We can't bring them back." Turns out, I guess they could.

Jill: It does show the... Oh, what is it? The lies of their statements.

Joyce: Delicate. It was delicate. It took them time. How dare you be so cavalier? National secrets. Second question comes from Robert in Canada for Kim, and Robert says, "Given his crimes, can the law deal with Trump as a citizen following the conclusion of his term in office?" Kim?

Kim: So it depends on what you mean. So let's start by crime, because of his crimes. Donald Trump has been convicted of crimes in New York City by a state court. So that's the only crime he has been convicted of. Recall that Jack Smith had to end the federal prosecution of Donald Trump for his role in January 6th when he won reelection because of DOJ policy that prohibits the prosecution of a sitting president.

Then there is also the immunity decision that the Supreme Court handed down, which largely immunizes him for anything he does as part of his official duty. How far does that

go? The Supreme Court has not yet said. Let's hope they don't have to. My God. But given the fact that even talking to his own cabinet members would be shielded from liability, I think it's pretty, it's broad enough that don't look for any crimes to come out of what he does while he's in the Oval Office if it's related at all to that job.

Now, everything other than that, before he was in office, after he was office, if he has tried and convicted, he can face the same accountability as anybody else. The immunity decision does not give him lifelong immunity. It just gives him immunity from the actions that he does as part of his job as president. So if he leaves right away and then shoots someone on Fifth Avenue, he can be indicted immediately. So yeah, I guess it depends on what you mean by crimes. Whether they... And oh, also, if there are crimes that he did before he went into office, the statute of limitations has to not have run. That would be the only potential bar. So it depends on what crime you mean, what scenario it is. But he does not have blanket immunity forever to commit any crime, no.

Joyce: Well, I guess there's a little bit of a silver lining around the edges of that one. Thank goodness, right? Okay, Barb, last question. We seem to have a theme today. This is from @stan... I hope I'm going to say this right, @stanOOonbluesky. And they ask, "Can the people harmed by the criminals pardoned by the president sue those criminals after the pardon?" Ooh, it's a good question.

Barb: It is a good question. And the answer to this one is yes. There's no buts. There's no maybes. This is an absolute unequivocal yes. So if you are harmed by one of the criminals pardoned by the president on January 6th at the US Capitol, good news for you, man. I should hang out a shingle here. I'll represent you. I'll do the case for free. I'll do it with you.

Joyce: Yeah, right.

Barb: So yes, you can sue them. It would be a tort. It would be something like assault, battery, assault with intent to cause great bodily harm. All kinds of tort offenses could be brought. And get this, not only can you bring the case, but you can get all of the evidence from the government, because guess what? Those cases are closed, never to be opened again because they were pardoned. So they have no criminal exposure whatsoever. So the exception to the Freedom of Information Act is off the table. You can file a FOIA with the US government to get the file on that defendant. And if they'd never been prosecuted, you might not know who they are. You wouldn't know their name, but there's a file and a name, and you can get their FBI file and find out about all the investigative things, all of the interviews that were done, all of the video. You can use all of that in your own civil lawsuit against these criminals. So even if they will not do time in prison, you can make them pay.

Joyce: Thank you for listening to #SistersInLaw with Kimberly Atkins Stohr, Barb McQuade, Jill Wine-Banks, and me, Joyce Vance. Follow #SistersInLaw wherever you listen, and please give us a five-star review. It really helps others find the show. Show some love to this week's sponsors. We love them too. HexClad OneSkin, Laundry Sauce, and Honeylove. The links are in the show notes. Please support them. They really do make our podcast possible. See you next week with another episode, #SistersInLaw.

Jill: Supreme Court just handed those two big wins.

Barb: Oh, no.

Joyce: I saw.

Jill: I looked at.

Barb: We're done. We're done. We're done. Save it for next week.

Jill: We can't do all of the-

Joyce: No, I just want you all to know.

Jill: Yeah.

Kim: It's a lot of shadow docket. We can't, yeah, it's bad. It's bad.

Jill: All right.

Joyce: Oh, jeez.