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President Trump Declares National Emergency: Professor Russell Responds

By Ardy Raghian

Margaret M. Russell is an Associate Professor of Constitutional Law at Santa Clara University School of Law. Russell received her J.D. from Stanford University in 1984, and is a Board Member of the Equal Justice Society. She is affiliated with Santa Clara University's Center for Social Justice and Public Service, the Markkula Center for Applied Ethics, and the Center for Multicultural Learning.

On February 15, President Trump declared a national emergency to secure billions of dollars worth of funding for his border wall. This has raised questions over the scope of emergency powers granted to the president. On Monday, a coalition of 16 states, including California, challenged President Trump in court.

Trump's Emergency Declaration has been called "an act of Constitutional vandalism," is it Constitutional?

I think that the president's declaration of a national emergency under these circumstances is flagrantly unconstitutional as a violation of separation of powers. Neither the Constitution nor the National Emergencies Act of 1976 supports his decision to appropriate taxpayer dollars in this manner when his very own announcement of the decision explains "I didn't have to do this." The president's announcement was almost surreal in its flippancy and disrespect for the Constitution. After warning for several weeks that he would declare a national emergency if Congress did not approve the amount he wanted for a border wall, he carried out his threat with crystal clarity as soon as Congress explicitly rejected his demand. Rather than recognizing that Article I of the Constitution grants Congress the power of the purse, and that the Republican-controlled Senate had joined with the Democratic-controlled House of Representatives in exercising that power, the president distorted both Supreme Court precedent and federal statute to invent a so-called "national emergency." This is a very troubling time for our constitutional democracy.

The 1952 case of *Youngstown Sheet and Tube Co. v. Sawyer* is hardly an obscure case for those familiar with the constitutional constraints on the reach of presidential power. This case, which overturned President Harry Truman's Executive Order directing the Secretary of Commerce to seize and operate private steel mills, is most famous for Justice Robert Jackson's concurrence setting forth the analytical framework used today for the reach of presidential power. Justice Jackson's oft-repeated conclusion is that the president's power is at its "lowest ebb" when Congress has explicitly spoken on a matter within its Article I powers. In the case of President Trump's declaration of emergency power, it could not be clearer that Congress has explicitly spoken in its allocation of limited funds for Trump's "border wall."

Many members of the President's party have disagreed with this declaration, as they worry about the precedent it will set. What kind of precedent will this emergency declaration set?

The president, in his press conference announcing his "national emergency," defended his actions by saying that previous presidents, both Democrat and Republican, have declared national emergencies with little fanfare or opposition. However, as even members of his own party have noted, all of the approximately 60 other national emergency orders since 1976 occurred in the absence of specific Congressional legislation to the contrary. The precedent that the "border wall"

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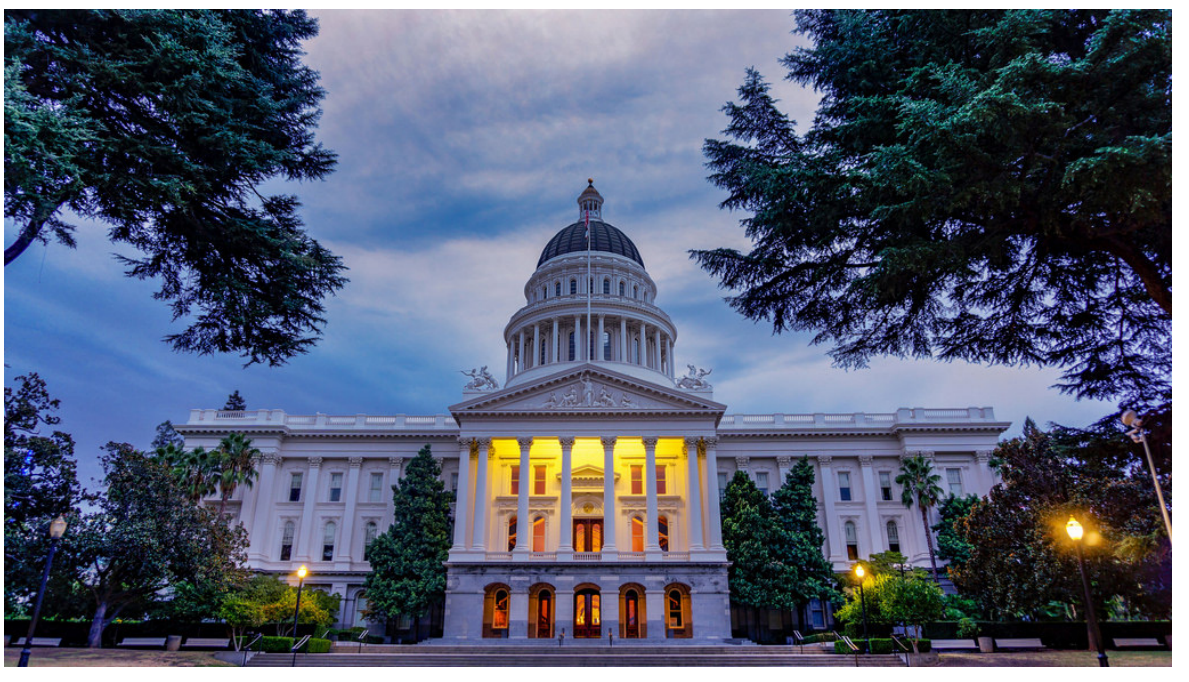
California Bans Long Guns for People Under 21

By Sarah Gregory
Staff Writer

Last year marked the deadliest year on record for gun violence in schools. Since the deadly Columbine High School massacre in 1999, nearly 200,000 minors in at least 193 schools have experienced a shooting in their schools, according to a 2018 report from Giffords Law Center to Prevent Gun Violence.

Deadly mass shootings, specifically the Parkland Shooting, which took place one year ago at Stoneman Douglas High School, is what inspired California Senator Anthony J. Portantino to draft Senate Bill 1100—which went into effect last month.



Under the bill, individuals between the age of 18 and 21 will be unable to obtain a long gun through sale or transfer from a California licensed firearms dealer. A long gun refers to firearms like shotguns or rifles. Three of the deadliest shootings since 1999—Columbine, Sandy Hook, and Parkland—all involved long guns.

"I felt it was my parental and legislative duty to answer the pleas from Florida and endeavor to make our schools safer for all our children. Parents shouldn't have to choose bulletproof backpacks when they send their children off to school," said Senator Portantino in a press release promoting the bill.

This sentiment is echoed by gun control lobbyists throughout California. Allison Anderman, a representative of the Giffords Law Center to Prevent Gun Violence, says gun control legislation "was really primed" for success last year. More than one dozen new gun laws passed, including a lifetime gun ownership ban for people involuntarily admitted to a mental health facility.

"The Parkland students in particular were very talented at amplifying their voices and generating momentum. The numbers of casualties were particularly high and any time it involves minors or children, I think there is a particular degree of outrage," said Anderman.

However, gun rights lobbyists like the National Rifle Association say SB 1100 violates the second and 14th amendments of the U.S. Constitution, and that these restrictions are not the best way to prevent gun violence. Although the restrictions imposed by the bill are substantial, the bill also contains a few exceptions. Specifically, individuals between the ages of 18 and 21 who are either active or retired peace officers, law enforcement officers, active or retired members of the military, and individuals who already possess a California hunting

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California Bans Long Guns for People Under 21

license are not prohibited from acquiring long guns through sale or transfer.

The California Rifle and Pistol Association (CRPA) lobbied in opposition of the bill, saying these exceptions are not enough. Matthew Cubeiro, an attorney for the CRPA, says "it is going to drastically impact individuals that are interested in the sport of firearms and individuals that want to learn about firearm safety and how to effectively and safely engage in that sort of community."

Before SB 1100 was enacted, individuals between the ages of 18-21 were required to pass a number of tests in order to purchase a long gun. This criterion included background checks and the receiving of a Firearm Safety Certificate. Gun rights lobbyists like the CRPA say the promotion of firearm safety courses is a better alternative to current gun control methods.

"If we take this approach that people shouldn't be taught firearm safety, that is where problems can occur and accidents can happen," said Cubeiro. "I'm not saying everyone needs to own or handle a gun, but policy makers seem to be more concerned with passing laws that restrict firearms than their jobs and the issue of public safety."

Cubeiro says "there is really no evidence offered by the author [of SB 1100] to suggest that this particular age range is causing problems associated with firearm crimes in connection with long guns." Meanwhile, gun control lobbyists cite several academic studies that suggest otherwise.

There were 94 school gun violence incidents in 2018 alone, which is 59 percent higher than the previous record of 59 in 2006, according to data from the U.S. Naval Postgraduate School. However, the data shows that the great majority of the 1,355 school shooting incidents since 1970 involve handguns, while long guns like rifles and shotguns makeup only about 9 percent of these incidents.

Nonetheless, the Giffords Law Center to Prevent Gun Violence says there is a dangerous gun culture in schools that is causing fear and unrest among minors. A 2018 report by the law center shows that nearly 60 percent of high schoolers report concerns about a potential mass shooting in their school or community. Two-thirds of school districts now require schools to conduct active-shooter drills, with kids as young as two participating.

"Preventing even one person under the age of 21 from committing any kind of gun violence with a long gun is an important goal," said Anderman. "So, if this bill does that, then we think it's effective."

Rumor Mill

By Susan Erwin
Senior Assistant Dean

Dear Rumor Mill,
It seems like everyone is nervous about last July's Bar Exam results, but the administration isn't really talking about them. What's up?

To answer this one, I asked Professor Kinyon to weigh in:

Yes, we care a lot about the Bar Exam results. Like every other piece of data about our students and our educational program, we spend a lot of time digging through those results to see what we can learn. Over the years, a lot of changes have been implemented based on Bar Exam data and other sources, including the development the UP Point policy, changes to the disqualification and Directed Study policies, redesign of our Bar preparation programs and the ALW course, and a push for faculty to align their courses with Bar coverage and testing formats. (Yes, that's why you're seeing more multiple-choice questions on your exams.)

But there's a reason we don't want you to get too fixated on the July Bar results - they don't say anything about you as an individual student and your likelihood of Bar success. We really believe that each and every one of you can pass the Bar Exam. It takes very serious, deliberate preparation over the coming months (and years for the 1Ls and 2Ls). It takes a lot of practice. And it takes a lot of self-discipline.

We've been working with you on these skills since you arrived at 1L orientation, and we'll keep doing so after graduation through your Bar study period. A key to passing is being honest about your own strengths and weaknesses, pushing yourself when you don't feel like it, and being thoughtfully self-critical so that you can make genuine improvement. The Law School is committed to helping you do that - that's why we created the Office of Academic & Bar Success and all the programs they offer.

If you didn't take the July Bar Exam, those results don't say anything about you. If you're nervous about them, confused about them, or just have any questions about them, come see us in the Office of Academic & Bar Success. I am happy to talk to you, and to help you make your own plan for success.

Dear Rumor Mill,
All of the "Who is 9?" stuff is really annoying. We aren't going to do any of these things and it is insulting that you are posting these stories.

For this one, I am reprinting a response that I gave to one of your classmates who had very reasoned arguments for taking down the posters:

Please allow me to share my reasons for keeping the posters up -

I have now been through over 20 barristers balls. Some are incident-free but honestly, most are not. Incidents include physical harm, sexual assault, arrests, incarceration, and many other less serious problems. Many students have been denied moral character clearance, leaving them with hundreds of thousands of dollars of debt and no hope for a legal career.

Every time these incidents happen, I am the one counseling the students and their loved ones. There is frequently nothing I can do to fix things after they have occurred. The only way to help is to convince students prior to the event to be responsible for their actions (which is a full time job for every law school dean of students). I can't even count the number of times that I have been told that we should have warned the students. We do!

It just doesn't work to just tell students something and expect them to internalize it. We tell you many ways - from orientation, to emails, First Year Fridays, TV slides, grapevine announcements, facebook posts, rumor mills, mandatory sessions, MOUs that we make you sign, announcements forwarded through fellows and faculty, and anything else we can think of to get your attention. Neither I nor any of my fellow Deans of Students have found the magic bullet that will cause students to believe that these warnings apply to them.

The most effective thing - by leaps and bounds - has been the "Who is 9?" campaign. You all read it. You all talk about it. You all remember that your Moral Character approval is at stake. You all understand that these things happened to fellow law students. Students always approach us at Barristers to let us know that they are not number nine - which is always great news.

The details surrounding these incidents have been changed quite a bit. The students graduated eons ago. The folks involved most likely would not even recognize themselves.

The negative - that some students might be uncomfortable reading the statements - doesn't outweigh the positive - that someone might internalize the message to be careful. For this reason, we will be leaving the posters up and will be adding 8 more stories.

I am always happy to discuss further. To make an appointment with me, just go to law.scu.edu/current and click on "make an appointment" and pick a time that works for you.

Heard a rumor lately?
Tell me about it – serwin@scu.edu

New Changes for H-1B Visa Seekers

By Evan Gordon
Staff Writer

Migrant caravans, family separations, and the border wall have dominated headlines for quite some time now, with the Immigration & Customs Enforcement (ICE) attracting much of the limelight. However, ICE's less media-worthy sister agency, the United States Citizenship & Immigration Services (USCIS), recently proposed a new rule in December that will substantially impact the highly popular H-1B visa program.

According to the USCIS website, the "H-1B program allows companies in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's degree or higher in the specific specialty, or its equivalent." The Immigration Act of 1990 established the program, providing a statutory limit of 65,000 H-1B visas to be issued each year. Additional legislation was passed in 2004, reserving an additional 20,000 visas for applicants possessing advanced degrees from American universities.

To cope with the increasing influx of H-1B petitions, USCIS began randomly selecting petitions for processing through a lottery-based system. Through this mechanism, companies file petitions during the first five business days of April, and if USCIS receives more petitions than the congressionally set 85,000 minimum during that time frame, petitions are selected through a random lottery system, with receipt notices issued for selected cases, and rejection notices and filing fees returned for unselected filings. To put things into perspective, USCIS received 124,000 H-1B CAP petitions during the filing window of FY 2014, 172,000 in FY 2015, 233,000 in FY 2016, and more than 236,000 in FY 2017.

The H-1B is a highly-sought visa in the tech industry, especially in Silicon Valley. Tech companies throughout the United States favor the H-1B because of the flexible range of requirements to qualify for the classification. Whereas other visa categories have much more rigid sets of requirements needed to qualify, the primary requirements for the H-1B call for the position to be a specialty occupation requiring a bachelor's degree. Additionally, workers from any country can apply. Although certain visa categories are reserved for nationals from specific countries pursuant to various treaties, foreign professionals from all around the world are eligible for the H-1B visa. It is also extendable for a maximum stay of six years, or longer in certain circumstances, and is also portable between employers.

The New Rule

On December 3, 2018, USCIS published its new proposed rule in the Federal Register, which provides a period of up to 60 days for the public to comment before submission to the Office of Management and Budget for review and approval. The new rule would require petitioners to electronically register H-1B CAP petitions during a registration period preceding the filing window. During this registration period, USCIS will conduct its random selection and electronically notify petitioners of which cases have been selected for processing, thereby no longer requiring the submission of thousands of cases by mail which would ultimately have to be returned. In addition, the order in which the selection process takes place would be reversed.

Under the current lottery process, the U.S. advanced degree cases are counted towards the 20,000 allotment first, with unselected advanced degree petitions getting thrown into the pile of 65,000 non-advanced degree cases for the second round of selection. Although applicants possessing U.S. advanced degrees already have higher odds of selection, USCIS estimates that reversing this order will result in a 16% increase at the likelihood of selection for those with U.S. advanced degrees. Although USCIS recently announced that the electronic registration system would not be rolled out in time for the upcoming CAP season, the agency did clarify that it would implement its proposed reversal in the selection process effective immediately.

The Impacts

According to USCIS estimates, petitioners will save approximately $47.3–75.5 million, depending on the firms companies utilize for preparing petitions. The agency further calculates USCIS will save roughly $1.6 million annually from cutting down on costs associated with sorting out unselected filings and mailing them back to the petitioners. However, this new role proposal comes at a time of heightened concern and confusion for foreign nationals and employers.

Cindy Jen, a Partner at Fragomen, Del Rey, Bernsen & Loewy, LLP, believes that these new changes might cause anxiety amongst clients and employees.

"They don't know if it's going to work… is it fair, is it truly electronic and a blind draw? What does it look like on the back-end? What's the level of scrutiny for the documentation? I think any type of big change like this, when it comes to a procedure involving a couple hundred thousand cases is probably going to be bumpy," said Jen.

However, she was less convinced that the new lottery registration tool would decrease costs and time for petitioners. Given the registration window that USCIS has indicated would start 14 calendar days before the first day to file H-1B CAP petitions, it would likely not be logistically feasible for most employers to finalize dozens or hundreds of fully prepared petitions within two weeks, she said.

"I think it actually will create potentially more work, because employers might opt to enter more people into the lottery thinking that it's not that much more effort, however, it doesn't discount the fact that we have to do the analysis, and it doesn't lessen any of the preparation that needs to happen," said Jen."And if the paperwork turnaround is that short of a period of time, I would venture to guess that one of the strategies for firms that file large numbers would be to prepare ready petitions, so it's no less work."

Professor Pratheepan Gulasekaram, who teaches immigration law at Santa Clara School of Law, questioned the rationale behind the government's attempt to tip the scales in favor of immigrants with U.S. advanced degrees.

"These changes are being proposed at a time when, in my opinion, the United States should be looking for more ways of easing these legal pathways to entering the country, especially if we think we're committed to this notion that immigration at the specialized worker level is good for our economy and there are employers willing to employ not just the Master's degrees, but also people who have other college degrees in these specialized areas where we need them," said Gulasekaram. "The labor market works with people of all sorts of educational backgrounds, coming all the way from high advanced degrees to no degree, and a lot of people in between."

Although the USCIS notice of proposed rulemaking states that the increased likelihood of selection for those holding U.S. advanced degrees will result in a more highly-educated workforce and be more beneficial to the economy, such an advantage might not yield the intended impact in light of rising levels of visa petition denials.

As a result of President Trump's 'Buy American, Hire American' Executive Order and new policies implemented over the past two years, petitioners are seeing staggering increases in denial rates and Requests for Evidence (RFEs), where USCIS sends out requests for additional evidence or documentation to establish eligibility for approval. According to USCIS data, the agency issued roughly the same number of RFEs for H-1B petitions during the last quarter of 2017 as it did during the first three quarters of 2017 combined. Similarly, agency data displayed an approximate 40% spike in the proportion of H-1B petitions denied from the 3rd quarter to the 4th quarter of 2017.

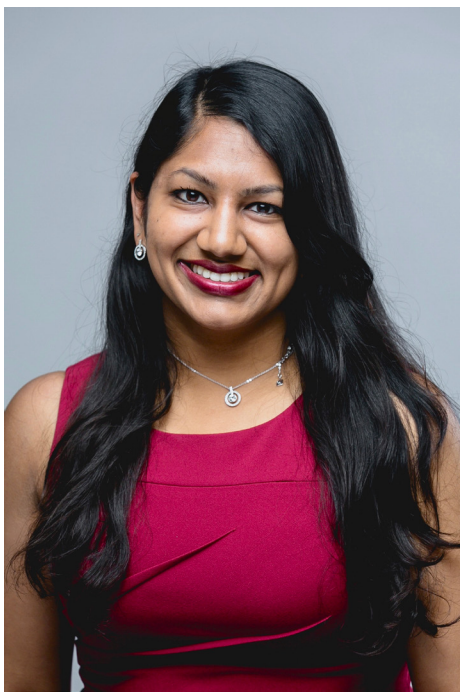
In the aftermath of Buy American, Hire American, and under the leadership of current Director Lee Francis Cissna, USCIS has undergone a noticeable transformation from service provider to enforcement agency. Within the past two years alone, there have been a variety of policy memorandums either implementing or reversing procedures and guidelines, sending shock waves to employers throughout the country. Such changes include no longer providing deference to previously approved petitions for visa extension requests, prohibiting the usage of the Power of Attorney, subjecting H-1B petitions seeking to place workers at third-party worksites to much higher levels of scrutiny, and providing Adjudicating Officers much wider discretion to deny application without having to issue RFEs.

"The immigration service is not friendly right now," said Jen. "There seems to be a lot of anti-immigrant sentiment and a lot of anxiety for a couple of years now, and the fact that this process will be changing is probably creating a level of discomfort."

Charney Hall Hot Takes

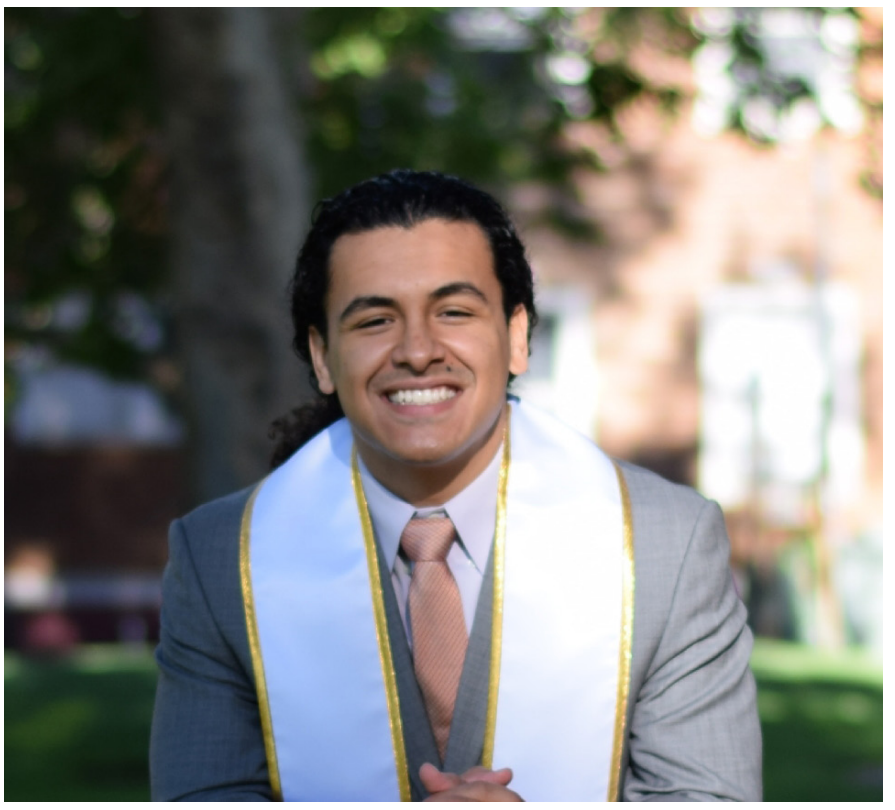
By Ivan Muñoz
Staff Writer

Does Santa Clara's GPA scale/curve put us at a disadvantage in the job market?



Sonya Aggarwal (2L)

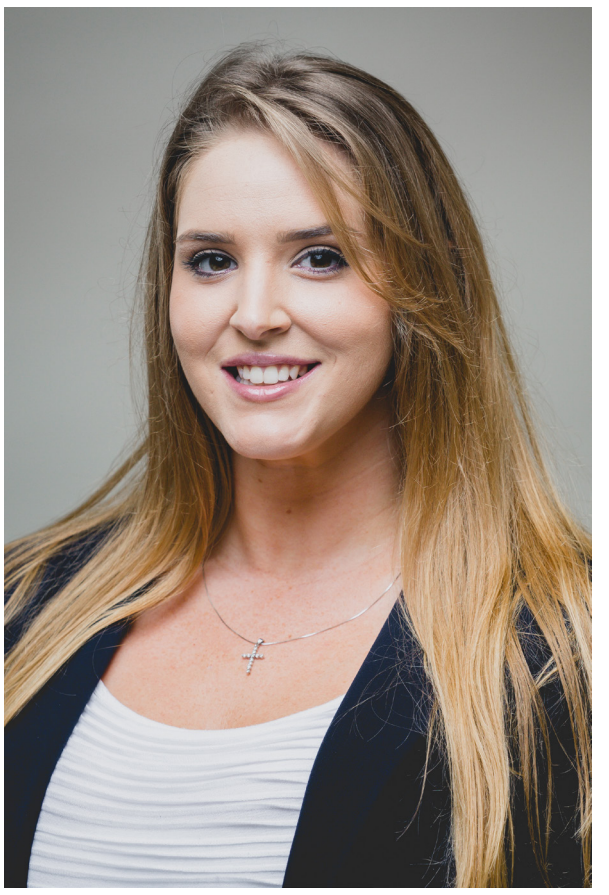
While I have not noticed a significant disadvantage from Santa Clara's GPA scale in the job market, there are some obvious and inherent dangers associated with such a system. The curve here can be quite strict and cause employers to focus on a GPA-focused approach to your application rather than a holistic approach. Juxtaposing this with surrounding schools, such as Berkeley Law, that do not follow the GPA system, this inherently leads to unequal comparisons between potentially equal applicants.



Enriko Alfaro (2L)

No, I do not think it puts us at a disadvantage for the job market. For 1L year, at least 53% of students are required to receive no less than a B-. And professors are allowed to give 67% of the class As and Bs, which a maximum of 12% of students receiving As. If we turn to other schools from out area, for example Berkeley, we see that they are only allowed to give 40% of their classes an honors grade, with only 10% of them receiving a high honors, while every one else receives either a passing or failing grade. At Berkeley, employers are not able to differentiate amongst those who received the same grade. Employers will not be able to tell if you barely received a passing grade versus you almost receiving an honors grade.

Here at Santa Clara, a student is able to be distinguished from other students. In my opinion, 67% of the class receiving As and Bs is not something that puts us at a disadvantage. With a B- being equal to a 3.0, I honestly believe that our grade curve, although not the best, does not put us at a disadvantage. School rank, location, and network capabilities are things that I believe affect student employment opportunities more than the GPA system.



Brittnie Panetta (2L)

The curve is a double-edged sword. It provides an objective gauge to employers reviewing thousands of resumes in a competitive market. On the other hand, it puts approximately half of the class in a GPA range many employers would not even consider.

I question if raising the curve average would really do us justice. While GPA might not accurately reflect performance, it does have a tendency to "get it right" most of the time. Moreover, an inflated GPA might do us more of a disadvantage than the curve itself.

However, Santa Clara attempts to offset the impact. For example, there is no GPA requirement for valuable extra curriculars such as Moot Court or Trial Team. In addition, there is an incredible alumni network that strives to ensure Santa Clara Law students success.

Overall, the curve will leave some disadvantaged in the job market. That is ultimately just the competitive nature of the profession. If one wants to succeed in the field of law, then that will requiring studying hard, networking, and seeking opportunities. In conclusion, it takes more than merely performing well in the classroom to succeed.

DJ Castillo (3L)

I think in some ways the curve does disadvantage us in that a student's true skill in a particular subject area isn't always reflected in the grade they get. But I also feel that Santa Clara does present opportunities for students without high grades to take gain practical experience, for example through their clinics and externship programs. I have a fatalistic approach to the grade curve in that I always assume it's working against me, so I try that much harder. But I don't believe it's going to change anytime soon so in interviews where grades are discussed, and I don't have an A to show off, I supplement my answers by talking about my practical experience.

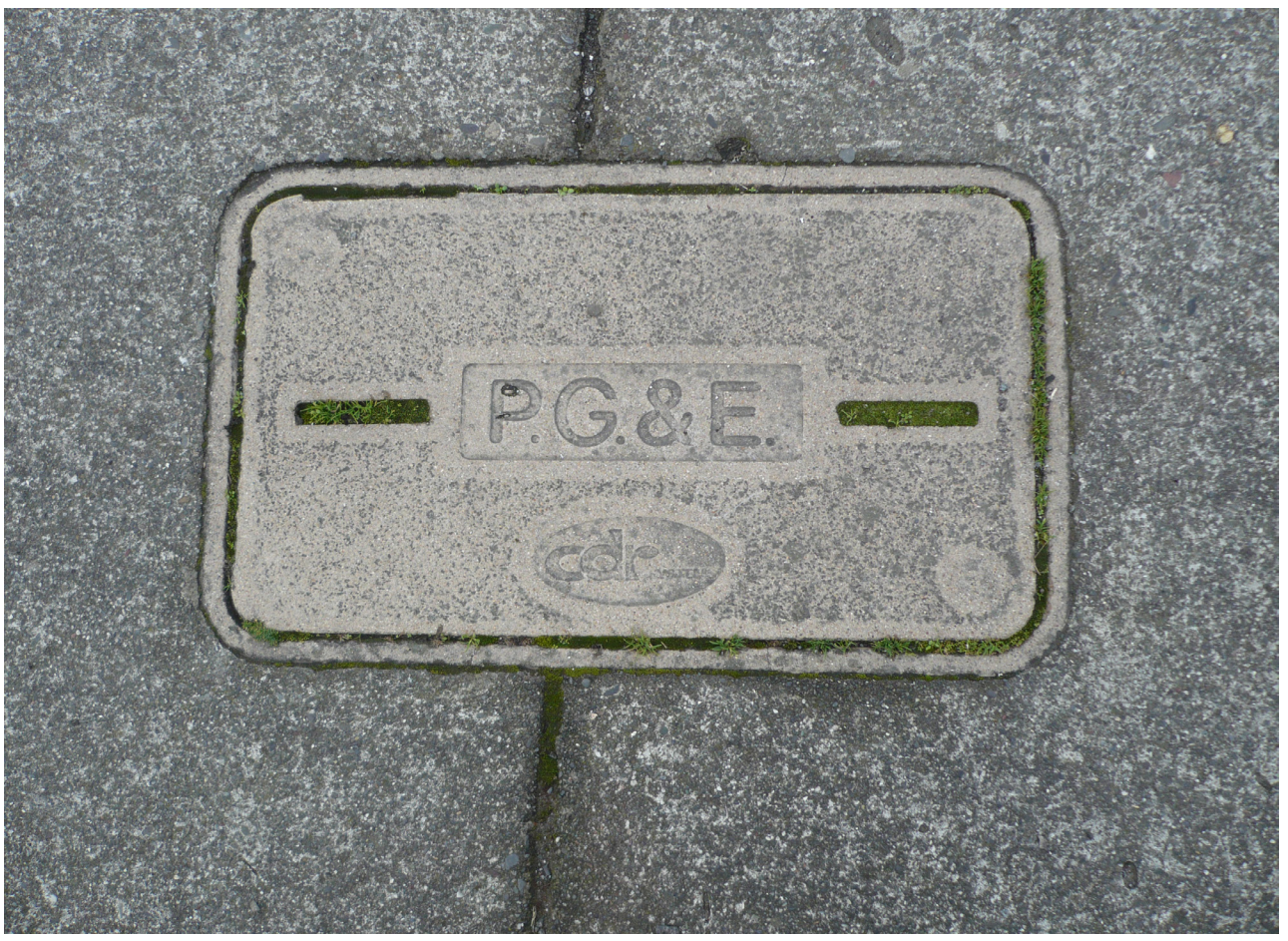
PG&E Files for Bankruptcy - What's Next?

By Jenna Anderson
Staff Writer

On January 29, Pacific Gas and Electric Company filed for bankruptcy, asking the court for $5.5 billion in debtor in possession financing. The bankruptcy is in part a response to 750 complaints on behalf of over 5,000 victims from the 2017 wildfires in Northern California. PG&E has potential liability for up to $30 billion in damages. PG&E provides electricity and natural gas to 16 million customers in Northern and Central California, employs 24,000 people, pays millions of dollars per year in statewide and franchise taxes, and keeps smaller energy companies in business. Each city and county in California will be affected by the bankruptcy in a different way, depending on their relationship and contracts with PG&E.

Why bankruptcy?

PG&E is an investor-owned utility that is currently faced with a multitude of inverse condemnation claims based on the wildfire's attributed to PG&E's lines. Cal Fire has determined so far that PG&E's electric infrastructure maintenance and operation has caused 17 of the 2017 California wine country fires. While state investigators have cleared PG&E of liability for the deadly Tubbs fire in 2017, PG&E still has potential liability for other fires, including a fire in Paradise, California that killed 86 people.



In response to their damaged credit and a potential liability of $30 billion, PG&E has filed for Chapter 11 Bankruptcy.

PG&E's potential liability costs are high because California law imposes a strict liability standard on utility companies for property loss and harm indirectly caused by their operations. The utility company must pay for all costs associated with a fire, if a power line or any equipment owned by the utility is involved in starting that fire. For example, even if PG&E were maintaining lines properly, they would be held liable if an earthquake caused a tree to fall on a power line, which in turn sparked a property damaging fire.

This legal concept is called inverse condemnation, which entitles property owners to just compensation if their property is damaged by a public use. Entities subject to inverse condemnation include the government, municipally-owned public utilities, and investor-owned utilities.

How will it affect people who rely on PG&E?

PG&E's press release claims they are not "going out of business," and that there will be no disruption to the services they provide customers. However, customers could be indirectly affected by PG&E's relationship with suppliers and counties.

Bankruptcy allows PG&E to request that their contracts with suppliers be revoked or renegotiated, which could put smaller and renewable energy companies out of business.

Catherine Sandoval, Professor at Santa Clara University School of Law who formerly served on the California Public Utilities Commission, explained that power purchase agreements between PG&E and smaller companies were previously approved at a market price, but now that more solar farms have been built and renewable energy is growing, the price is much lower. Bankruptcy gives PG&E the opportunity to seek to change the debt to be the new lower price. It is likely that power providers relied on the original contract price, and a change such as this could cause them credit problems. "Right now, this is a credit problem as opposed to a power problem, but you can see that this could become a power problem, and that becomes an issue of safety and reliability, as well as an issue about rates," said Sandoval. Customers could suffer from delayed implementation of safety measures, higher gas and electric prices, and slowed progress towards renewable energy goals, Sandoval said.

Customers may also be affected by the PG&E property tax that counties use to fund programs and provide basic services to their residents. PG&E is one of the largest private landowners in California, paying more than $460 million in statewide property taxes in 2017-18. Locally, PG&E paid Santa Clara County $52,082,912 in property taxes. A cash-flow pinch could cause PG&E to default on these taxes or force them to split their payments. This would force counties to provide services with alternate funds.

Fire victims with lawsuits pending will also be affected. When the debtor in possession financing petition is accepted by the court, an automatic stay is granted, which benefits the debtor. The automatic stay halts any prepetition legal proceedings as well as on the enforcement of any pre-filing judgment. This prolongs the relief sought by fire victims while PG&E takes potentially years to submit a reorganization plan.

What do Bay Area energy companies have to say about it?

"We are our own power company here in Santa Clara, we produce our own power, we have our own transmission lines, we have our own power generation plant, so we are a little bit different in the sense that we serve our residents through our lines, but we do have agreements with PG&E," said Manuel Pineda, Chief Electric Utility Officer for Silicon Valley Power.

Pineda explained, "we have agreements with them for operations and maintenance of different facilities, there are power purchase agreements, there are transmission line agreements, and we serve facilities in some cases. It is a very complex relationship here and we are currently preparing the paperwork for a multi-level analysis on how it will affect us." Given the early stage of this bankruptcy filing, Pineda says he cannot forecast how the bankruptcy will affect Santa Clara.

San Jose, on the other hand, may be affected in a different way, because San Jose Clean Energy uses a community choice aggregation program. Community choice aggregation (CCA), is a model that allows communities to join together to purchase electricity from an alternative supplier while still receiving transmission and distribution service from their existing utility provider. These community choice programs are administered by local governments with a mission to provide competitive alternatives to investor-owned utility sources. By aggregating demand, communities gain leverage to negotiate better rates with competitive suppliers and choose greener power sources.

San Jose Clean Energy is the most recent addition to the 14 CCA's in PG&E's territory. San Jose Clean Energy sources energy to be delivered over existing lines operated by PG&E.

As of now, San Jose Clean Energy's relationship with PG&E is business as usual. Zach Struyk, Deputy Director of Account Management and Marketing at San Jose Clean Energy, explained that PG&E continues to maintain the lines, deliver energy, and serve as a customer's first call for an outage or service issue. PG&E reads the meters and incorporates San Jose Clean Energy's charges as a line item in one bill for customers. Customers pay PG&E, and PG&E pays San Jose Clean Energy.

Struyk explained that he was nervous when PG&E planned to file bankruptcy, but PG&E's first day motion asking the judge to let them continue to perform this function for CCA's was approved, and San Jose Clean Energy has a seat at the table for the bankruptcy proceedings.

"In the future there is a lot of uncertainty out there, much bigger than how we are going to operate. Some have been calling for a public takeover of PG&E or the lines. Some CCA jurisdictions are looking at that more actively than others. I don't think there is a one size fits all approach. In San Jose we are exploring all options that improve energy affordability, safety, reliability and transparency," said Struyk.

99 Percent of Applicants for Public Service Loan Forgiveness Program Denied

By Emily Branan
Staff Writer

After almost ten years of working as an attorney for the government, Ricky L. applied for the Public Service Loan Forgiveness program, hoping his hard work would lead to the discharge of his student loans.

The U.S. Department of Education initially denied Ricky, who asked to remain anonymous because of his close work with members of Congress in California. Later, he learned he was on the wrong repayment plan to qualify for the program. Even though he was paying more each month than would have been required on the correct payment plan, Ricky was out of luck.

"I didn't bother to check every single detail because I figured since I was a government employee, I would qualify. I was never thinking I wouldn't qualify because I was on the wrong repayment plan," said Ricky.

Ricky's story is not unique. Federal Student Aid, an office of the U.S. Department of Education, reports over 99 percent of the first applicants for student-loan forgiveness have been denied since they became eligible in October 2017.

People who work in qualifying public service positions while making payments on their loans for ten years are eligible for the Public Service Loan Forgiveness Program. The College Cost Reduction and Access Act created the program in 2007.

"I think it's just one of those government programs that was a good idea, but they never really put all the mechanisms or pieces in place to administer it carefully," said Bryan Hinkle, Assistant Dean of Law Enrollment Services at Santa Clara University School of Law.

There are three criteria that must be met to qualify for the loan forgiveness program. First, the borrower must be in the direct loan program. Second, the loans need to be on an income-driven repayment plan. Finally, the borrower must be doing the right kind of work, either for a government agency or a qualifying non-profit organization.

Hinkle says one of the root problems is that early borrowers were given misinformation, mostly by loan servicers.

"The reason people weren't qualifying is because borrowers were getting bad information upon which they relied, so they would work, taking the steps they needed to take to qualify for the program or they misunderstood the employment requirements, and that is what is tripping up people," said Hinkle.

Hinkle said the work requirement is another hindrance for some borrowers. The American Bar Association recently filed a lawsuit against the Department of Education after four of its employees were denied for not meeting the work requirement. In filing the lawsuit, the ABA said it received notice that it was no longer an eligible employer for the program in 2016, and since the Department applied the change retroactively, those employees lost nine potential years of qualifying work for the program.

The Department of Education reports that when the program started in 2007, only about 30 percent of its loans were direct loans, and there were a limited number of income-driven repayment plans available for borrowers.

"The Department expects few people to be immediately eligible for a loan discharge under the Public Service Loan Forgiveness Program due, in large part, to complexities of the program Congress created more than a decade ago," said Liz Hill, U.S. Department of Education Press Secretary.

The Department of Education expects the number of approved applications will increase over the next few years. A couple of years into the program, around 2010, the Department began adding resources, such as creating more income-driven repayment plans, making sure more loans qualified and introducing employment certification forms for borrowers to confirm they are doing the right kind of work.

The Department predicts those borrowers who benefitted from the extra resources will start becoming eligible for forgiveness in the next few years. Hill said the Department is also working to improve outreach and external communications about the program.

The Department of Education said Congress created the temporary expanded Public Service Loan Forgiveness last year. It allows the Department to work with people who were denied when they initially applied and have made consistent payments, but were not in the right repayment plan to receive forgiveness.

Hinkle said although the Department of Education may be predicting a higher approval rate going forward, people should understand that the program is not a guarantee.

"It is not in your promissory note. You're not entitled to receive it. It is just a program that currently exists and is funded, and could go away," Hinkle said.

Ricky said he does not think the current uncertainty about the program will deter people from public service, but he says he definitely thinks it will affect how long people stay.

"It's known that you'll make more money being an attorney in private practice than you would being an attorney for the government in most cases," Ricky said.

Hinkle said another benefit of Public Service Loan Forgiveness is that there is no tax penalty on the forgiven amount. Under income-driven repayment plans, the remaining balance can be discharged after 20 or 25 years of payments, but borrowers may have to pay income tax on the forgiven amount.

Hinkle said students who are thinking about careers in which they would qualify for Public Service Loan Forgiveness should visit the financial aid office, read the Federal Student Aid website, and review the terms of the program to make sure they are doing everything they need to do to qualify.

Ricky said he also encourages borrowers "not to wait until the end of their fulfillment to make sure they are following they are following every single rule and regulation that is part of it."

President Trump Declares National Emergency: Professor Russell Responds

emergency declaration sets is a treacherous one; it suggests that national emergencies can be declared as a political ploy to advance a president's personal agenda. This consequence would be disastrous for our constitutional integrity as a nation, regardless of the party exercising such a power grab.

Critics are saying this is an abuse of power, what are the possible repercussions for Trump doing this?

It is clear that the president sees the repercussions as insignificant — at least so far. He blithely addressed the imminence of lawsuits challenging his emergency declaration, and voiced a lack of concern for challenges that would go to the Supreme Court. His discussion of the likelihood of litigation is disturbing in his apparent lack of respect for any constitutional constraints on his actions; his tone is that of a blustering, hostile bully as far as the independence of the judiciary is concerned.

So far, the President has suffered few repercussions for his obvious disregard for all institutional actors who disagree with him. If the House of Representatives wanted to consider articles of impeachment, there are several possibilities for what might arguably be considered impeachable grounds of "high crimes and misdemeanors." I think the president's national emergency declaration is unlikely to be the source of a move for impeachment; there are simply too many other candidates for consideration as "impeachable offenses."

Is this emergency declaration unprecedented in terms of abuse of executive power, or is this representative of an ongoing trend toward the Executive branch gaining more power?

Both Republican and Democratic presidents have increased the use of executive orders to broaden the reach of their powers — a trend that historian Arthur Schesinger termed "The Imperial Presidency" in his 1973 book of the same name. However, even less than a week after the president's declaration about the border wall, a consensus is emerging that this invocation of "national emergency" for partisan factually unsupported reasons is in a category by itself. It is dangerous, and there is rightfully cause for concern.

Critics of the Trump Administration say he embodies authoritarian tropes, does this emergency declaration demonstrate that?

Not only does this declaration of a "national emergency" illustrate the President's reckless disregard of facts and of the Constitution, the hubris with which he conducted the press conference on February 14 shows that he probably considers "authoritarian" to be a compliment.

What happens now?

There are several possible paths, involving Congress and the courts. It seems almost certain that the president will not declare an end to the ersatz "national emergency" that he has conjured up in order to get his " border wall." The National Emergencies Act of 1976 does not provide a specific definition of what constitutes a national emergency, but it provides a check on presidential power: the House and Senate can take up a joint resolution to end the president's declaration. However, assuming that the president would veto such a resolution, Congress probably lacks the required two-thirds vote of each chamber to override his veto.

Several lawsuits have already been filed or will likely be filed in the next week: by Public Citizen; Citizens for Responsibility and Ethics in Washington; the American Civil Liberties Union; the State of California (probably joined by other states); and possibly members of Congress. I think all of them will count in the sense that each presents different constitutional and statutory arguments and highlights unique injuries to the rights of different plaintiffs. Public Citizen, for example, seeks relief on behalf of three Texas landowners and an environmental group. Citizens for Responsibility and Ethics in Washington is suing the Department of Justice for failing to provide documents related to the president's decision to declare a national emergency. I think it is likely that one or more will reach the U.S. Supreme Court, but it will take some time before these challenges are resolved on the merits.

Justice Kavanaugh and the Attic of Constitutional Law

By Christopher Daley
Staff Writer

"I don't expect Justice Kavanagh to engage in what Justice Ruth Bader Ginsburg once called, 'a spring-cleaning of the attic of constitutional law,'" says Professor Steven Calabresi, Chairman of The Federalist Society since 1986. "[Justice Kavanaugh] is just not going to revisit a lot of old precedents or overrule them, I think he's going to focus on deciding the new cases that reach him directly." said Calabresi. The Federalist Society was credited with informing President Trump's consideration of Justice Kavanaugh, and while Calabresi is hopeful, others continue to be less enthused about Justice Kavanaugh's ascension to the Supreme Court.

Justice Kavanaugh's nomination last year was objectively contentious and fraught with concerns. Opposition was directly stated from groups like the American Civil Liberties Union, and the American Bar Association actively called for the vote on Justice Kavanaugh's confirmation to be delayed. Now, nearly five months after he was sworn in, conversations about Justice Kavanaugh and the political controversy caused by his nomination and confirmation have shifted to the background of the regular news cycle.

While national attention has dwindled away from him, Justice Kavanaugh's confirmation has re-opened conversations about what should be expected from a Justice of the Supreme Court. Some legal scholars, like Professor Bradley Joondeph, professor of constitutional law at Santa Clara University School of Law, think Justice Kavanaugh represents the continuation of a misalignment between the Supreme Court and the political electorate.

Joondeph, who clerked for Justice Sandra Day O'Connor, expressed concern that "the Supreme Court will be very conservative, on ideological cases at least, and that conservatism will be actually quite different and separate from the result of national elections." He explained, "if you were to pick an ideological center of [the Supreme Court], it is not just more Republican than Democrat but more conservative Republican than moderate Republican."

For Joondeph, Justice Kavanaugh's confirmation further reveals a "divergence between the ideological center of the Supreme Court and the result of now several consecutive national elections." This concern is amplified, Joondeph clarified, when the Supreme Court "has at its disposal the capacity to control the degree to which the electoral process reflects those voting preferences, like through partisan gerrymandering cases, or through campaign financing rules."

It is in this context that Joondeph is hopeful that, "Kavanaugh would appreciate all of those concerns and maybe restrain himself to some degree, in terms of his own personal views on constitutional issues, and see the broader threat to the legitimacy of the Court, to the legitimacy of the federal judiciary, to our democracy, particularly when the Supreme Court, among the three branches, might be the most functional right now."

Calabresi, professor of constitutional law at Northwestern Pritzker School of Law, sees Justice Kavanaugh in a more hopeful light, expressing agreement with Justice Kavanaugh, "that the Supreme Court should not go around examining and overruling a lot of precedent--instead it should focus on deciding cases correctly from now going forward."

Calabresi, who clerked for Justice Antonin Scalia, sees Justice Kavanaugh as embodying more the spirit of Justice Anthony Kennedy. "[Kavanaugh] will probably be somewhat more conservative than Justice Kennedy on some things and somewhat more liberal on some things." Calabresi underscored that "it's literally impossible to replace any Supreme Court Justice with someone who's exactly like them. There's just too many issues that the justices deal with for that to be possible, but I considered Kavanaugh to be a moderate conservative with a judicial philosophy that is compatible with Justice Kennedy's."

Although Joondeph and Calabresi disagree on the precise concerns and hopes associated with Justice Kavanaugh, there was an echoing of agreement between them in terms of the moderation Justice Kavanaugh could use in his role on the Supreme Court. Joondeph says that Justice Kavanaugh "has a very well-established view of what the Constitution means and how a judge is to go about interpreting the Constitution." Adding that, "the hope is that those inclinations however sincere will nonetheless be restrained, to some degree, by concern for the institutional consequences of taking all of those views to their logical conclusion."

For Calabresi, these sentiments were found more in the judicial philosophy Justice Kavanaugh implements in his rulings, expressing that Justice Kavanaugh playing a moderate role is "in line with [his] judicial philosophy, as well as with [his] desire to preserve the reputation of the Supreme Court." Calabresi says this moderation "reflects genuinely what [Kavanaugh] believes as a justice."

Whether this moderation is found in Justice Kavanaugh's awareness of maintaining institutional stability or in his precise judicial philosophy is a critical issue, for the tension found in Justice Kavanaugh's position on the Supreme Court is not only the result of external political influences, but internal influences as well. As Joondeph pointed out, "you run the risk of losing the respect of your colleagues if it looks like you are voting insincerely in order to achieve a particular result."

California Considers Eliminating Cash Bail

By Bianca Garcia
Staff Writer

"We're trying to survive," said Justin Aguilera, Director of Bad Boys Bail Bonds Inc., in a response to Governor Brown's signing of Senate Bill 10 that would eliminate cash bail in California indefinitely.

Aguilera admits that despite the bail industry's successful postponement of the bill by way of statewide referendum, California bail bondsmen are beginning to look for other avenues to make a living—"... investigation, interlock devices, and IDs."

The bill's author, Senator Bob Hertzberg, describes it as a step toward bail reform that will "...eliminate bias and discrimination in the justice system," according to his press release. However, critics of the bill like the American Civil Liberties Union argue that the tools for evaluating risk would reflect racial biases against minorities. Critics also say SB 10 will likely result in more people being locked up, as suspects will be detained for weeks awaiting a hearing, and judges will be given too much discretion.

Santa Clara County Judge Jesus Valencia says the court's primary concern "is one of public safety and the efficient administration of justice." Which is undermined, he says, "if we don't have the people who are charged or accused appearing in court and delaying proceedings by their absence." Today, about 15-20 percent of people fail to appear before the court after being released on bail, explained Valencia. While he says the court doesn't have any vested interest in the matter, he admits SB 10 would "change the game."

Aguilera, with skin in that game, argues that the bail system is protecting people's Eighth Amendment Constitutional right and enables individuals to get out of jail to fight their case. Meanwhile, Santa Clara County Public Defender Tom Larkin says bail doesn't protect anyone.

"If society cares about public safety, the reality of it is that, the public needs to realize there's nothing safe about bail," said Larkin.

Current law provides that when someone is arrested, that person typically—provided a Judge grants bail—has a constitutional right to post that bail, at which point a bail bondsman assists them in getting out of custody before standing trial.

"Most of the time we're dealing with the family member," said Aguilera, describing the process of aiding individuals and their loved ones. "We have to have someone who's employed, someone who's been at their job for a while, and we look into all this to make sure that person can post bail." Bail bondsmen work with people who are financially incapable of paying bail by creating payment plans and accepting as little as $100 as a down payment.

But, according to Judge Valencia, the point of SB 10 is to address the disproportionate impact the current bail system has. "It's [the current bail system] disproportionately impacting people of color and people of lower means that they often are the ones that cannot afford bail and then they languish in the jail or undergo longer periods of incarceration just because they don't have the means to post bail," he said.

SB 10 bill requires persons arrested and detained to be subject to a pretrial risk assessment, conducted by Pretrial Assessment Services, to assess the risk level of persons charged with the commission of a crime. Pretrial Services will both report the risk determination results as well as make recommendations for conditions of release of individuals pending adjudication of their criminal case.

A three-tiered system ranking individuals based on offense will determine their release. Low-risk misdemeanors, will be released on their own recognizance, and high-risk felonies will be held through court proceedings. Within this framework, each county in California is required to develop an algorithm to compute individuals of "medium risk," by inputting data to determine their likelihood to return to court, thus permitting or prohibiting release.

Larkin does not negate the excitement of extracting money from the equation "because it has really traumatic effects on people to be incarcerated." But he is ultimately disappointed to see that this new risk assessment tool will jail "persons only accused of a crime and presumed innocent" on the basis of an algorithm that inputs information based on socio-economic status, including employment and income – a premise the legislation was intended to combat.

While Judge Valencia says "this risk assessment tool gives individuals the opportunity to advocate and speak on their own behalf; they can make a demonstrable showing as to whether or not they will appear on their own recognizance," Larkin explains that "60-80 percent of jails are populated by people who have been convicted of nothing."

"It is crazy that we are basically saying we are going to jump through hoops to get people who have been convicted of crimes out of the jail to make room for those who have only been accused of crimes," said Larkin while describing what would happen to people that would fall within the medium and high-risk tiers.

Meanwhile, Aguilera sees the need to keep the accused accountable by getting individuals to court to fight their case. He estimated that there are over 10,000 active warrants in Santa Clara County and fears that criminals will be "looking for opportunities to break the law" when they're only "getting a slap on the wrist."

Today, bail bondsmen are tracking down those with bench warrants. But with SB 10, Aguilera posits, "who's going to find them when they have a warrant? It's not going to be the police, it's not going to be the sheriff."

While many defense organizations share Larkin's view, "the issue should not be setting a rate at how serious the charge is, the issue should be if you're going to set bail it shouldn't matter what the amount is. All that should matter is if the person could afford it," said Larkin. "For some people that's $1, for some that's $5, and for some people it's $100,000. Your ability to pay shouldn't affect your ability to get out of jail."

Facial Recognition: Your Image Unlocks Your Civil Liberties

By Joshua Srago
Staff Writer

All it takes is that quick glance down and your phone springs to life. No need for a code, no need for a fingerprint, merely using the front-facing camera to capture your image and your phone knows it's you. Has anything been more convenient in the way we interact with our personal devices? Of course, there are still certain risks that come with using biometric traits, such as facial recognition, as the access key to our devices.

The recent landmark decision by California Magistrate Judge Kandis Westmore declaring that law enforcement cannot compel individuals to use biometric features such as faces or fingerprints, making them akin to passcodes when unlocking personal devices, may be the first in a series that raises significant questions when it comes to individual rights and facial recognition. As technology companies begin to offer and deploy these solutions for a myriad of uses, we will now have to consider at what point facial recognition software crosses the line from useful tool to violation of individual rights.

The first consideration is the technology. There is immense value that facial recognition can provide. Not only can it be a tool to aid with accessibility for disabled individuals, but there are benefits in terms of constructing environments that better suit how people use them. Jake Tesler, R & D Hardware engineer for technology consulting firm TEECOM shared, "The business use case of being able to track identity is that it can help, long-term, in figuring out how people effectively manage and use spaces. Not just looking at it in terms of groups of people, but actual, specific people." Tesler continued, "It can help you with office layouts and figuring out how to organize teams, where to put people, and how to make a more universally accessible space."

To accomplish this task, companies could use as few as two to three images of employees acquired in the process of getting headshots for the website or a photo for an access badge and input these images into a piece of software. The software would then compare the images and build a dataset for each individual and store that information in a database. Once each person is in the database, all that's required is that person's image being captured on a camera and the stored dataset being matched.

Of course, this immediately raises questions in regards to how that information is being stored and with whom it is being shared. Jacob Snow, Technology and Civil Liberties Attorney at the ACLU of Northern California, says, "There's a threshold question as to whether or not companies should be enabling surveillance in the world we live in where communities of color and immigrants are being targeted, persecuted, and, in some cases, terrorized by the government. And what role private companies have in saying 'no' to technology enabling that kind of behavior."

Companies internally using facial recognition may raise some privacy concerns that must be taken into account, but W. David Ball, Associate Professor at Santa Clara University School of Law, draws a distinction between private companies and law enforcement. "It can be [a] state action if the police department says to the private company 'I want to contract with you for doing that.' But if it's Amazon that's collecting this information, or Facebook, or other multiple private entities that are monitoring us, that's not a Fourth Amendment issue."

Ball explained, the Fourth Amendment had been read to extend only to property until *Katz v. United States* where the Supreme Court, "moved away from this property conception and toward a reasonable expectation of privacy conception." He continued, "When I go out and walk in the street, that's not private. If police are staking out my house; if police have binoculars watching my front door; if police have a camera trained on my front door, those are all things where it's my front door and that's exposed to the public so there is no reasonable expectation of privacy."

If we are aware and accept that this technology exists and we are subject to it, what is the risk? Snow says, "It is possible to use facial recognition as a biometric at scale with hundreds or even thousands of people being identified in a single image." Using the example of a political protest, Snow continued, "It's not possible in an instant to fingerprint every single person at a political protest, but you could recognize their face with a face surveillance tool. Those characteristics make facial recognition uniquely dangerous for civil rights, civil liberties, and resisting pervasive surveillance in our society."

Snow further elaborated on the dangers, saying, "For facial recognition, there are reasons why the nature of it as a biometric is unique. It operates at long distances without the knowledge of the person identified; there's no way for the person to know if they have been tracked and identified; it's also not possible for someone to reasonably avoid being identified by facial recognition."

Snow is not alone in considering the risks. Ball recognizes, "There's a pervasiveness that the Founders could not possibly have imagined where you can literally track everyone's coming and going every day; you can do it after the fact; you can do it cheaply; and to allow the government access to this information without a warrant is a little scary."

This is where groups like the American Civil Liberties Union come to the aid of the individuals. Snow draws the distinction between the possible usefulness and dangers of facial recognition. "Any system that can identify a missing child can also identify a political dissident. Any system that can identify a criminal can also identify a person that is undocumented. The risks to communities of color, to immigrant communities, to poor communities from this new form of technological power is significant. Building this infrastructure is a harm that, once it's built, it can't be undone."

For Snow, it isn't just a legal question, there is also an ethical question that must be evaluated, "You have the question of whether or not using facial recognition in a given context violates the law and then there's the question as to whether or not private companies can be using it whether it's legal or not."

When asked where the line is between facial recognition being a useful technology and a violation of civil liberties, Snow stated, "the line has to be established based on an understanding of the technology. It's not something that should be established based on how pervasive the technology is because once technology becomes pervasive, it's much more difficult to roll it back."

The creation and adoption of technology exists on a sliding scale. On one end, you have security. On the other end you have convenience. The more convenient something is, the possibility exists for it being much less secure. The more secure something is, the possibility exists for it being extremely inconvenient to use. Until further decisions come down and the law draws further distinctions between an individual's right to privacy and the capabilities of technology, the best people can do is be aware. The ACLU has blogs and reports to provide information on the topic, as do other public interest groups such as the Electronic Frontier Foundation.

Town Hall Urges Community to Challenge White Nationalism

By Chris Vu
Staff Writer

On a Thursday lunch hour, Santa Clara University School of Law's Charney Hall Room 106 was packed—surpassing seating capacity—with students, faculty, and staff. Everyone was present to brainstorm answers to one question posed on the large screen: "What actions can SCU Law take in response to the rise in White Nationalism?"

The town hall - Pushing Back Against White Nationalism - was organized by the Jewish Law Student Association (JLSA) along with 15 other student organizations in response to incidents nationwide, including last October's synagogue shooting in Pittsburgh, the Charlottesville Rally, and the Charleston church massacre.

Student leaders were not alone. The law school's Committee for Diversity and Inclusion offered its support.

"There's been concern about the status of the country and what's going on politically," said Allen Hammond, Professor of Law and Chair of the Committee. "We're here to provide an environment that is both inclusive and supportive for our students."

The event was originally planned for last November, but organizers had to postpone it due to the unhealthy air quality caused by the Paradise camp fire. But, there was another urgent situation that had to be addressed.

Concerns for the safety of the event were raised when an anonymous user posted the flyer on 4chan—a fringe online chat board known for being racist—with the question "What should I do?" The user, who referred to Santa Clara Law School as "...my old school," received responses on 4chan including "Get out the Klu Klux Klan masks and go and picket it," and other violent and hateful comments.

"It was really disappointing to hear that somebody in this law school subscribes to such an extremist ideology and would act on it," said Evan Miller, President of JLSA. "It goes to show, that this is everywhere. People like to think we're in a post-racial world, and that's just not the case."

As a precaution, campus safety reviewed the posts and arranged a safety plan. Per protocol, they informed the Santa Clara Police Department (SCPD). In the event threats escalate, the SCPD steps in.

"Whenever there's a feeling that the discourse could get a little fiery between the sides, then we'll just go in and make sure everybody gets their say," said Philip Beltran, Director of Campus Safety.

Campus safety officers were present in uniform, monitoring the two exits and checking participants' IDs. Two Santa Clara Police Officers were also present, standing guard outside the room. In the end, there were no disruptions at the town hall.

"I think you shouldn't be dissuaded or discouraged by any topic in that arena, so use us so you have a safe event," said Beltran. "That's what university is all about around here, that dialogue takes place."

Susan Erwin, Senior Assistant Dean of Student Services agrees. "It's about free speech, you guys are here to learn how to have these kinds of conversations. It's important that we hear all the sides. It's not our job to say what kinds of events we can and can't have."

Last November, in the wake of the Pittsburgh shootings, JLSA initiated a task force that will take on projects to address white nationalism, with the town hall as the first event.

"We're living in a really great community where we're surrounded by smart people and lots of resources," said Michelle Oberman, Professor of Law, faculty advisor for JLSA, and head of the task force. "If we could tap into our own creativity, we could actually more effectively respond to the despair that we're feeling."

During the Pushing Back Against White Nationalism town hall, faculty, staff, and students sat together in groups and wrote down ideas. The room collectively picked 30 ideas. Moving forward, the task force will prioritize the projects that can be readily pursued this spring semester.

Oberman emphasizes that the task force, like the town hall, is open to anyone. "This is a project for the entire community - it's not a top down thing. Anybody who shows up will have a chance to have their voice heard on what they think we should be doing first," she said.

The task force calls "for folks who have a strong sense of things moving in a troubling direction," said Oberman. Or "feel some sense of moral obligation."

"This is your community saying 'we need your voice, we need your energy.' It's time."

New Partnership Prepares Students for Life After Law School

By Wanying Li
Staff Writer

Santa Clara University School of Law partnered with the Institute for the Future of Law Practices (IFLP) in November 2018 to bring real-world problem solving opportunities to law students. IFLP grew out of the Tech Lawyer Accelerator program at the University of Colorado School of Law in 2018, and has since been educating law students on practical working skills, and successfully placed more than 90 students in paid internships that later led to permanent employment upon graduation.

Lisa Colpoys, Program Director for IFLP, chose Santa Clara Law as its 17th partner school because the campus demonstrates innovation in curriculums, which is well-aligned with IFLP's core value—preparing law students with a "bigger tool box" to handle various challenges of today's complex and dynamic legal world.

"Legal employers are demanding that their lawyers understand how their businesses operate, and they want their lawyers to have certain skills that allow them to be trusted advisors of their business," said Colpoys. "Those skills include basic business skills and an understanding of how technology is used in their business."

IFLP adopts a learning model that combines training with a guaranteed internship afterward. The training prepares students with operational and business skills that complement traditional law school courses, while exposing students to various industrial topics such as Data Services, Finance and Accounting, and Technologies. There are five three day modules that participants must complete. Unlike traditional classroom experiences, training modules largely consist of team activities, hands-on projects, and capstone presentations that receive feedback from industry experts.

The five modules provided are: Business Fundamentals and Professional Communication, Project Management, Process Improvement, Innovation, Technology and Knowledge Management, as well as Data Analytics and Artificial Intelligence. Depending on students' upcoming internship placement—determined by their expressed interest—this module teaches them how to integrate the knowledge and skills learned from the training into their following internship. After the training, students are placed into paid internship with IFLP partner employers ranging from corporate to public interest law firms, which then provide students a chance to practice and refine what they've learned from the training.

Lauren Diner, who participated in IFLP last summer and is currently in her second year at Northwestern Pritzker School of Law, says the IFLP boot camp is helpful because law schools usually do not teach students enough lawyering and project management skills, which is expected from employers.

"I was able to take a lot of those foundational skills that I had practiced and put them into a real life company setting," said Diner. "Especially for second-year students, you really don't have a ton of opportunity to make meaningful connections with employers, and the employers that are signed up to partner with IFLP are real reputable big companies."

In the past summer, Diner interned with Neota Logic, a New York based software company, where the whole team mentored her. Although Lauren is not returning to her IFLP employer this coming summer, she regards her IFLP internship experience as a highlight that makes her resume stand out. IFLP experiences also prepare students like Diner to talk about their past work during interviews with prospective employers, which contributed to her obtaining a desired internship with a law firm.

"Training is more effective when accompanied with practice such as internships," says Tammy Dawson, Santa Clara University School of Law Career Counselor.

Dawson also confirmed that from her experience, companies are seeking trusted advisors. In other words, lawyers who have an understanding of their business, show good judgement, and can generally help them make difficult business decisions while minimizing risk. Students who show potential in these areas will generally be more competitive. She strongly encourages students to try out opportunities like IFLP. As many IFLP partner employers are located in Midwest and Mountain States, students who plan to stay in California upon graduation may be placed in internships in other states. However, Dawson suggests students, especially first-years, not turn down an internship solely based on its location.

"Most employers are more interested in what skills you developed than in the location where you spent your first-year summer," she said. Moreover, Ms. Dawson emphasizes that networking always plays an important role in one's career path. However, there is "no one way to good jobs," says Dawson, who encourages law students to contact the Office of Career Management for career-related question.

To participate in the IFLP, students need to submit—via IFLP's online application—their resume, cover letter and a written assessment that provides solutions to a given real-world legal problem. Applicants nominated to the candidate pool will be interviewed by IFLP. Qualified applicants will be referred to partner employers and successfully matched students will be officially admitted.

Professor Spotlight with Karla De La Torre

By Pedro Naveiras
Staff Writer

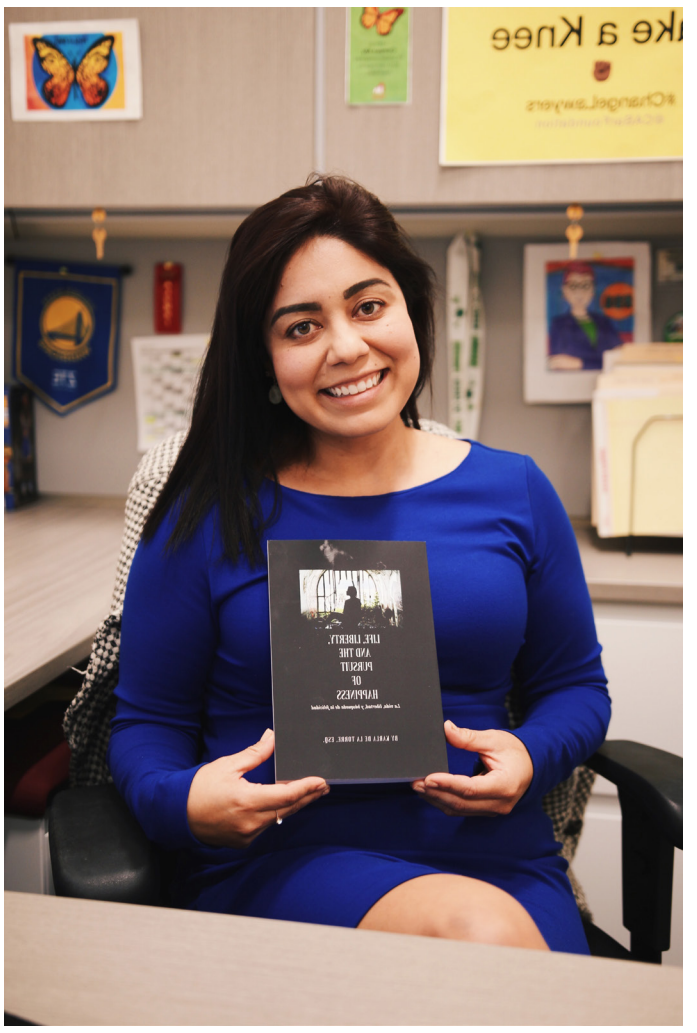
Karla De La Torre, Santa Clara University School of Law Adjunct Professor of Law and Law Admissions Counselor, recently published her book, *Life, Liberty, and The Pursuit of Happiness* (*La vida, libertad, y la busqueda de la felicidad*), where she shares her story—in poetry and prose—about the realities of being an undocumented immigrant in the United States.

What inspired you to write this book at this time?

I wrote it so that people could understand the political climate. The current political climate has been such that it is based on people's beliefs on immigration, as opposed to actual facts to what the process is, what livelihoods are like, and it really irks me.

What are the three main takeaways that you hope people will get from reading your book?

1. Immigration policy cannot be condensed into sound bites or memes. It often leaves gray areas... So many gray areas, and I want people to better understand immigration.
2. Let people know they can achieve their goals if they keep trucking along. I hoped that law students would read it and see there is a light at the tunnel.
3. I wanted to give people a real look at what it is to be a student. So long as you keep doing what you love and are interested in, you'll reach a point where you wake up are happy. You never know where life is going to take you. It's a beautiful ride, as painful as it can be.



Is there something that makes you feel optimistic about the future?

Yes. The fact that the U.S. has encountered tough times before and it has somehow found the way to prosper. Also, I love the U.S. This is a country my parents came to because of the fact it is so prosperous. It makes me think of the Hamilton song, our diversity is our strength. The fact that there have been people who have tried to limit immigration, but there has also been a big pushback. This quote is in my book too, but it's important. "America is too great for small dreams" -Ronald Reagan. This keeps me optimistic because people in their hearts want to do the right thing.

What can students at SCU Law do to support the undocumented community, both in the law school and in their everyday communities?

Get educated. We have immigration classes here at Santa Clara. Maybe you think you're tech and you'll never have to deal with this side of the law, but you might have an immigrant working next to you. With how globalized our world is, it is nice to have a little knowledge about other things. You don't have to go to the border. Realistically, the best thing you can do is get educated and speak up. That's why I wrote my book, I was hoping to educate and inspire.

What happened during Obama era with DACA was a positive change in immigration and people felt safe to come out and tell their story. Then this administration came in and we're back to the Bush era and people are scared. No one wants to be in that place. We've been there before and hopefully we won't be there long.

Is there anything you'd like to talk about that I haven't already asked about?

I put the book out there to inspire people to share their story. I think it would be false to say I'm not scared. When there's a tough time socially, it is scary. I might lose it all tomorrow and that's the reality for a lot of people. I want people to be encouraged to be kind to one another. Whether you ever see each other again, you see these people. You're all pursuing the same thing and that unites you. Be kind.

San Jose's Google Village: What Does This Mean for Housing?

By Emily Ashley
Staff Writer

Google's rapid development may soon be knocking on San Jose's door. The tech giant just announced massive expansions to its operations in Austin, TX, and they've recently bought property in San Jose that will potentially host a new Google village. While some celebrate the economic stimulation that San Jose will see as a result, others fear what its arrival will mean for housing and rising rent prices in the area.

Mark Golan, Vice President of Real Estate for Google, says they were drawn to San Jose largely because of the growing Diridon Station and its potential to provide an easy commute for employees. If built, the village will sit on West Julian Street near the station.

"We see the problems that exist when workplaces are built away from areas where people can commute through public transportation or away from areas where they can live," says Golan. Google is attempting to create a "much better quality of life in terms of reducing their commute," he said.

While increased means of transportation is often viewed as a beneficial development, some members of the community are concerned about housing and rising rents. Google is looking to expand the area, knowing that with a new campus, new shops and restaurants will start popping up, creating mixed-use purposes for the land in the area.

"Mixed-use [land] is very important to create vibrancy," says Joe Van Belleghem, Senior Director of Development at Google.

But, how will that vibrancy impact nearby rents and, specifically, the people who run shops or provide services in that mixed-use land? Some community members expressed concern for lower-income workers in the area being pushed out of the city to places like Hollister or Tracy where they can't access the public transportation that Google is excited about. But, the company hopes to work with the city to eradicate that issue.

"The well-being of a community is affected when those that work in our shops, build our buildings, teach our kids, protect us can't live in the communities that they work and I realize that Google can't solve all those problems, but I really fundamentally believe that we can be part of the solution by working with the community. We also believe that for us to thrive, the community also has to thrive," said Van Belleghem.

Elisabeth Handler from San Jose's Office of Economic Development believes that the solution lies within business taxes, and Google will be instrumental in driving up those revenues.

"Our residents go elsewhere to earn their money- and that means those towns where they are earning their money- in Cupertino or Mountain View or Palo Alto- are collecting the business taxes and revenues from those companies," Handler says. "It's business taxes that pay for residential amenities."

Pastor Scott Wagers of the Community Homeless Alliance Ministry thinks the approach to affordable housing should be more direct.

"The city is selling public land to a corporation, and for what? To really make way for Google- and their premise is that somehow that's going to help the homeless & the poor, and that's just not going to happen. It's not logical, unless Google directly starts to subsidize housing for the poor," Wagers said.

Wagers agrees with Handler's point about the benefits of business tax revenues for housing, but wants to see more immediate action.

"That's cogent - I think they have cogent arguments, and that's a good one right there, but ultimately I think because you already have a pre-existing homeless problem- that would be good if there wasn't a huge amount of people already living in the street, and by the time Google moves in in 5 years, who knows how big the homeless problem will be," said Wagers.

Wagers believes technology companies, like Google, contribute to the lack of affordable housing in Silicon Valley.

"Technology is creating more homelessness than it can abate. And I see why, because of the supply & demand of housing. The cost of housing is driven up by tech workers who make, you know, $150-200,000 a year," Wagers continued.

While some residents share concern that an influx of people could move into San Jose to take high-paying jobs at Google, Handler believes those positions will go to people who already live in the city.

"It's not as though these people are being imported from Mars… they're just people who live here and are going to work downtown, which feels like a win-win not just for the city, but for the residents of the city," said Handler.

Google wants to hear from the city itself, so they've been taking action- like attending public engagement meetings- to seek the community's input on their plans.

"This is the beginning of the process for us, now that we're getting close to having a site that's viable we really want to hear the feedback from the community before we decide a plan," Golan says. "There's nothing that has been done in any detail because frankly, we want to hear from the community first."

Blood, Money, and Justice: Jamal Khashoggi's Murder

By Lubna Hakim
Staff Writer

Disclaimer: All opinions expressed by the author below are solely his/her opinions and do not reflect the opinions of The Advocate.

Walking hand in hand through the streets of Istanbul, Turkey, Jamal Khashoggi and his fiancé were ready to begin their new life. The Washington Post columnist known for being a critic of Saudi Arabia knew that this October day would be fateful, but not in the way he imagined it. As he walked into the Saudi consulate to obtain a copy of his divorce papers, allowing him to legally marry his fiancé, a 15-man Saudi hit-squad stood ready to execute and dismember him. Until this day, Khashoggi's remains are missing, leading turkish officials to believe his body was dissolved in acid. The brutish murder of our Virginia resident highlighted where President Donald Trump's allegiances lie. By standing with Saudi Arabia, Trump shouted to the world that he couldn't care less about American values, morals and laws.

Initially, Saudi Arabia denied any involvement with the disappearance of Khashoggi. But after weeks of persistent denial, the Kingdom eventually confessed that Saudi officials were responsible for the gruesome murder. The Saudi government took measures to punish those involved but left out the prime mover in the operation—Saudi Crown Prince Mohammed bin Salman (MBS).

In late November, the Central Intelligence Agency (CIA) concluded that MBS directly ordered the assassination of Khashoggi. The CIA reached this conclusion by accumulating and assessing multiple sources of intelligence, including exchanges between MBS and one of the hitmen, audio recordings from devices placed by the Turks in the Saudi consulate, and video surveillance footage. Despite the CIA's confirmation, Trump undermined U.S. intelligence and reflected uncertainty regarding MBS' involvement. In an interview with Fox News, Trump said, "[MBS] told me he had nothing to do with it."

The Trump Administration placed sanctions on 17 Saudi officials accused of involvement in the murder, but refused to take any actions against MBS despite all evidence pointing toward the prince. Trump claims there was "nothing definitive" linking the assassination with MBS. He then acknowledged it is very likely MBS had knowledge of this tragic murder but explicitly said he values the commercial relationship with Saudi Arabia and would not risk losing it. Lastly, Trump strongly emphasized security threats and Saudi Arabia's importance as a strategic U.S. ally in military sales and oil production.

By suggesting that only a blatant confession from MBS would confirm his involvement, Trump has signaled that he trusts MBS more than our men and women in the CIA. This isn't the first time Trump has sided with the denials of strongman over Americans. The administration's disbelief of the CIA report is likely tied to undermining the Russian investigation concerning the interference in the 2016 presidential election. By weakening the credibility of U.S. intelligence in the Khashoggi case, Trump attempts to support his claims of an unreliable CIA. It is a dangerous time in our country when the president ignores the CIA's findings in favor of a Prince that says "it wasn't me."

In its fact-intensive conclusion, the CIA reported "high confidence" of MBS' involvement. The CIA explains that high confidence entails quality information that allows for a solid judgment on the issue. Republican Senator Lindsey Graham, a usual supporter of Trump, stated, "There's not a smoking gun. There's a smoking saw." Graham further emphasized, "You have to be willfully blind not to come to the conclusion that this was orchestrated and organized by people under the command of MBS."

Not only are Trump's statements on the lack of evidence unpersuasive, but his statements regarding business with Saudi Arabia are largely exaggerated with misleading numbers. A report by the Centre for International Policy, a Washington think tank, revealed that despite Trump's claims that Riyad, Saudi Arabia's capital, is purchasing $110BN in U.S. weapons and providing hundreds of thousands of U.S. jobs, the reality is weapon sales are about $15BN and accounts for fewer than 20,000 U.S. jobs. These inflated numbers allude to alternative reasons for prioritizing Saudi Arabia relations.

In his July 2015 rally, Trump enthusiastically stated, "I like the Saudis," "I make a lot of money with them. They buy all sorts of my stuff. All kinds of toys from Trump. They pay me millions and hundred of millions." While currently there are no Trump Hotels or golf courses in Saudi Arabia, Trump has largely profited from business with Saudi's since the 1990s—Trump sold $4.5M Trump Tower to Saudi Kingdom in 2001 and experienced a 13% bump in hotel revenues from Saudi officials in 2018. Further, Kushner and MBS have fostered a close relationship and conversed this year about a possible $100M business deal. These personal ties with Trump's family is another explanation for the administration passive response in Khashoggi.

Unlike the U.S., Denmark and Germany have consciously made the decision to prioritize human rights over money by halting Saudi weapons sales as a direct response to the Khashoggi murder.

A year before the killing, MBS said that he would use "a bullet" on Khashoggi if he did not return home and end his criticism of the government. Khashoggi fled to the U.S. under a self-imposed exile in June 2017, after feeling unsafe in Saudi Arabia. Khashoggi, an Indiana State University (ISU) graduate, could have been any U.S. resident passionate about freedom of expression. The U.S. must protect the constitutional rights of freedom of press and speech in which a Virginia resident died for. In the end, money and power buried the innocent soul of Jamal Khashoggi. Nevertheless, Congress provides some hope of justice and has promised to discipline even the most powerful.

In December, the Senate passed a non-binding resolution condemning the murder of Jamal Khashoggi and confirming MBS' direct responsibility. As a response to Trump's denial and inaction, Congress triggered the Global Magnitsky human rights act. Under this act, the president has 120 days to submit a report determining MBS' direct involvement and placing human rights sanctions. Friday, February 8 marked the deadline to submit the report. Unsurprisingly, Trump has failed to respond to the congressional request. While the administration has provided precedent from the Obama administration for failing to respond, Juan Pachon, a spokesman for Democratic Senator Bob Menendez, said that Trump was breaking the law.

Sadly, the administration's ludicrous attempt to hold the alleged murderers accountable for punishing those involved has shielded the kingdom from accountability. The U.S. role in the Khashoggi murder suggests that commercial transactions and a strategic location are a license to kill. It sets a precedent that leaders can get away with horrendous crimes without any consequences and, instead, a continued allyship. By turning a blind eye on this heinous murder, Trump shows the U.S.' strong dependency on the Saudi government and the importance of prioritizing Saudi interest rather than American values.

Rather than advocating for human rights and protecting an innocent individual who risked his life for the freedom of speech and press, Trump stood by the murderer. We should not forgive Trump's behavior, nor should we dismiss it. Jamal Khashoggi's story should be remembered as a moment when our president failed our nation's values. Americans must continue to demand justice for Khashoggi. As President Harry Truman so famously said, "America was not built on fear. American was built on courage." Now, we must have the courage to stand up for our values, just as our forefathers did.