



MAKING SENSE OF THE ACQUITTAL IN KATE STEINLE'S CASE: WHY ANTI-IMMIGRANT RHETORIC EQUATING IMMIGRANTS WITH CRIMINALS MUST STOP

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Kate Steinle's death was a senseless tragedy. On July 1, 2015, as she was walking along San Francisco's Pier 14, a gun goes off and cuts her life short. She died in her father's arms.

The accused, Jose Ines Garcia Zarate, is an undocumented Mexican immigrant who had been deported five times before, and each time, has illegally come back into the United States. He was charged with murder and manslaughter, but the jury recently acquitted him of the charges. His acquittal has inflamed President Trump who calls the verdict a travesty of justice. He uses the acquittal as another reason to build the wall. If Mr. Garcia Zarate did not cross the border illegally, Kate would still be alive today, Trump and his supporters argue.

But Mr. Garcia Zarate's immigration status was not relevant. In the criminal justice system, the twelve jurors were asked to look at the facts and deliberated hard for six days. The key issue was whether the defendant intentionally killed the victim? Immigration status was not part of the jury's deliberations and should not have been, however much Trump and his supporters may insist. Evidence was presented in the trial that the bullet had ricocheted before killing Ms. Steinle. The jury determined that Mr. Garcia Zarate did not intentionally kill her. Mr. Garcia Zarate was nevertheless convicted for felony possession of a weapon and will face prison time. After he completes his sentence, Mr. Garcia Zarate will presumably be deported to Mexico for the sixth time.

In order to have a fair criminal trial, which the United States ensures for all defendants, immigration status should never be relevant and thus not

admissible evidence. The only question in court was whether the defendant intentionally fired the gun. As the facts were presented, Mr. Garcia Zarate, a homeless immigrant living in the country illegally, unwrapped a cloth object under a bench on a San Francisco pier. Inside the cloth was a gun that had been stolen days before. During the presidential campaign, Trump exploited Kate's unfortunate death to conflate immigrants with criminals, foment hate, inspire a mass deportation program and to catapult him into the presidency. Trump continues to rage and exploit Ms. Steinle's unfortunate death to further his anti-immigration policies. He says this in a recent [tweet](#):

The Kate Steinle killer came back and back over the weakly protected Obama border, always committing crimes and being violent, and yet this info was not used in court. His exoneration is a complete travesty of justice.
BUILD THE WALL!

Mr. Garcia Zarate may have been an undocumented person who illegally crossed the border many times. But that fact would not have changed the outcome as Mr. Garcia Zarate's border crossings in violation of law were not the proximate cause of Ms. Steinle's death. If Mr. Garcia Zarate had not picked up the gun at that fateful moment, and if another homeless person born in the United States picked up the same gun, Ms. Steinle may have still been killed. The fact that a person may have crossed the border illegally does not make them a criminal with a tendency to commit even more crimes in the United States. The criminal justice system can fairly deal with people accused of crimes, whether they may be immigrants or US citizens.

To be clear, Mr. Garcia Zarate is no model immigrant. He is not a Dreamer or a STEM graduate. Still, he got a fair trial in our criminal justice system even though he was unable to afford fancy lawyers. Most immigrants, however, are hardworking and honest, trying to make better lives for themselves, while also benefiting the United States. They are also valiantly trying to legalize their status in an immigration system that urgently needs an upgrade. Indeed, a [Cato Institute report](#) establishes that immigrants, even undocumented immigrants, commit lesser crimes than native Americans. It is irresponsible to use this tragic incident to scapegoat all immigrants or to drum up support for mass deportations of millions of people. It would also not be in keeping with Ms. Steinle's memory if her death results in hate and misery [fomented by white nationalist groups](#).

Ms. Steinle's death was also used as a basis for the Trump administration to oppose sanctuary jurisdictions. Mr. Garcia Zarate had completed a nearly four-year federal prison sentence for illegally reentering the country. He was turned over to San Francisco law enforcement officials because of an outstanding warrant for a marijuana-related charge that was immediately dismissed. Local officials released him, despite a request from federal authorities to keep him in custody because of his immigration status, according to a wrongful-death lawsuit filed by Steinle's family. The [Trump administration issued an executive order in January 2017](#) to articulate its broadened enforcement policy against undocumented immigrants, which among other things sought to block federal funds from "sanctuary jurisdictions."

The January executive order stated, "Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic." The executive order said, among other things, that the policy of the executive branch is to "ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." The order further said that the Secretary of Homeland Security has the authority to designate a jurisdiction as a sanctuary jurisdiction, and that the Attorney General can take "appropriate enforcement action" against any entity that "has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law."

Following lawsuits by the counties of San Francisco and Santa Clara, California, federal district [Judge William H. Orrick ruled](#) against a provision of the Trump administration's executive order issued in January 2017 to block federal funds from "sanctuary jurisdictions." The counties challenging the executive order argued that the relevant provision of the Trump executive order violated the separation of powers doctrine in the Constitution because it improperly sought to wield congressional spending powers. The counties said it was so overbroad and coercive that even if the President had spending powers, the executive order would clearly exceed them and violate the Tenth Amendment's prohibition against commandeering local jurisdictions. Further, the counties argued that the provision was so vague that it violated the Fifth Amendment's Due Process Clause and was void for vagueness. And because it sought to deprive local jurisdictions of congressionally allocated funds without any notice or opportunity to be heard, it violated the procedural due process

requirements of the Fifth Amendment.

The federal government responded that the counties could not demonstrate that the executive order's sanctuary provision was invalid under all circumstances. It also claimed, among other things, that the provision was consistent with the Constitution's separation of powers and did not apply to funding in which the county might have a constitutionally protectable interest.

The court noted that the provision in question, by its plain language, attempted to reach all federal grants. The rest of the executive order was broader still, the court noted, addressing all federal funding. And if there was any doubt about the scope of the executive order, the court observed, the President and Attorney General "erased it with their public comments." The court noted that the President has called the order "a weapon" to use against jurisdictions that disagree with his preferred policies of immigration enforcement, and his press secretary reiterated that the President intends to ensure that "counties and other institutions that remain sanctuary cities don't get federal government funding in compliance with the executive order." The Attorney General has warned that jurisdictions that do not comply would suffer "withholding grants, termination of grants, and disbarment or ineligibility for future grants," and the "claw back" of any funds previously awarded, the court noted.

The court said that the Constitution vests spending powers in Congress, not the President, so the executive order "cannot constitutionally place new conditions on federal funds." Further, the court noted, the Tenth Amendment "requires that conditions on federal funds be unambiguous and timely made; that they bear some relation to the funds at issue; and that they not be unduly coercive." Federal funding that bears no meaningful relationship to immigration enforcement "cannot be threatened merely because a jurisdiction chooses an immigration enforcement strategy of which the President disapproves," the court said. Because the executive order violates the separation of powers doctrine and deprives the counties of their Tenth and Fifth Amendment rights, the court granted the counties' motions for summary judgment and permanently enjoined the defunding and enforcement provisions of the executive order.

Despite the injunction, and following the acquittal verdict in the Stienle case, anti-immigrant rhetoric equating immigrants with criminals continues to intensify as the Administration ramps up its deportation force, doubles down

on cruel deportation tactics, and attacks policies put in place by local police and sheriffs to keep their communities safe. The hateful rhetoric must stop. Entangling local law enforcement with deportations undermines trust and safety. Local law enforcement has repeatedly come out in favor of so-called "sanctuary" policies, not the least because honoring detainers issued by ICE has led to counties being liable when courts have found that a person's constitutional rights under the Fourth Amendment were abridged when someone was detained without a judicial warrant or court order. When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it encourages criminals to prey upon victims and witnesses alike. Victims of domestic and other violence choose to suffer in silence rather than seek assistance; key witnesses of crime refuse to come forward out of fear that they themselves will be treated as a criminal; and a climate of fear grips entire neighborhoods. Regardless of the passions generated in the Steinle case, cities and localities need to make pragmatic, rational choices about how to best make and keep their city/locality safe. The decision to disentangle local policing from immigration enforcement promotes community trust and the federal government should not interfere with this local policy making. Indeed, such a disentanglement will be more effective in preventing crime.

America has been a nation of immigrants since its inception over 240 years ago, while it has been just over a year since ugly anti-immigration sentiment has been unleashed through Trump's rise. Over these two centuries, there has also been a recognition that those who are accused of crimes face a fair trial in the United States regardless of where they come from or their immigration status. It is hoped that these bedrock principles grounded in the nation's history and character will withstand the xenophobic stirrings of the moment.