

# Op-ed: The Berkeley balcony tragedy and the American legal system

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In recent days, much has been written about the tragic Berkeley balcony collapse and its victims – mostly Irish students visiting the United States on the U.S. government's J-1 nonimmigrant visa. More than 150,000 Irish students have used the program for J-1 visas to visit the United States in the past 50 years, including 8,000 last summer, many of finding work in the San Francisco Bay area at retail shops, restaurants and tourist attractions, such as Fisherman's Wharf.

Our hearts go out to the families who lost loved ones at such a young age and to the injured students and their parents and siblings who must now struggle to recover shattered lives. It is a shock that such a terrible tragedy should occur on a summer adventure that has become a ritual of passage for thousands of Irish young people.

While most of the coverage has been empathetic to the victims – who were celebrating a 21<sup>st</sup> birthday – there have been some notable exceptions. For example, the *New York Times* was forced to apologize for insensitive coverage that employed Irish stereotypes and seemed to blame the victims for a terrible accident that killed 6 and left seven others severely injured. Likewise, some bloggers have focused on the legal status of the Irish students, in effect demonizing the victims for being foreign workers and possibly being in the United States illegally.

Regardless of skewed journalism and ignorant internet commentary, it is important to understand one critical fact regarding this tragic accident. The civil legal system in California will treat all of the victims of this accident equally, whether they are American citizens, tourists or foreign nationals, regardless of their compliance with American immigration laws.

As a basic principle of U.S. constitutional law, the right to sue is guaranteed to all persons physically present within the borders of the United States. This is so if the person is a U.S. citizen, visiting as a foreign national on a work visa such as J-1, or even if unlawfully present in the country.

For example, as clearly stated by the United States Supreme Court in *Plyler v. Doe* (1982), "aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments." This means that regardless of citizenship or immigration status, everyone in the United States is

entitled to full and complete recovery in the civil justice system. Thus, even though an illegal alien may have violated certain provisions of the Immigration and Nationality Act and thereby become subject to the prescribed penalties – deportation and possible criminal punishment – he or she is not stripped of their constitutional rights.

Initial speculation focused on the possibility that the 13 students overloaded the balcony. But structural engineers rejected blaming the victims. They said the cause of the tragedy appeared to be structural. Newly released records show the balcony was designed to hold nearly 2 tons, far greater than the weight of the people who fell to the pavement below.

“It appears to be a classic case of dry rot, meaning water intruded into the building [and] rotted the wood” that supported the balcony, Gene St. Onge, an Oakland civil and structural engineer, told the *Los Angeles Times*. A city report released a week after the collapse confirmed that the balcony had significant dry rot. Berkeley city officials ordered a second balcony removed from the building because it was “structurally unsafe,” but stressed that they were not making a final determination as to the cause of the balcony collapse at this time.

As we mourn for those who lost their lives and wish for a rapid recovery for those who suffered terrible injuries, Irish visitors to the United States and the families of the victims of this horrific tragedy should be aware that in the United States there is legal recourse for victims of accidents. In the United States the law exists to right wrongs. Well-established laws and procedures of the U.S. and California legal systems provide that the innocent victims of this tragedy and their families will be able to recover civil damages from all culpable parties.