



Office of the Mayor

CONSENT CALENDAR
JANUARY 28, 2020

To: Honorable Members of the City Council
From: Mayor Jesse Arreguin
Subject: Support the “New Border Vision” to expand public safety, protect human rights, and welcome people to our city.

RECOMMENDATION

Adopt a resolution supporting the “New Border Vision”, a 21st century border policy that begins with the belief that migrants are part of the human family and should be treated with dignity and respect. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump.

FINANCIAL IMPLICATIONS

No financial implications to the City.

BACKGROUND

The residents of Berkeley have a long history and deep commitment to welcoming immigrants, refugees, and those in exile. In 1971, the City Council declared Berkeley to be a “City of Refuge”, and reaffirmed their decision in 1986 relating to Central American refugees, in 2007 after U.S. Immigration and Customs Enforcement (ICE) enforcement action took place throughout the Bay Area, and again in 2016 after the election of Donald Trump.

In early 2017, the Mayor convened a Sanctuary City Task Force, bringing immigrant rights groups, legal providers, health care providers, BUSD, UC Berkeley, Berkeley City College and other stakeholders together to discuss ways to implement our City of Refuge policy, and provide resources to support our undocumented community. On June 25, 2017, the city adopted an amendment to the City of Refuge Policy stating that “no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information status of individuals in the City of Berkeley unless such assistance is required by federal or state statute, regulation or court decision”. Consistent with our City of Refuge Policy, the City Council should take further action and work with the Southern Border Communities Coalition to bring light to the

greater authorization powers held by the federal border authorities and protect our civil liberties.

When we think of a "border city" we often think of those communities immediately along the US-International border. However, under federal law 8 C.F.R. 287.1, Berkeley is a border city as it falls within 100 miles of a land or sea border, and as such Berkeley City are subject to the "warrantless powers" of Department of Homeland Security (DHS) employees who may assert the power under 8 U.S.C. 1357(a)(3) to interrogate our residents, set up checkpoints, and board and search our cars, trains, buses, planes, boats, without needing a warrant or the equivalent of probable cause as is normally required under the U.S. Constitution's Fourth Amendment and the California Constitution's Article 1 Section 13.

As a border city, federal authorities within the Department of Homeland Security ("HSI") Customs of Border Protection ("CBP"), Homeland Security Investigations ("HSI"), and Immigration Customs Enforcement ("ICE") - and local enforcement bureaus serving on a joint task force with any DHS agency - may act without warrant to: set up checkpoints, search vehicles, BART, AC Transit, enter onto private property and racially profile and interrogate anyone suspected of not being a citizen. Recent polls estimate that 1 in 4 Californians have been stopped at an internal checkpoint by border authorities¹. Furthermore, DHS agencies have a long history of abusing their power to bring fear and death to their victims.

Border authorities engage in widespread corruption and abuse of power with little accountability. In the last year alone, at least 12 people have died in CBP custody². Since 2010, over 90 people have been killed during CBP encounters, 21 in California³. At least 28 of those killed were U.S. citizens. In 2018, CBP officers were arrested at a rate 5 times the average for state and local police officers⁴. The DHS Office of Inspector General has found that CBP lacks adequate safeguards to address employee misconduct. However, they are continuously expanding and using large sums of the federal budget for their unsupervised inhumane misconduct.

The power of border authority is only growing. With over 60,000 employees, CBP is the largest law enforcement agency in the U.S. and poised to become a national police

¹ Tom K. Wong, US Immigr. Pol'y Ctr., Public Opinion About the Border, at the Border 19 (2019), <https://usipc.ucsd.edu/publications/usipc-border-poll-final.pdf>.

² Garrett M. Graff, *The Border Patrol Hits a Breaking Point*, POLITICO Magazine (July 15, 2019), <https://www.politico.com/magazine/story/2019/07/15/border-patrol-trump-administration-227357>

³ *Deaths by Border Patrol*, Southern Border Communities Coalition, https://www.southernborder.org/deaths_by_border_patrol

⁴ Justin Rohrlich & Zoë Schlanger, *Border Officers Are Arrested 5 Times More Often than Other US Law Enforcement*, Quartz (July 16, 2019), <https://qz.com/1664253/cbp-officers-arrested-5-times-as-often-as-other-law-enforcement/>.

force with extra-constitutional powers⁵. Each year, the U.S. spends more on border and immigration enforcement than the combined budgets of the FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives; Drug Enforcement Administration; Secret Service; and U.S. Marshals - plus the entire annual budget of the NYPD. Such a large and unjust federal agency must be checked for the protection of our civil liberties. Being that Berkeley established itself as a sanctuary city, it is part of its commitment to protect immigrants and refugees from these abusive federal agencies and speak up against federal law.

The New Border Vision resolution calls to end these abuses; it calls for compassionate border governance based on expanding public safety, protecting human rights, and creating a welcoming environment for residents and newcomers. This resolution aims to protect our human rights and stand up against unjust federal law by holding authorities accountable, keeping families together, providing humanitarian aid, rescue and recovery, protecting vulnerable individuals, and creating a welcoming environment for residents and newcomers. Given Berkeley's status as a border city under federal law, it is important to advocate for changes to federal law to provide greater oversight and limits to the power of federal border officials. Berkeley needs to take the first step to address this unjust federal power that jeopardizes the safety of our community and engage with other communities and cities to do the same.

ENVIRONMENTAL SUSTAINABILITY

No identified environmental effects.

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Attachments:

1:Resolution

⁵ See Garrett M. Graff, *The Green Monster*, POLITICO Magazine (Nov./Dec. 2014), <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>; *About CBP*, U.S. Customs & Border Protection, <https://www.cbp.gov/about>

RESOLUTION NO. ##,#### N.S.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY
CALLING FOR A “NEW BORDER VISION” TO EXPAND PUBLIC SAFETY, PROTECT HUMAN
RIGHTS, AND WELCOME PEOPLE TO OUR CITY

WHEREAS, the Berkeley Council has found that peace is inseparable from justice, and the residents of Berkeley have welcomed to our city those who have been forced into exile and those who have come fleeing torture and death (BMC 3.68.010 E,L); and

WHEREAS, the Berkeley Council declared Berkeley to be a City of Refuge in 1971 (Resolution No 44,784 -N.S.), reaffirmed that decision in 1986 relating to Central American refugees (Resolution 52,526-N.S.), in 2007 after ICE raids took place in the Bay Area Communities (Resolution 52,526-N.S.), and again in 2016 due to increased hate crimes after the election of Donald Trump, and against xenophobic rhetoric used during the campaign (Resolution 67,763-N.S.); and

WHEREAS, in early 2017, a Sanctuary City Task Force was convened, which brought immigrant and civil rights groups, faith leaders, legal experts, school and university officials, and community activists together to discuss ways to strengthen our City of Refugee policy, as well as support our undocumented community members; and

WHEREAS, over the past two years, the Task Force and working groups developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of ICE enforcement activity; and

WHEREAS, the Berkeley School Board in December passed a sanctuary campus policy which clearly articulates restrictions on information sharing, providing access to school facilities, and collaboration with immigration officials; and

WHEREAS, the Director of the Berkeley Health, Housing and Community Services Department also provided guidance to department staff on ICE protocols; and

WHEREAS, on March 14, 2017, City Council adopted a resolution to Denouncing the Presidential Executive Order to Build a US-Mexico Border Wall and divest from all companies involved (No. 67,865); and

WHEREAS, on July 25, 2017, the City Council affirmed that no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information on the status of individuals in the city of Berkeley unless required by law, and

WHEREAS, the City Council affirms no department, agency, commission, officer or employee shall deny access to any city service or benefits to residents on the basis of their immigration status; and

WHEREAS, On July 24, 2018, the City Council passed a resolution to Support California’s Sanctuary Immigration Policies and Lawsuits Against Trump’s Policies (No. 68,573), by calling on the City Council to support SB 54, AB 103, and AB 450; and

WHEREAS, on October 31, 2017, the City Council adopted a resolution Directing Berkeley to Divest from All Entities Involved in Targeting Immigrants (No. 68,208); and

WHEREAS, these laws serve to make all Californians, Immigrants, Citizens and undocumented alike feel secure and protected in speaking and seeking aid from California law enforcement and protect them from unannounced workplace immigration raids and work to ensure that those being detained on the grounds of their citizenship are treated fairly and not being help under poor conditions; and

WHEREAS, on February 13, 2018, the City Council passed a resolution Opposing the Threats of Imminent Enforcement Sweeps by ICE (No. 68,328) after it was widely reported that federal immigration officials planned a major enforcement sweep in the Bay Area and across other parts of Northern California; and

WHEREAS, the City is made up of a diverse population, and 19% of City residents were born outside of the United States⁶ but now form part of the fabric of our communities and contribute to the cultural, social and economic vibrancy of the City; and

WHEREAS, the City is a border city as it falls within 100 miles of a land or sea border under 8 C.F.R. 287.1, and as such the residents of the City are subject to the “warrantless powers” of Department of Homeland Security (DHS) employees who assert the power under 8 U.S.C. 1357(a)(3) to interrogate our residents, set up checkpoints, and board and search our cars, trains, buses, planes, boats, and other conveyances without needing a warrant or the equivalent of probable cause as is normally required under the U.S. Constitution’s Fourth Amendment and the California Constitution’s Article 1 Section 13; and

WHEREAS, the City also falls within 25 miles of an external boundary of the United States and as such the residents of the City are subject to DHS employees entering onto their private property, but not their dwelling, to patrol the border under 8 U.S.C. 1357(a)(3), which also undermines the constitutional rights of City residents; and

⁶ <https://datausa.io/profile/geo/berkeley-ca/#demographics>

WHEREAS, City residents are subject to profiling by DHS employees because the U.S. Department of Justice’s “Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity”⁷ prohibits profiling except in the vicinity of border, which includes our City, and this runs counter to California law under the Racial and Identity Profiling Act and Penal Code Section 13519.4; and

WHEREAS, the Department of Homeland Security is made up of multiple agencies who enforce border security in various ways, at physical land borders, at sea and in the interior of the country described as the expansive border region, which includes the City, and agencies consist of U.S. Customs Border Protection (CBP) and its component agency, Border Patrol, but also U.S. Immigration Customs Enforcement (ICE), Homeland Security Investigations (HSI), the US Coast Guard and the Cybersecurity and Infrastructure Agency, among others; and

WHEREAS, the City depends on local, state, and federal laws to protect the natural and cultural heritage of California and address climate change through laws that protect our air quality, water quality, biological diversity, historical sites, sacred places, and other valuable resources, and all of these laws can be waived in their entirety by DHS without judicial review under Real ID Act Section 102 for the purpose of building border barriers, undermining our well-being and the principle of due process embedded in the U.S. Constitution’s Fifth Amendment; and

WHEREAS, we are less safe, not more safe, when DHS employees operate with absolute power, and without transparency or accountability, asserting that they are not subject to our laws, which leads to a culture of impunity and high rates of abuse and corruption that endanger the country, with 42 CBP officers arrested for corruption since 2004 in California⁸; and

WHEREAS, the impunity of DHS employees operating in the border region has led to the assault of countless people and the killing of more than 90 people, including citizen and non-citizen women, children and men since 2010, of which 21 were killed in California and at its borders, and no DHS employee has ever been held accountable⁹; and

WHEREAS, border deterrence tactics such as walls and other barriers intentionally funnel people into dangerous and remote corridors that has led to the deaths of over 7,000 people since 1994, when Operation Gatekeeper began at the California border, with a current death toll of an estimated 400 men, women and children a year, which amounts to one person dying

⁷ Page 2, Footnote 2 of 2014 DOJ Guidance: <https://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>

⁸ http://www.pogoarchives.org/m/prisons/CBP-2017-033851-and-CBP-2018-035232-Redacted_20180423.pdf

⁹ <https://www.southernborder.org/deaths-by-border-patrol>

every day for the last 25 years as a result of irresponsible policies that use risk to life as a deterrence¹⁰; and

WHEREAS, border policies criminalize rather than manage migration, leading to the inhumane treatment of families seeking life, liberty, and the pursuit of happiness, which are described as inalienable rights in the U.S. Declaration of Independence, and have led to the mass incarceration of more than 50,000 migrants, which include 24,177 in California as of 2017¹¹; and

WHEREAS, nearly one million people arrive to the United States every day, around 196,000 people every day via California, and more than 99 percent of them come with prior authorization as citizens, residents, and visa holders, but often face long waits at California’s border because of poor border management despite the government’s allocation of over \$13 billion a year to U.S. Customs and Border Protection alone¹²; and

WHEREAS, the United States loses billions of dollars and thousands of jobs every year due to long wait times at our southern border that delay trade and travel, and the cost is felt across every state, all of which are dependent on trade with Mexico as our largest trading partner; and

WHEREAS, over 160 countries took an unprecedented action in December 2018 by signing a Global Compact on Migration that calls for the protection of human rights at borders, setting new global standards and best practices for border governance as detailed in the United Nations Office of the High Commissioner for Human Rights “Recommended Principles and Guidelines on Human Rights at International Borders;” and

WHEREAS, current U.S. border policies are out of sync with global best practices and undermine our well-being, and we need our country to change its approach to the border and become a model of good border governance to create humane and functional borders for the 21st century; and

WHEREAS, border communities in conjunction with human rights experts have drafted a “New Border Vision” that adopts global best practices and relates them to the U.S. borders to expand public safety, protect human rights, and welcome people with dignity at our borders; and

WHEREAS, the “New Border Vision” leads with our values beginning with the belief that migrants are part of the human family and should be treated with dignity and respect; that migration is the exercise of the inalienable right to life, liberty, and the pursuit of happiness and as such, migrants should be humanized rather than criminalized; that we should treat all people as we would want to be treated, and give everyone full and fair opportunity to be safe; and

¹⁰ https://www.southernborder.org/deaths_by_border_patrol

¹¹ <https://www.bjs.gov/content/pub/pdf/p17.pdf>

¹² <https://explore.dot.gov/views/BorderCrossingData/Monthly?isGuestRedirectFromVizportal=y&embed=y>

WHEREAS, expanding public safety in the “New Border Vision” means expanding public trust of DHS, but there can be no trust if there is no accountability and border agents treat residents as second-class citizens and migrants as criminals, the “New Border Vision” calls for the following:

- Decriminalize migration and focus border authorities on lawful and legitimate law enforcement activities as defined by international human rights standards, and utilize technologies with privacy protections in their detection activities, not expensive, harmful, and ineffective walls, so that everyone, including border residents and migrants, feel safe in the presence of border authorities and do not have reason to fear mistreatment;
- Set a high standard for effective, professional and accountable law enforcement so that border authorities are trained, supervised, and recognized for adhering to best practices that build trust and keep us all safe, regardless of our status;
- Respect human rights without creating zones of exceptions or impunity, end mass detention, and provide people who suffer abuse by border authorities with meaningful access to justice to hold border authorities accountable; and

WHEREAS, protecting human rights in the “New Border Vision” means preserving the dignity of life, rather than intentionally endangering it or treating it as an acceptable collateral consequence of our policies, the “New Border Vision” calls for the following:

- Prioritize human rights at the border, allowing people to seek protection or safe return with the assistance of our government, rather than prosecution by the government; migrants seeking protection should not be turned back into harm’s way;
- Provide immediate aid, rescue, and recovery to people in distress at the border, and support rather than prosecute humanitarian aid workers who fill gaps left by the government to save lives;
- Protect children by keeping families together, locating them in the community rather than in detention, and giving child welfare specialists a primary role, not border law enforcement authorities; and

WHEREAS, welcoming people with dignity in the “New Border Vision” means creating an efficient, effective, and humane entry system to foster goodwill, but that is challenging at a militarized border, the “New Border Vision” calls for the following:

- Expand the channels for entry with adequate and accountable staff, more lanes at ports, more open hours, and more opportunities to approach so no one is left waiting for unreasonable amounts of time;

- Set the standard for border authorities to conduct welcoming, expeditious, non-threatening, professional interviews to identify people entering and screen for people who may need protection;
- Direct border authorities to refer migrants seeking protection to other agencies or community organizations that are not law enforcement and are better suited to provide trauma, medical, psychological, legal, language and other assistance in whole-of-government and whole-of-society approach to humanitarian response; and

WHEREAS, the “New Border Vision” is grounded in good governance principles that call for evidence-based and data-driven decision-making, consideration of affected communities including border residents, transparency and oversight, and full accountability without exceptions, waivers, or zones of immunity.

NOW THEREFORE BE IT RESOLVED THAT THE CITY OF Berkeley:

- 1. Recognizes that the City of Berkeley is a border city, which falls into the zone of border enforcement, as defined in 8 C.F.R. 287.1, and as such have a particular stake in the border policies that affect our residents as well as our country.**
- 2. Supports a “New Border Vision” that expands public safety, protects human rights, and welcomes people with dignity at the border. Our government should lead with our values, address our needs and adhere to good governance principles to create humane and well-functioning borders for the 21st century.**
- 3. Calls on Congress to eliminate “powers without warrant” in 8 U.S.C. 1357, which subjects City residents to potential unreasonable searches by federal authorities, undermining constitutional protections that the City is charged with protecting.**
- 4. Calls on Congress to end the border-region exception to the prohibitions on profiling, which subjects City residents to potential profiling by federal authorities, undermining California’s protection against profiling, which the City is charged with protecting; and calls on Congress to legislate universal prohibitions.**
- 5. Calls on Congress to eliminate the blanket waiver authority in Real ID Section 102, which gives federal authorities absolute and unreviewable authority to waive all local, state, and federal laws to build border barriers, undermining the well being of City residents, the protection of their natural and cultural heritage in California, and their due process rights.**
- 6. Calls on Congress to end the criminalization of migrants for simply being migrants by eliminating 8 U.S.C. 1325, which leads to the criminal prosecution and incarceration of people asking for help; instead we should limit the adjudication of migrant cases to civil immigration proceedings to determine what remedies they**

may be eligible for including asylum.

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to U.S. Senator Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump.