



Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
June 9, 2009

To: Honorable Mayor and Members of the City Council
From: Councilmembers Jesse Arreguín and Max Anderson
Subject: Calling For The Release Of Jesús Gutiérrez And Urging UC Berkeley To Adopt A Sanctuary Policy

RECOMMENDATION:

Adopt a Resolution calling for the release of Jesús Gutiérrez and urging UC Berkeley to adopt a Sanctuary policy. Copies of this Resolution to be sent to the San Francisco ICE field office, the Secretary of Homeland Security, and our Congressional representatives, UC Berkeley Chancellor Robert Birgeneau and UC Police Chief Victoria Harrison.

BACKGROUND:

In February 2007, the American Federation of State, County and Municipal Employees (AFSCME) Local 3299 launched its statewide service and patient care contract campaign.

AFSCME Local 3299 represents employees throughout the UC system, including service workers on the UC Berkeley campus, some of whom are undocumented.

After AFSCME began its campaign, the University of California administration began its attempts to conduct document re-verification of UC Berkeley service workers, including Jesús Gutiérrez, who is a custodial worker and a three-year UC employee. He is also a member of AFSCME.

Such document re-verification is not required by law and is often a tactic used by employers to intimidate against workers involved in labor organizing, as was recently the case with the workers at the Woodfin Suite Hotels in Emeryville. In their campaign for a new contract, AFSCME advocated for protections for immigrant workers against retaliation by UC management.

In January 2009, AFSCME Local 3299 won their contract campaign with the University, which included landmark protections for immigrant workers. For example, the University would notify the union once it learns that a federal immigration agent wishes to interrogate or search any employee on the University's premises. Jesús Gutiérrez was involved in AFSCME's efforts to secure a fair contract.

In April 2009, after AFSCME's agreement with the University, the University of California Police Department (UCPD) investigated Jesús Gutiérrez, culminating with his April 29th arrest on criminal charges of identity theft and false impersonation. US Immigration and Customs Enforcement (ICE) subsequently put a hold on Gutiérrez, effectively placing him into indefinite detention at a Santa Rita Jail until his pending hearing at the Alameda County Courthouse in Oakland.

The University's investigation and arrest of Gutiérrez violates the spirit of their labor agreement with AFSCME and sends a message to all immigrants working for the University that they should not organize and assert their rights as workers or else they may face arrest and possible deportation.

Gutiérrez's arrest and detainment may also contradict recent case law on the issue. On May 4th, 2009, the US Supreme Court ruled in *Flores-Figueroa v. United States*, No. 08-108 that individuals who provide identification numbers that are not their own, but don't intentionally impersonate others, cannot be subject to harsh criminal punishments under federal law. Authorities had previously used identity theft charges to pressure Immigrants to plead guilty to lesser charges and be deported.

The City of Berkeley has a longstanding history as a City of Refuge to protect undocumented residents from the Federal government's inhumane immigration policies and practices. The City adopted its City of Refuge policy in 1971 and reaffirmed it in 2007.

The arrest of Jesús Gutiérrez within the City of Berkeley violates the spirit of our City of Refuge policy and undermines our efforts to establish the safety and security of immigrants in our community.

UC Berkeley does not have a similar sanctuary policy and in light of the nationwide raids by ICE to identify and detain undocumented residents, the University should adopt such a policy to protect its employees and students and to promote more just and humane immigration policies.

Gutiérrez is still detained and is awaiting trial. His case will be heard on June 11, 2009. Because of the unjust nature of his arrest, it is important that the City of Berkeley call for his release and urge UC Berkeley to adopt a sanctuary policy to protect its immigrant workers and students.

FINANCIAL IMPLICATIONS:

NONE.

CONTACT PERSON:

Jesse Arreguín, Councilmember, District 4	981-7140
Max Anderson, Councilmember, District 3	981-7130

Attachments:

1. Resolution

RESOLUTION NO.

CALLING FOR THE RELEASE OF JESÚS GUTIÉRREZ AND URGING UC
BERKELEY TO ADOPT A SANCTUARY POLICY

WHEREAS, in February 2007, the American Federation of State, County and Municipal Employees (AFSCME) Local 3299 launched its statewide service and patient care contract campaign; and

WHEREAS, AFSCME Local 3299 represents employees throughout the UC system, including service workers on the UC Berkeley campus, some of whom are undocumented; and

WHEREAS, After AFSCME began its campaign, the University of California administration began its attempts to conduct document re-verification of UC Berkeley service workers, including Jesús Gutiérrez, who is a custodial worker and a three-year UC employee. He is also a member of AFSCME; and

WHEREAS, Such document re-verification is not required by law and is often a tactic used by employers to intimidate workers involved in union organizing, as was recently the case with the workers at the Woodfin Suite Hotels in Emeryville. In their campaign for a new contract, AFSCME advocated for protections for immigrant workers against retaliation by UC management; and

WHEREAS, In January 2009, AFSCME Local 3299 won their contract campaign with the University, which included landmark protections for immigrant workers. For example, the University would notify the union once it learns that a federal immigration agent wishes to interrogate or search any employee on the University's premises. Jesús Gutiérrez was involved in AFSCME's efforts to secure a fair contract; and

WHEREAS, In April 2009, after AFSCME's agreement with the University, the University of California Police Department (UCPD) investigated Jesús Gutiérrez, culminating with his April 29th arrest on criminal charges of identity theft and false impersonation; and

WHEREAS, US Immigration and Customs Enforcement (ICE) subsequently put a hold on Gutiérrez, effectively placing him into indefinite detention at a Santa Rita Jail until his pending hearing at the Alameda County Courthouse in Oakland; and

WHEREAS, the University's investigation and arrest of Gutiérrez violates the spirit of their labor agreement with AFSCME and sends a message to all immigrants working for the University that they should not organize and assert their rights as workers or else they may face arrest and possible deportation; and

WHEREAS, Gutiérrez's arrest and detainment may also contradict recent case law on the issue. On May 4th, 2009, the US Supreme Court ruled in *Flores-Figueroa v. United States*, No. 08-108 that individuals who provide identification numbers that are not their own, but don't intentionally impersonate others, cannot be subject to harsh criminal punishments under federal law. Authorities had previously used identity theft charges to pressure Immigrants to plead guilty to lesser charges and be deported; and

WHEREAS, the City of Berkeley has a longstanding history as a City of Refuge to protect undocumented residents from the Federal government's inhumane immigration policies and practices. The City adopted its City of Refuge policy in 1971 and reaffirmed it in 2007; and

WHEREAS, the arrest of Jesús Gutiérrez within the City of Berkeley violates the spirit of our City of Refuge policy and undermines our efforts to establish the safety and security of immigrants in our community; and

WHEREAS, UC Berkeley does not have a similar sanctuary policy and in light of the nationwide raids by ICE to identify and detain undocumented residents, the University should adopt such a policy to protect its employees and students and to promote more just and humane immigration policies.

NOW, THEREFORE, BE IT RESOLVED, by the Council of Berkeley that it hereby calls on United States Immigration and Customs Enforcement (ICE) and the Obama Administration to lift the immigration hold on Jesus Gutierrez and that he be released from jail; and

BE IT FURTHER RESOLVED, that the use of immigrants raids to suppress the free speech rights of workers will not be tolerated in Berkeley and the City of Berkeley urges UC Berkeley to adopt a sanctuary policy to protect its immigrant workers and students; and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the San Francisco ICE field office, the Secretary of Homeland Security, our Congressional representatives, UC Berkeley Chancellor Robert Birgeneau and UC Police Chief Victoria Harrison.