



Office of the Mayor

CONSENT CALENDAR  
March 10, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín, and Councilmembers Ben Bartlett, Susan Wengraf, and Cheryl Davila

Subject: Oppose S.2059 - Justice for Victims of Sanctuary Cities Act of 2019

RECOMMENDATION

Adopt a Resolution opposing S.2059 – Justice for Victims of Sanctuary Cities Act of 2019. Send a copy of the Resolution to Congressman Barbara Lee, Senators Diane Feinstein and Kamala Harris, and President Donald Trump.

BACKGROUND

Berkeley has been a Sanctuary City since 1971 when it passed a resolution to protect sailors resisting the Vietnam War. Over the decades, the Sanctuary City Resolution has been updated to protect immigrant communities. In 1986, it was revised in response to a growing refugee population from civil unrest in Central America. In 2007, the Council reaffirmed our status as a city of refuge after ICE raids took place in the region. After the 2016 election, the Resolution was updated after increasing rhetoric and federal actions against the immigrant community. More recently, Berkeley became the first city to adopt a New Border Vision Resolution, calling on Congress to implement a new framework that expands public safety and protects human rights in border communities.

In the 2020 State of the Union Address, President Donald Trump spent nearly 8 minutes spreading lies and misinformation about immigration, safety, and sanctuary cities. Below are some of the claims made in the speech, accompanied with fact checks.

**Claim:** “Tragically, there are many cities in America where radical politicians have chosen to provide sanctuary for these criminal illegal aliens”.

**Fact:** Sanctuary cities help protect people from criminal elements. Many crimes against people will go unreported if they fear that their immigration status will lead to deportation. If local law enforcement ends up doing the work of federal immigration enforcement, the immigrant community is less likely to trust and interact with local law officials, undermining public safety. Public safety is not a radical idea, and it is the responsibility of a city to ensure the protection and safety of all its residents.

**Claim:** “In Sanctuary Cities, local officials order police to release dangerous criminal aliens to prey upon the public, instead of handing them over to ICE to be safely removed”.

**Fact:** No such order to release dangerous criminals exist, and is merely sharp rhetoric designed to ignite the President's base. Berkeley, along with other sanctuary cities, do not interfere with the criminal justice process. The reality is Berkeley's sanctuary city policy is as follows in relation to cooperation with ICE:

*Except in limited circumstances where ICE agents have a valid judicial warrant, after review and consultation with the Department Director and City Attorney, city departments, agencies, commissions, officers or employees are **not required to:***

- *Cooperate with ICE agents*
- *Answer ICE agents' questions*
- *Comply with an ICE Administrative Warrant*
- *Immediately comply with a subpoena served by ICE agents*
- *Speak with ICE agents at all*

*City officers or employees shall not consent to a warrantless search by ICE agents of a non-public area or non-public city records.*

**Claim:** "The State of California passed an outrageous law declaring their whole state to be a stankuary [sic] for criminal illegal immigrants – a very terrible sanctuary with catastrophic results".

**Fact:** There are less crimes in jurisdictions that provide sanctuary compared to other jurisdictions. A 2017 report by the Center for American Progress states that "crime is statistically significantly lower in sanctuary counties compared to non-sanctuary counties. Moreover, economies are stronger in sanctuary counties—from higher median household income, less poverty, and less reliance on public assistance to higher labor force participation, higher employment-to-population ratios, and lower unemployment." Specifically, on average there are 35.5 fewer crimes committed per 10,000 people in sanctuary jurisdictions, the average annual income is \$4,353 higher, the poverty rate is 2.3% lower, and unemployment is 1.1% lower. Multiple studies have found similar results, using government data.

One of the major takeaways from this segment of the State of the Union Address was his call for the immediate passage of S.2059, the Justice for Victims of Sanctuary Cities Act of 2019. Introduced by Senator Thom Tillis (R-NC), the bill would allow people to sue sanctuary city jurisdictions if they or a family member become the victim of a crime committed by someone who is undocumented. This bill does not give someone the right to sue a jurisdiction that is not a sanctuary city, even though someone is more likely to be a victim of a crime in a place that is not a sanctuary city.

In 2015, the City Council expressed opposition to H.R. 3009, which would have blocked certain federal funds to jurisdictions that are sanctuary cities. While it was approved by the House, it was not brought up in the Senate. Similarly, S.2059 aims to financially target sanctuary cities by greenlighting the ability to commence frivolous lawsuits against such jurisdictions. Bills such as these, which are designed to discredit and delegitimize sanctuary cities, along with justifications through anecdotal or cherry picked

examples, inversely end up having the opposite effect of its advertised intention. Ultimately, S.2059 is a false solution to a problem that does not exist.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of S.2059

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

OPPOSING S.2059 – JUSTICE FOR VICTIMS OF SANCTUARY CITIES ACT OF 2019

WHEREAS, the City of Berkeley has long espoused our commitment to welcoming immigrants, refugees, and those in exile; and

WHEREAS, the City of Berkeley declared itself to be a City of Refuge in 1971 to protect sailors that were resisting the Vietnam War (Resolution 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 Bay Area communities (Resolution 63,711-N.S.), and again in 2016 due to increased hate crimes after the election of Donald Trump, and xenophobic rhetoric used during the campaign (Resolution 67,763-N.S.); and

WHEREAS, in January 2020, the City Council adopted a resolution in support of a New Border Vision Resolution, calling on Congress to implement a new framework that expands public safety and protects human rights in border communities (Resolution 69,280-N.S.); and

WHEREAS, multiple studies have proven that jurisdictions that provide sanctuaries are safer and economically more prosperous compared to other jurisdictions. Specifically, a 2017 report by the Center for American Progress shows that on average there are 35.5 fewer crimes committed per 10,000 people in sanctuary jurisdictions, the average annual income is \$4,353 higher, the poverty rate is 2.3% lower, and unemployment is 1.1% lower; and

WHEREAS, in the interest of promoting public safety, it is important to create an environment in which people feel comfortable interacting with local law enforcement. If local law enforcement ends up doing the work of federal immigration enforcement, the immigrant community is less likely to trust and interact with local law officials, undermining public safety; and

WHEREAS, Berkeley's sanctuary city policy aims to provide that trust, by not interacting with ICE officials without interfering with the criminal justice process; and

WHEREAS, on February 4, 2020, President Donald Trump announced in his State of the Union Address his support and request for the immediate approval of S.2059 – the Justice for Victims of Sanctuary Cities Act of 2019; and

WHEREAS, introduced by Senator Thom Tillis (R-NC), this bill would allow people to sue sanctuary city jurisdictions if they or a family member become the victim of a crime committed by someone who is undocumented; and

WHEREAS, S.2059 fails to acknowledge the facts and statistics around Sanctuary Cities, and if implemented could result in increased crimes and reduce the likelihood of such crimes being reported.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby opposes S.2059 – the Justice for Victims of Sanctuary Cities Act of 2019.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Congressman Barbara Lee, Senators Diane Feinstein and Kamala Harris, and President Donald Trump.

116TH CONGRESS  
1ST SESSION

# S. 2059

To provide a civil remedy for individuals harmed by sanctuary jurisdiction policies, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 9, 2019

Mr. TILLIS (for himself, Mr. GRAHAM, Mr. GRASSLEY, Mrs. BLACKBURN, Ms. ERNST, and Mr. CRUZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide a civil remedy for individuals harmed by sanctuary jurisdiction policies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for Victims  
5 of Sanctuary Cities Act of 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) SANCTUARY JURISDICTION.—

9 (A) IN GENERAL.—Except as provided in  
10 subparagraph (B), the term “sanctuary juris-

1           diction” means any State or political subdivi-  
2           sion of a State that has in effect a statute, ordi-  
3           nance, policy, or practice that prohibits or re-  
4           stricts any government entity or official from—

5                   (i) sending, receiving, maintaining, or  
6                   exchanging with any Federal, State, or  
7                   local government entity information re-  
8                   garding the citizenship or immigration sta-  
9                   tus of any alien; or

10                   (ii) complying with a request lawfully  
11                   made by the Department of Homeland Se-  
12                   curity under section 236 or 287 of the Im-  
13                   migration and Nationality Act (8 U.S.C.  
14                   1226 and 1357) to comply with a detainer  
15                   for, or notify about the release of, an alien.

16           (B) EXCEPTION.—A State or political sub-  
17           division of a State shall not be deemed a sanc-  
18           tuary jurisdiction based solely on having a pol-  
19           icy whereby its officials will not share informa-  
20           tion regarding, or comply with a request made  
21           by the Department of Homeland Security under  
22           section 236 or 287 of the Immigration and Na-  
23           tionality Act (8 U.S.C. 1226 and 1357) to com-  
24           ply with a detainer regarding, an alien who

1 comes forward as a victim or a witness to a  
2 criminal offense.

3 (2) SANCTUARY POLICY.—The term “sanctuary  
4 policy” means a statute, ordinance, policy, or prac-  
5 tice referred to in paragraph (1)(A).

6 (3) SANCTUARY-RELATED CIVIL ACTION.—The  
7 term “sanctuary-related civil action” means a civil  
8 action brought against a sanctuary jurisdiction by  
9 an individual (or the estate, survivors, or heirs of an  
10 individual) who—

11 (A) is injured or harmed by an alien who  
12 benefitted from a sanctuary policy of the sanc-  
13 tuary jurisdiction; and

14 (B) would not have been so injured or  
15 harmed but for the alien receiving the benefit of  
16 such sanctuary policy.

17 **SEC. 3. CIVIL ACTION FOR HARM BY AN ALIEN THAT BENE-**  
18 **FITTED FROM A SANCTUARY POLICY.**

19 (a) PRIVATE RIGHT OF ACTION.—

20 (1) CAUSE OF ACTION.—Any individual, or a  
21 spouse, parent, or child of such individual (if the in-  
22 dividual is deceased or permanently incapacitated),  
23 who is the victim of a murder, rape, or any felony  
24 (as defined by the State) for which an alien (as de-  
25 fined in section 101(a)(3) of the Immigration and

1 Nationality Act (8 U.S.C. 1101(a)(3))) has been ar-  
2 rested, convicted, or sentenced to a term of impris-  
3 onment of at least 1 year, may bring an action for  
4 compensatory damages against a State or a political  
5 subdivision of a State in the appropriate Federal or  
6 State court if the State or political subdivision failed  
7 to comply with—

8 (A) a request with respect to an alien that  
9 was lawfully made by the Department of Home-  
10 land Security under section 236 or 287 of the  
11 Immigration and Nationality Act (8 U.S.C.  
12 1226 and 1357); and

13 (B) a detainer for, or notify about the re-  
14 lease of, the alien.

15 (2) STATUTE OF LIMITATIONS.—An action  
16 brought under this subsection may not be brought  
17 later than 10 years after the occurrence of the  
18 crime, or death of a person as a result of such  
19 crime, whichever occurs later.

20 (3) ATTORNEY’S FEE AND OTHER COSTS.—In  
21 any action or proceeding under this subsection the  
22 court shall allow a prevailing plaintiff a reasonable  
23 attorney’s fee as part of the costs, and include ex-  
24 pert fees as part of the attorney’s fee.

25 (b) WAIVER OF IMMUNITY.—

1           (1) IN GENERAL.—Any State or political sub-  
2           division of a State that accepts a grant described in  
3           paragraph (2) from the Federal Government shall  
4           agree, as a condition of receiving such grant, to  
5           waive any immunity of such State or political sub-  
6           division relating to a sanctuary-related civil action.

7           (2) GRANTS DESCRIBED.—The grants described  
8           in this paragraph are—

9                   (A) a grant for public works and economic  
10                  development under section 201(a) of the Public  
11                  Works and Economic Development Act of 1965  
12                  (42 U.S.C. 3141(a));

13                  (B) a grant for planning and administra-  
14                  tive expenses under section 203(a) of such Act  
15                  (42 U.S.C. 3143(a));

16                  (C) a supplemental grant under section  
17                  205(b) of such Act (42 U.S.C. 3145(b));

18                  (D) a grant for training, research, and  
19                  technical assistance under section 207(a) of  
20                  such Act (42 U.S.C. 3147(a)); and

21                  (E) except as provided in paragraph (3), a  
22                  community development block grant made pur-  
23                  suant to title I of the Housing and Community  
24                  Development Act of 1974 (42 U.S.C. 5301 et  
25                  seq.).

1           (3) EXCEPTION.—Grants described in para-  
2           graph (2)(E) shall not include any disaster relief  
3           grants to address the damage in an area for which  
4           the President has declared a disaster under title IV  
5           of the Robert T. Stafford Disaster Relief and Emer-  
6           gency Assistance Act (42 U.S.C. 5170 et seq.).

7 **SEC. 4. ENSURING COOPERATION BETWEEN FEDERAL AND**  
8                                   **LOCAL LAW ENFORCEMENT OFFICERS TO**  
9                                   **SAFEGUARD OUR COMMUNITIES.**

10           (a) AUTHORITY TO COOPERATE WITH FEDERAL OF-  
11           FICIALS.—A State, a political subdivision of a State, or  
12           an officer, employee, or agent of such State or political  
13           subdivision that complies with a detainer issued by the De-  
14           partment of Homeland Security under section 236 or 287  
15           of the Immigration and Nationality Act (8 U.S.C. 1226  
16           and 1357)—

17                   (1) shall be deemed to be acting as an agent of  
18           the Department of Homeland Security; and

19                   (2) shall comply with section 287(d) of the Im-  
20           migration and Nationality Act (8 U.S.C. 1357(d))  
21           and section 287.5(d) of title 8, Code of Federal Reg-  
22           ulations.

23           (b) LEGAL PROCEEDINGS.—In any legal proceeding  
24           brought against a State, a political subdivision of State,  
25           or an officer, employee, or agent of such State or political

1 subdivision challenging the legality of the seizure or deten-  
2 tion of an individual pursuant to a detainer issued by the  
3 Department of Homeland Security under section 236 or  
4 287 of the Immigration and Nationality Act (8 U.S.C.  
5 1226 and 1357)—

6 (1) the State or political subdivision of a State  
7 shall not be liable for any action taken in accordance  
8 with the detainer; and

9 (2) if the actions of the officer, employee, or  
10 agent of the State or political subdivision were taken  
11 in accordance with the detainer—

12 (A) the officer, employee, or agent shall be  
13 deemed—

14 (i) to be an employee of the Federal  
15 Government and an investigative or law  
16 enforcement officer; and

17 (ii) to have been acting within the  
18 scope of his or her employment under sec-  
19 tion 1346(b) of title 28, United States  
20 Code, and chapter 171 of such title;

21 (B) section 1346(b) of title 28, United  
22 States Code, shall provide the exclusive remedy  
23 for the plaintiff; and

24 (C) the United States shall be substituted  
25 as defendant in the proceeding.

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1       (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
2 tion may be construed to provide immunity to any person  
3 who knowingly violates the civil or constitutional rights of  
4 an individual.

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