



Office of the City Manager

CONSENT CALENDAR
February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Berkeley Peace & Justice Commission

Submitted by: Igor Tregub, Chairperson

Subject: Resolution: Condemn the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence

RECOMMENDATION

Adopt a resolution affirming Berkeley's commitment to our asylum-seeking residents and condemning the Federal government's administrative decision undermining asylum protection for survivors of domestic violence.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

In his June 11, 2018 decision in the asylum case *Matter of A-B-* (27 I&N Dec. 316 (A.G. 2018)), former Attorney General Sessions declared that asylum seekers presenting claims based on domestic violence will "generally" no longer qualify for relief. His decision included sweeping pronouncements undermining protections for individuals fleeing other forms of persecution perpetrated by nongovernment actors, including gangs and organized crime groups.

At its regular meeting on November 4, 2019, the Peace and Justice Commission recommended that the Council of the City of Berkeley adopt a resolution affirming Berkeley's commitment to our asylum-seeking residents and condemning the Federal government's administrative decision undermining asylum protection for survivors of domestic violence. The vote for the attached resolution was as follows:

M/S/C: Bohn/Rodriguez

Ayes: Askary, Bohn, Lippman, Maran, Meola, Morizawa, Pancoast, Pierce, Rodriguez

Noes: None

Abstain: None

Absent: al-Bazian, Gussman, Tregub

Excused: None

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The Berkeley City Council has repeatedly affirmed its commitment to protecting our immigrant communities, and since January 2017 has consistently condemned actions of the Trump Administration that target our immigrant and asylum-seeking residents.

ALTERNATIVE ACTIONS CONSIDERED

None

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Igor Tregub, Chairperson, Peace and Justice Commission

Nina Goldman, Commission Secretary, City Manager's Office (510) 981-7537

Attachment:

1. Resolution Affirming Berkeley's Commitment to our Asylum-Seeking Residents and Condemning the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence

RESOLUTION NO. ##,###-N.S.
AFFIRM BERKELEY'S COMMITMENT TO OUR ASYLUM-SEEKING RESIDENTS
AND CONDEMN THE FEDERAL GOVERNMENT'S ADMINISTRATIVE DECISION
UNDERMINING ASYLUM PROTECTIONS FOR SURVIVORS OF DOMESTIC
VIOLENCE

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, the Berkeley City Council has repeatedly affirmed its commitment to protecting our immigrant communities, and since January 2017 has consistently condemned actions of the Trump Administration that target our immigrant and asylum-seeking residents; and

WHEREAS, the City of Berkeley has a long history and proud legacy of leading the fight to advance women's rights and combat gender-based violence;ⁱ and

WHEREAS, former U.S. Attorney General Jefferson B. Sessions, on June 11, 2018, issued a sweeping decision in the asylum case *Matter of A-B-* (27 I&N Dec. 316 (A.G. 2018)), involving a domestic violence survivor from El Salvador, which vacated the Board of Immigration Appeals' landmark decision in *Matter of A-R-C-G-* (26 I&N Dec. 388 (BIA 2014)), which had recognized domestic violence as a basis for asylum; and

WHEREAS, in his decision then-Attorney General Sessions declared that asylum seekers presenting claims based on domestic violence will "generally" no longer qualify for relief, and his decision included sweeping pronouncements undermining protections for individuals fleeing other forms of persecution perpetrated by nongovernment actors, including gangs and organized crime groups;ⁱⁱ and

WHEREAS, in *Grace v. Whitaker* (344 F. Supp. 3d 96 (D.D.C. 2018)), the U.S. District Court for the District of Columbia found the heightened standards articulated by Sessions in *Matter of A-B-* to be inconsistent with existing legal precedents and congressional intent behind the Refugee Act of 1980, holding that there can be no blanket rule barring domestic violence asylum claims, and although the *Grace* decision has halted the implementation of *Matter of A-B-* in initial credible fear proceedings, the Departments of Homeland Security and Justice have instructed adjudicators that *Matter of A-B-* must continue to be used in deciding asylum claims on their merits. Berkeley's East Bay Sanctuary Covenant was a lead plaintiff in successful lawsuit challenging the Trump Administration in this matter;ⁱⁱⁱ and

WHEREAS, the majority of women and girls seeking asylum at the U.S. southern border hail from the Northern Triangle countries of Central America, El Salvador, Guatemala,

and Honduras, where rates of femicide (gender motivated killings of women) are among the highest in the world, and which are currently experiencing epidemic levels of violence, including widespread domestic violence and other forms of gender-based violence, which is perpetrated with virtual impunity;^{iv} and

WHEREAS, according to data from the Syracuse University Transactional Records Access Clearinghouse (TRAC), in the 12 months following the issuance of the *Matter of A-B-* decision national asylum grant rates for applicants from El Salvador, Guatemala, and Honduras fell to an average of 15 percent, compared to a 24 percent grant rate in the year prior to the decision; and the *Matter of A-B-* decision has put countless women, children, LGBTQ people, and families at heightened risk of removal to perilous situations where their lives are in danger;^v and

WHEREAS, United Nations guidance and international law reflect that domestic violence can form the basis of asylum protection when all other elements of the refugee definition are met, and the United Nations High Commissioner for Refugees (UNHCR) has asserted that the *Matter of A-B-* ruling stands at odds with the United States' international treaty obligations by creating a high barrier to women fleeing domestic violence;^{vi} and

WHEREAS, in 2018, 84 members of Congress, including Congresswoman Barbara Lee, cosponsored Congresswoman Jan Schakowsky's (D-Ill.) resolution (H. Res. 987) condemning the former Attorney General's decision in *Matter of A-B*;^{vii} and

WHEREAS, Senators Feinstein and Harris have decried the *Matter of A-B-* ruling and called for its reversal;^{viii} and

WHEREAS, 118 members of Congress, including Barbara Lee, signed a letter sent on September 12, 2018 to then-Attorney General Sessions requesting that he rescind his decision in *Matter of A-B*.^{ix}

NOW THEREFORE BE IT RESOLVED, that the Council of the City of Berkeley declare its condemnation of former Attorney General Sessions' decision in *Matter of A-B-* seeking to close the door to women and others seeking asylum on the basis of domestic violence.

BE IT FURTHER RESOLVED, that Council of the City of Berkeley recognize the decision as a shameful attempt to eviscerate protections for women, children, LGBTQ people, and families fleeing harrowing violence.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley call on the U.S. Department of Justice to rescind the *Matter of A-B-* decision.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge congressional appropriators to instruct the Departments of Justice and Homeland Security that they may not use appropriated funds to implement *Matter of A-B*.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge our representatives in Congress to enact laws that address the issues created by *Matter of A-B*- and restore justice and fairness to our asylum system.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge the federal courts of appeals to overturn *Matter of A-B*- and affirm that domestic violence may be a basis for asylum.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley ask the City Clerk to send a copy of this resolution to Congresswoman Barbara Lee, Senators Dianne Feinstein and Kamala Harris, the Chairs of the Congressional Appropriations Committees, and the Chairs of the Committees on the Judiciary.

ⁱ “Adopt the Operative Principles of the UN Convention on the Elimination of All Forms of Discrimination Against Women,” BMC Chapter 13.20, <https://www.codepublishing.com> › CA › Berkeley › Berkeley1320020.html

ⁱⁱ “Attorney General issues precedent decision, Matter of A-B-, seeking to limit protection for asylum seekers,” Reena Arya: <https://cliniclegal.org/resources/attorney-general-issues-precedent-decision-matter-b-seeking-limit-protection-asylum>
And: Grace v. Whitaker (344 F. Supp. 3d 96 (D.D.C. 2018)), the U.S. District Court for the District of Columbia found the heightened standards articulated by Sessions in Matter of A-B- to be inconsistent with existing legal precedents and congressional intent: <https://casetext.com/case/grace-v-whitaker>
and: <https://www.aclu.org/legal-document/grace-v-whitaker-opinion>

ⁱⁱⁱ “East Bay Sanctuary Covenant v. Trump,” February 7, 2019, ACLU, <https://www.aclu.org/cases/east-bay-sanctuary-covenant-v-trump>
And:
“Groups file a federal lawsuit challenging new Trump Asylum restrictions,” Feb 7, 2019 , ACLU, <https://www.aclu.org/press-releases/groups-file-federal-lawsuit-challenging-new-trump-asylum-restrictions>
and:
“*East Bay Sanctuary Covenant v. Trump*. Restrictions on Asylum,” Aug 13, 2019, [https://www.ca9.uscourts.gov](https://www.ca9.uscourts.gov/content/view) › content › view

^{iv} “Central America’s Turbulent Northern Triangle,” October 1, 2019, Center on Foreign Relations, <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>

^v “Asylum Representation Rates Have Fallen Amid Rising Denial Rates,” Transactional Records Access Clearinghouse (TRAC), <https://trac.syr.edu/immigration/reports/491/>

^{vi} “**Why domestic abuse and anti-gay violence qualify as persecution in asylum law**,” June 15, 2018, <http://theconversation.com/why-domestic-abuse-and-anti-gay-violence-qualify-as-persecution-in-asylum-law-98354>

vii “H.Res.987 - Condemning the Attorney General's decision in "Matter of A-B-" seeking to declare domestic violence and gang violence as invalid grounds for seeking asylum,” <https://www.congress.gov/bill/115th-congress/house-resolution/987/all-info>

viii “Feinstein Statement on Asylum Law Changes,” June 11, 2018, Sen. Dianne Feinstein, <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=51182C79-CC38-4A12-9395-10404C2C0044> and <https://twitter.com/SenKamalaHarris/status/1017481406866444288>

ix “118 House Democrats to AG Sessions: Reverse Decision Ending Asylum for Victims of Domestic, Gang, and Gender-Based Violence,” September 13, 2018, Rep. Jim McGovern, <https://mcgovern.house.gov/news/documentsingle.aspx?DocumentID=397246>