

United States House of Representatives
Judiciary Committee
September 6, 2019
El Paso Texas
Testimony: Jo Anne Bernal
El Paso County Attorney

I. Intro:

Honorable Chairman Nadler and members of the Judiciary Committee. My name is Jo Anne Bernal and I am the El Paso County Attorney. Welcome to El Paso, we are honored to have you here in our community.

El Paso has found itself in the midst of a perfect and terrible storm. A little over a month ago a man drove into our city to kill our citizens because of the color of our skin. The hatred that motivated the shooter did not start that day. There has been a confluence of factors that precipitated the hostility we saw in our community. Underlying all these factors is the repeated speech directed at Latinos in this country. Sometimes the speech is subtle and other times not so subtle; but each time hateful speech is uttered or inferred, it reinforces the strong negative feelings against Latinos in this country and makes them less safe.

In El Paso, the hostility toward immigrants must be viewed through the prism of governmental conduct over the last several years. There has been a consistent pattern of governmental conduct on both the state and federal level that is, unfortunately, fueling hate and violence. It is time for government to put away the politics of hate and acknowledge that its actions have dire consequences for communities such as ours.

A. Presidential Campaign Rhetoric

We are all familiar with the hateful rhetoric that permeated the 2016 campaign. Beginning with Donald Trump's declaration that Mexico was sending criminals, rapists and drug smugglers to the United States and proceeding with the constant barrage of rhetoric about the need for the border wall. Trump has promoted hateful ideas designed to make Americans fear and despise immigrants from the South. Trump's reference to an "invasion" from the South can only make people fearful. His speech dehumanizes brown people. His administration's actions – putting children in cages, separating children from their parents and holding asylum applicants in inhumane conditions – reinforces his dehumanization of brown people. The repeated rhetoric implies or outright alleges, that brown people come

to our country to take advantage of public assistance, take jobs from US citizens, don't pay taxes and crowd our schools. The one common thread is that brown people, Mexicans, Central Americans are bad and are to be feared, hated and caged and sent back to where they came from.

B. ICE in the Courthouse;

In February 2017, barely a month after President Trump took office, federal immigration agents entered the El Paso County Courthouse, proceeded to a court specifically designated as the Protective Order Court and detained an undocumented victim of domestic violence who was seeking protection from an abusive partner. The victim was removed from the courthouse by federal officials and detained on immigration violations. The very public and aggressive arrest is consistent with Trump's urgency to treat immigrants like criminals and justify the need for the border wall and the detention of immigrant families.

It was a stunning and unprecedented event in El Paso. One of my duties of office is to obtain protective orders for victims of domestic violence, stalking and sexual assault. It is the County Attorney's policy to never ask a victim of violence about

her citizenship or immigration status. A victim is deserving of protection regardless of her legal status and a criminal is deserving of prosecution regardless of whether he has abused a citizen or non-citizen in our community.

The incident within the Courthouse went viral and immediately, victims scheduled for a protective order hearings began to cancel their hearing dates expressing fear of entering the Courthouse. In violating the sanctity of the courthouse, there was an immediate consequence. Victims were not protected and abusers were not deterred. U.S. citizens in need of a protective order had to think twice about seeking protection if any member of their family – a witness or relative – might face immigration authorities in the state courthouse.

Despite the assurances and feedback we received from federal agencies indicating this was an isolated and extraordinary event, the incident has had a real and demonstrable chilling effect on the rights of undocumented immigrant victims in our community.

For example, within days of the incident being made public, an undocumented mother of three U.S. citizen children who had sought a protective order to protect

her from stalking asked to withdraw her protective order because of threats by her former partner to report her to immigration authorities. Similarly, an undocumented mother who sought protection for her 17-year-old daughter who was the victim of dating violence and stalking asked to withdraw the request for the protective order because of her fear of ICE officials in the courthouse.

Following the ICE arrest in the courthouse, we have witnessed in El Paso a steady decrease in the number of domestic violence victims who seek protective orders. What we experienced in El Paso were federal agents with a perceived license to take any steps they deemed necessary to round up undocumented victims. This perceived license comes from the top.

C. SB 4:

While federal authorities were ramping up the rhetoric and conduct against immigrants and Mexicans, the anti-immigrant rhetoric on the state side was similarly front and center. Only months after Trump took office, the Governor of Texas signed a bill into law that is commonly referred to as SB4. At the time, SB 4 was considered “the most dramatic state crackdown yet on so-called “sanctuary

cities,” and came right at a moment when the Trump administration has sought to do the same at the federal level.” The Nation, *“Texas’ SB4 is the Most Dramatic State Crackdown Yet on Sanctuary Cities,”* June 1, 2017.

In a complicated statutory scheme, SB4 prohibited local governments from doing anything that limited local law enforcement officers’ ability to enforce federal immigration laws. Senate Bill 4 contained provisions that criminalized a public official’s actions in interfering with the enforcement of immigration laws. Indeed, the law originally contained sanctions against public officials for even making public statements against the local enforcement of immigration laws.

Make no mistake that SB 4 was marred by hateful rhetoric from the start. The author of SB 4 advanced four reasons for the need for SB4. One of those reasons was to “get at bad people.” 85 H.J. S8 Supplement (57th Legislative Day) at S8. One of the authors of the bill, Chairman Geren, explained that the “bad people” were the “illegals” who “need to go home.” 85 H.J. S15 (57th Legislative Day). The law was not directed at felons, drug traffickers or human smugglers, it was directed generally at “illegals” who were characterized as bad people.

Setting aside the questionable mandate that local law enforcement officials should have any role in enforcing federal immigration laws, the effect of these laws on minority communities continues to be felt. To allow, much less mandate, that local law enforcement be empowered to question a United States citizen about his citizenship solely on the basis of his skin color and a belief that he may have committed a non-violent crime puts all Latinos in our community at risk of being subject to racial profiling.

What was clear from this controversial law was that government was using anti-immigrant rhetoric to advance a political objective. In a city with a large immigrant community; these types of law makes our community less safe. Victims are less likely to report crimes, seek protection or interact with police.

El Paso County was one of the first entities to sue the State of Texas to challenge the constitutionality of SB4. Although we were successful at the district court level, the majority of the statute was upheld as facially valid by the Fifth Circuit. There remains a constitutional challenge in federal court regarding whether SB 4 was impermissibly enacted due to a racial animus.

D. Culmination of Hate

El Paso has been ground zero in the immigration battle. Thousands of refugees from Central America have found their way to the US through El Paso. And yet politicians use this fact to solicit donations from their base. Both state and federal governments have sent an influx of military and law enforcement into our region. The militarization of the border is our new normal. Does anyone really think that the images portrayed around the country and indeed the world, do not shape the world's view of Latinos in EP? The anti-immigrant rhetoric has spilled over to anti-Hispanic or anti-Latino rhetoric. Every time hate speech is left unchallenged, the hate is accepted as the new normal. Hate speech not only dehumanizes Latinos, it subtly suggests that we are somehow not quite as American as other Americans. It gives license for those filled with hate to treat us as "others."

It has been publicly reported that the shooter in EP complained about the "Hispanic Invasion". Note, it was not the immigrant invasion or illegal invasion or undocumented invasion. It was not a complaint about drug dealers or human traffickers. It was a reference to Hispanics. Bigotry and hate – in the form of speech and government conduct – have fueled the flames of violence and we are the target. This simply should not be the role of government or its leaders.