

SHEILA JACKSON LEE

18TH DISTRICT, TEXAS

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**STATEMENT**

**CONGRESSWOMAN SHEILA JACKSON LEE**

**SUBCOMMITTEE ON IMMIGRATION AND CLAIMS**

**OVERSIGHT HEARING ON DETENTION OF CRIMINAL ALIENS AND ADDITION OF NEW**

**BORDER PATROL AGENTS**

**RAYBURN 2141**

**FEBRUARY 25, 1999**

**I. INTRODUCTION**

**Immigration has at one time touched all Americans. Whether it was Migration through delicately designed ships of the 1400's 1500's and 1600's, whether by slavery, or large ships of the 1800-1900's, or fishing boats or even by foot, most Americans have come from somewhere.**

**I look forward to serving on this committee and working with both committed government professionals, along with those passionately working to hold America to the words found in the Statute of Liberty: "GIVE ME YOUR POOR, YOUR TIRED, YOUR HUDDLED MASSES YEANING TO BREATHE FREE."**

**I look forward to working with Chairman Lamar Smith, along with Chairman Hyde and Ranking Member Conyers. In actuality, chairman Smith and**

**I have a lot in common; even more so than we are both from Texas. First, we both will work diligently on the committee. Secondly, we will both hold true to convictions, especially when we don't agree.**

**That leads me to this hearing and to my convictions. The United States is truly at its best when all of us can abide by our laws and when those laws are fair and just.**

**Oversight is important and that is one of our tasks. So I look forward to constructive oversight seeking to make committed professionals better.**

**Our hearing today gives me pause. On the one hand, I recognize the need for securing our borders and keeping dangerous criminals detained, but on the other hand, I recognize the need for fundamental fairness, due process, and equal protection of the law.**

## **II. DETENTION**

**I am not convinced that the Illegal Immigration and Immigrant Responsibility Act of 1996 is a feasible law that is best for our nation. The 1996 law amended the Immigration and Nationality Act by mandating that the Immigration and Naturalization Service detain nearly all immigrants who have committed a crime. The list of crimes which subject an immigrant to mandatory detention is extensive, and includes nonviolent crimes, crimes which occurred in the distant past, and crimes for which no sentence was served. Consequently, Lawful Permanent residents who have been in the United States for many years and who have U.S. citizen family members, are often locked away for months or even years in INS facilities and local jails with no possibility for release.**

**It is documented that many immigrants subject to mandatory detention, have U.S. citizen spouses and children who are dependent on them. Many entered the United States as Legal Permanent Residents or refugees when they were children. Many committed nonviolent offenses years ago, have paid their debt to society, and have been law-abiding for years or even decades. Many have jobs and own businesses. Many have no ties to their countries of origin, and some do not even speak the language of their native country. Such was the case with Jesus Cojjado. Over twenty years ago when Jesus was 23 years of age he was in a relationship with a young woman who was a minor. At the time, he was living in the United States but he was not yet a naturalized citizen. The young woman's mother notified the police of this relationship and Jesus was arrested. Two decades later, after Jesus was married and the father of two adult children, he was arrested after returning from a trip to the Dominican Republic because he was asked if he'd had ever been arrested. When answered yes, he was immediately detained, his business drastically suffered, and his life was irreparably damaged. He was detained for more than six months because this is what the 1996 law now mandates. I cannot believe that this law was enacted to lock up innocent persons like Jesus Cojjado. Fortunately, he has been released by the INS, but it is a travesty that we are detaining individuals like this. We often talk about reform in congress. Bankruptcy Reform, IRS Reform, Budget Deficit Reform, well Mr. Chairman we need new Immigration Reform, Fairness Reform, or mandatory detention reform. I say we need Fairness Reform and mandatory detention reform because a person should only be detained in this country if they are a danger to the community, or if they**

pose a potential flight risk. The United States Supreme Court in Foucha v. Louisiana<sup>1</sup>, stated that, “Freedom from physical detention lies at the core of the liberty interest protected by the due Process Clause.” Accordingly, the government may deprive an individual of that interest only if it can demonstrate that such deprivation actually serves a significant and legitimate objective. In general, persons with pending removal hearings should be released from custody absent specific reasons to maintain them in detention. Any individual who (1) has family ties in the community, (2) is not a danger to the community, (3) is likely to participate in the resolution of his or her immigration claims, and (4) has posted reasonable bond should qualify. It is clear that the 1996 Immigration law requires the Attorney General to take into custody certain categories of aliens. Under the transition period custody rule in Section 303 of the 1996 law, the Attorney General was permitted to release an alien “lawfully admitted to the United States” who satisfied that he or she “will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.” However, when those provisions expired in October 1998, lawful permanent residents, refugees, and other lawfully admitted aliens became subject to the Act’s “mandatory detention” provisions, further burdening the INS detention system . The question now becomes: how do we alleviate this burden? Was the spirit and the letter of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to be unjust or unfair or to crack down on the overwhelming influx of illegal immigration. I think the latter, however the consequences of the Act has brought the former option to fruition. Perhaps we need to amend this law Mr. Chairman, make it

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<sup>1</sup> 112 S.Ct. 1780 (1992)

**better...fairer. Repealing the mandatory detention provisions would not mean that dangerous criminals would be released from detention. Only those who could demonstrate that they are not a danger to the community and will appear for future immigration court hearings will be released. The INS and immigration judges will still be able to decide that an individual should not be released from detention. This law was not intended to detain or to lock up the Jesus Cojjados of the world.**

**It makes no sense whatsoever for INS to detain immigrants who pose no security threat to society. The INS must retain the discretion to differentiate between those detainees who pose a risk to society and should be kept in detention and those who pose no risk and should be released.**

**As a woman and as the Chairwoman of the Congressional Children's Caucus I am concerned about how women and young children are treated in INS detention facilities. The Women's commission for Refugee Women and Children has assessed conditions of detention in more than 20 detention centers used by the INS to hold women asylum seekers. These assessments revealed that: Families are often divided, children are sometimes incarcerated in juvenile correctional facilities, and that children are sometimes incorrectly placed in adult detention centers. I implore the Commissioner to really to take a very close look at these practices to see if these types of inhumane conditions are corrected.**

**THE PROBLEM HERE MR. CHAIRMAN IS NOT DETENTION SPACE....IT'S THE LAW!! The law might be too harsh and unworkable. First, needs to be a pre-determination hearing before detention occurs. After all, we are**

**talking about liberty here... in many cases which involve person who have committed no crime.**

**Lastly, Mr. Chairman concerning detention. In U.S. V. Zadvydas, where an immigrant was detained for four years beyond the completion of his criminal sentence, the court stated that “the probability of permanent confinement is an excessive means of accomplishing the purposes sought to be served... This is abominable. The problem is not detention space...but the law.**

### **III. BORDER PATROL**

**I am keenly aware that the 1996 Immigration Law authorized a total of five thousand additional Border Patrol agents, to be added at the rate of one thousand per fiscal year from 1997 to 2001. However, INS failed to request any additional agents in its proposed budget for FY 2000. However, it must be taken into consideration that currently nearly 40 percent of the Border Patrol agents have less than two years of experience. While we do have the 1996 law authorizing additional agents, other factors must be taken into consideration. Having an inexperienced workforce just to meet the requirements of a congressional mandate, could very well lead to a host of other problems. For instance, in 1998 a Laredo, Texas agent was fired for not disclosing he had been deported as an illegal immigrant. The agent had become a naturalized citizen through the amnesty program of the 1980s and was a patrol agent for 10 months before his deportation record became known. A few bad agents have been hired despite elaborate screening at the INS. I raise this not to scold the INS, but to point out that deficiencies in the law that need to be corrected, and that it perhaps is bad**

**policy to engage in a massive hiring without proper screening, background checks, and training. I will be looking forward to engaging the Commissioner and the other witnesses on these issues Mr. Chairman. Thank-you.**