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U.S. COMMISSION ON IMMIGRATION REFORM

Statement by the U.S. Commission on Immigration Reform

The United States has lost a dedicated public servant with the passing of Barbara Jordan. Her remarkable career advanced so many of the essential goals of our nation: from civil rights, to the primacy of the Constitution, to the importance of ethics in public policy. She gave voice to the fundamental nature of American society as a nation of immigrants committed to the rule of law.

Throughout the work of this Commission, Barbara Jordan showed the qualities of character that enabled her to make such extraordinary contributions to this country. She was forceful, and patient; generous, and decisive. She never limited debate, but she never let us fail in our resolution to achieve the mission set out for us in the law. We would not have been able to come to consensus on so many complex issues, marked in public discourse by intense emotions that often impede progress, without her wisdom. Simply put, she was our leader.

She often noted that the members of this Commission, appointed by the respective leadership of both parties in Congress, did not agree on much, except the recommendations on immigration reform which she led us to make. But there is one other point on which we are unanimous: Professor Barbara Jordan was a great American. We will miss her.

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U.S. COMMISSION ON IMMIGRATION REFORM

Personal Statement by Susan Martin, Executive Director

Speaking for the whole staff of this Commission, it has been one of the privileges of my life to work closely with Barbara Jordan. The work of this Commission concerns some of the most divisive and difficult issues America faces, and she led the way. On matters that call for vision and candor, she led by example. She showed us all what the phrase "moral force" can mean in public life.

I once asked Professor Jordan why she had accepted appointment as Chair of this Commission. She spoke of her deep, abiding belief in our heritage as a nation of immigrants. Worried about growing racial and ethnic divisions in American society, she wanted Americans to understand that the United States is strengthened by immigration and by the civic unity that bridges cultural and religious diversity. As Chair of the Commission, she has been unfailing in her commitment to this goal. She recognized that to preserve our immigration tradition, we must restore credibility to our immigration policy. A lifelong Democrat, she forged a bipartisan consensus on specific recommendations that will help accomplish this difficult but essential task.

Like millions of Americans, I first heard Barbara Jordan speak during the Watergate impeachment hearing: "My faith in the Constitution is whole, it is complete, it is total. I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution." During a period of national soul-searching, those words, perhaps more than any others, restored faith in the American system of governance. Listening to that larger-than-life voice and seeing her commanding presence, I never expected to meet Barbara Jordan, let alone work with her and call her a friend. I am grateful for having had the opportunity to do both. She will be missed by all of us.

I think this
was her last
official act -
Remarkably consistent
with the Constitution
speech in 1974.

Testimony of the Honorable Barbara Jordan

**Professor, Johnson School of Public Affairs
University of Texas at Austin**

Chair, U.S. Commission on Immigration Reform

Before the

**House Subcommittee on Immigration and Claims
Committee on the Judiciary**

**Hearing on Birthright Citizenship
10 am December 13, 1995
2325 Rayburn House Office Building**

Good morning. I am Barbara Jordan, and I am pleased to have this opportunity to testify on such an important matter. I am here in a dual capacity. I was once a member of the House Judiciary Committee, and I have studied the Constitution. Presently, I teach political values and ethics at the LBJ School of the University of Texas. I hope I can bring some education and experience to bear before you today.

I am also Chair of the bipartisan Commission on Immigration Reform. As you know, our Commission has been deeply engaged in debate regarding our national interest in sound immigration policy -- in solving problems, completing unfinished business, and avoiding future error. We have made two reports to date, making recommendations for specific reforms to Congress. Our first report recommended a comprehensive strategy for deterring illegal immigration. It is called *U.S. Immigration Policy: Restoring Credibility*, and I will have more to say about it in a moment.

Our second report is called *Legal Immigration: Setting Priorities*, which we presented to Congress this spring. We on this Commission have been gratified that our work has helped this Subcommittee in preparing legislation to advance the national interest in immigration policy. We are a Congressional commission, and it is our job to serve you.

But this Commission has not made recommendations on the matter before you today. As a bipartisan Congressional panel, we have not addressed the 14th Amendment's application to immigration. But, personally I would like to do so now -- briefly.

There are profound problems, as I see it, in the Constitutional amendments before this Subcommittee. By making the immigration status of the mother the key to an American-born child's citizenship, for example, one of these amendments would require that the Federal government disown its obligations to citizen children. Consider the case of a citizen father married to a foreign mother. If the child is born abroad, the child is automatically made a U.S. citizen upon petition. If the child is born while the mother is in the United States, perhaps by overstaying a tourist visa from Thanksgiving to Christmas, neither the father's citizenship nor the birth on U.S. soil of an American child provides that child American citizenship. In fact, the father's natural right to pass on his citizenship to the child is denied. He must ask the government to bless his child.

But it is not the practical problems, profound as they are, on which I wish to focus. It is the principle.

There are three ways to become an American -- by choice, through naturalization; by blood, through having an American parent; and by birth in the United States. It is also true that most nations do not have these three methods. The simplest contrast is

Germany. With very few exceptions, you can only be a German if your ancestors were German. There are hundreds of thousands of second and third generations of people, born in Germany, knowing no other nation, who are not German, who will never be German. Congress should think again whether you wish to make the United States more like Germany.

De Tocqueville wrote of America that "The government of a democracy brings the notion of political rights to the level of the humblest citizens." And that is what we are talking about: *citizenship*. It is a beautiful word. It is an American word. The modern concept of citizenship is largely an American invention. It has Greek and Roman roots, to be sure. But we grew in the soil of the United States the modern concept of citizenship that so much of the world has adopted at last.

With all due respect to my Republican colleagues, the true "conservative revolution" happened in 1776. The Founders, you will recall, originally fought only to claim as colonists their rights as Englishmen. It was when King and Parliament denied those rights that they took the revolutionary step of asserting that these rights were not granted to them, as subjects, from the Crown, but that "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable rights." This idea -- the *American* idea -- is that governments do not grant rights. We are born with them.

I would be the last person to claim that our nation is perfect. But we have a kind of perfection in us because our founding principle is universal: that we are all created equal regardless of race, religion, or national ancestry. When the Declaration of Independence was written, when the Constitution was adopted, when the Bill of Rights was added to it, they all applied almost exclusively to white men of Anglo-Saxon descent who owned property on the East Coast. They did not apply to me. I am female. I am black. But these self evident principles apply to me now as they apply to everyone in this room.

To deny birthright citizenship would derail this engine of American liberty. Progress in America is not an accident. It was immigration that drove us down the track toward a broader and more truthful vision of ourselves. It was immigration that taught us that, in this country, it does not matter where you came from, or who your parents were. What counts is who you are. The 14th Amendment to the Constitution says, in part: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside."

This was originally a statute, the Civil Rights Act of 1866. Its authors knew that, as a statute, it was vulnerable to being overturned by future lawmakers. That, they determined, must not happen. We must not forget the history of the 14th

Amendment, or the context in which it was passed. We had fought a bloody civil war. And now, three amendments to the Constitution were adopted -- to end slavery; to provide equal protection of the laws; and to guarantee the right to vote.

I do not believe it is possible to amend the Constitution, or alter the meaning of the words, by statute. In this case, any attempt would have significant negative consequences. For example, H.R. 1363 would specify that certain children of illegal aliens are "not subject to the jurisdiction of the United States." Do we really want to give these individuals immunity from Federal prosecution for criminal acts? I am not sure how we could prosecute someone not subject to our jurisdiction.

So if the Congress wishes to deny birthright citizenship to children of illegal aliens, it must follow the intentionally arduous path of a Constitutional amendment. I hope that you will not take this step.

A constitutional amendment requires a supermajority vote in both the House and the Senate, and the ratification of two-thirds of the state legislatures, presently 38 states. Even if -- which I oppose -- it was sound policy to so amend the Constitution, it will take time. It will take resources. It will divide the country on the most profound level -- the question of who we are as a people, and who says so.

Let me go beyond my personal views here, to speak as the Chair of the U.S. Commission on Immigration Reform. Do not let debate on birthright citizenship distract you from the urgent business of controlling illegal immigration, which is essential to the credibility of our commitment to the national interest in legal immigration.

Able led by your Subcommittee Chair Lamar Smith, and the ranking minority member, John Bryant, you have an opportunity in this Congress to take significant steps to deter illegal immigration and promote lawful immigration in the national interest. You have labored in this Subcommittee to produce a bill, H.R. 2202, which takes some of the prudent, measured steps recommended by this bipartisan Commission, to do what needs to be done. The comprehensive strategy this Commission recommended last year to deter illegal immigration has seven parts:

- 1) Better border management.
- 2) Development of a better system for worksite verification.
- 3) Benefits eligibility consistent with the goals of immigration policy.
- 4) Deportation of illegal aliens.
- 5) Emergency management.
- 6) Reliable data.
- 7) Attacking the root causes of unlawful migration in the sending countries.

There is no one who knows better than those who serve on this Commission, how hard it has been to advocate these tough choices. But we believe that they are necessary, and through your actions as legislators, valuable progress in all of these areas is within reach.

Please do not be distracted from these real measures to attack illegal immigration through the Constitutional amendment process. There are far better ways to deal with illegal immigration than to cut the Constitutional baby with a sword, and say, this half is a citizen, and that half is not.

There will be those who will try to deny reality, when the whole House faces this issue shortly. But the vast majority of illegal aliens do not come to America to bear children, although it does happen. In three years and dozens of hearings, consultations and expert discussions, no one has ever reported to the Commission that the vast majority of births to illegal aliens are anything more than a reflection of the large numbers of illegal aliens who are here. The reason most illegal aliens come to our country boils down to three words: *They get jobs*.

There will be a vote on the House floor on retaining the provision to test worksite verification that the Judiciary Committee approved in H.R. 2202. There will be those who claim that it is not worth testing the system you have endorsed. There are also those who whisper in these hallways that illegal immigration isn't so bad, so long as they will work hard for low pay, so long as they do the dirty jobs that Americans supposedly won't do, so long as their children aren't to become Americans.

Caution. There are nations in the world that have tried this, and we are not like them. We are not a nation that is permanently divided into "us", and "them". You heard last week from my colleague on the Commission, Richard Estrada, who gave as his view that the United States must not follow the Kuwait model, where citizens are the privileged elite, and foreigners do the dirty work. I agree.

The Commission on Immigration Reform has outlined a comprehensive strategy to deter illegal immigration -- including the development and testing for a reliable system for worksite verification that protects our civil liberties.

I believe that treating us all alike is the appropriate way to attack illegal immigration, and I will be delighted to answer any questions.

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