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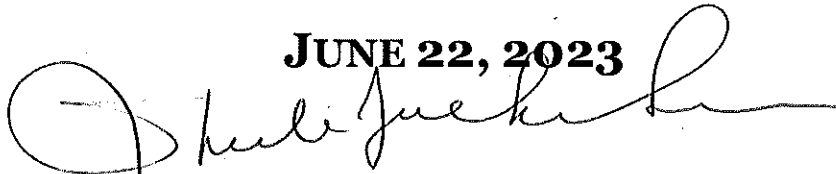
CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

**RANKING MEMBER OF THE SUBCOMMITTEE ON CRIME AND
FEDERAL GOVERNMENT SURVEILLANCE**

EXAMINATION OF CLEMENCY AT THE DEPARTMENT OF JUSTICE

**BEFORE THE SUBCOMMITTEE ON CRIME AND FEDERAL
GOVERNMENT SURVEILLANCE**

JUNE 22, 2023



- Today we are here to discuss the commutation of Philip Esformes. An individual, who – according to a press statement released by the Department of Justice under the former president – led one of the largest health care fraud schemes in history.

- The case was investigated by the FBI and HHS Office of the Inspector General and was brought as part of the Medicare Fraud Strike Force by the U.S. Attorney's Office for the Southern District of Florida, with assistance from the Florida Attorney General's Office Medicaid Fraud Control Unit.
- One agent in the FBI's Miami field office once described Mr. Esformes as "a man driven by almost unbounded greed."
- For nearly two decades, Mr. Esformes bankrolled his lavish lifestyle with taxpayer dollars, paying bribes to doctors, regulators, and inspectors, and stealing Medicare and Medicaid funds by billing for services that people either did not need or did not receive.
- These fraudulent healthcare claims, which robbed American taxpayers of more than \$1 billion, were finally uncovered after a lengthy investigation, and led to a 35-count indictment that named Mr. Esformes and his two co-conspirators.
- After a jury found him guilty of 20 counts of bribery, illegal kickbacks, obstruction, and money-laundering, Mr. Esformes was sentenced to 240 months imprisonment, ordered to pay \$5.5 million, and a forfeiture of nearly \$40 million was entered.

- However, just over a year later, he received a commutation, which freed him from prison immediately, but left the other aspects of his sentence intact, including a three-year term of supervised release.
- Unfortunately, for Mr. Esformes, no one thought about the six outstanding counts that the jury was unable to reach a verdict on. Apparently, the prosecutors in the Southern District of Florida do not believe that justice was served, and they have made it clear that he will be retried on the outstanding counts.
- So today the majority is holding a hearing purportedly about clemency. But just last Congress, we convened a hearing to discuss the backlog of thousands of clemency petitions, mostly for commutations, languishing somewhere in the clemency process – representing thousands of people in federal prisons across the country – waiting often with false hope to hear something from the Office of the Pardon Attorney.
- During that hearing, Republicans expressed skepticism about the need to reform the clemency process or for the President to utilize his power of clemency more frequently.

- I recall that Republican witness, Mike Hurst, the former U.S. Attorney for the Southern District of Mississippi – under the previous Administration – said during the hearing that: “asking the prosecutor’s opinion of a petition is not only appropriate, but it is vitally important, as no one knows these defendants and the circumstances surrounding their cases better than the prosecutor.”
- That did not happen in Mr. Esformes’ case. There were at least ten attorneys from the U.S. Attorney’s Office, who worked on the case, from the Fraud Section Chief and Assistant Chief to the trial attorneys to the forfeitures division. Not to mention the countless number of agents and investigators who scoured mountains of medical and financial records for innumerable hours. From what we know of this case, not one of them was consulted about Mr. Esformes’ commutation.
- For the last several days, we have heard about a two-tiered system of justice – from Republicans. This hearing and Mr. Esformes’ case are, indeed, evidence of an unbalanced system of justice. One that exists only for the wealthy and well-connected.

- This two-tiered system of justice has operated for centuriesⁱⁿ America. In small towns, in big cities, in Congress, and in the White House. And it is not drawn along party lines.
- I, and my Democratic counterparts in Congress, and those who came before me, have decried a two-tiered system of justice since the founding of this country.
- Just days after we celebrate – no commemorate – the day in which enslaved people finally found out that they had been freed **two** years prior, we are here to discuss the so-called miscarriage of justice suffered by an individual whose access delivered him from a prison cell within just over a month.
- I am aware of the criticisms of the clemency process as it exists today. As we discussed during our hearing last Congress, the process is flawed, cumbersome, and in need of reform.
- I expect that some of our witnesses today might suggest that it was these well-known issues with the clemency process that led the former president to sidestep the Pardon Attorney and other DOJ components to rely on an ad hoc system developed by Jared Kushner and others and predicated on access. This ad hoc system was the gift and the curse.

- I believe it was Mr. Tiffany who, during the last hearing on clemency, posed this question of Rachel Barkow, who proposed the creation of a clemency advisory board: “Are we setting up a parallel bureaucracy that ends up just being a problem?”
- In Mr. Esformes’ case, the answer is yes. He could have been shielded from any further prosecution by a pardon. Unfortunately, he was not.
- He received a commutation, which we all know – by definition – only reduces a sentence and does not impact a conviction.
- He is now facing retrial because there are those who believe the commutation sends the wrong message about the seriousness of healthcare fraud and undermines our system of justice. That is the prerogative of the prosecution.
- Whether or not the actions taken by the Southern District of Florida set a bad precedent remains to be seen. I am sure that practitioners will take note and ready themselves for such circumstances in preparing their clemency petitions in the future.
- It is my hope today that our discussion extends beyond the commutation of Mr. Esformes to the consideration of the outstanding counts for which he was not convicted to justify the 240-month sentence.

- Last Congress, we passed the Prohibiting Punishment of Acquitted Conduct Act, sponsored by Ranking Member Cohen, with an overwhelming bipartisan vote.
- Let us do so again and make sure that it reaches the President's desk this time. **No** person should be subject to punishment – especially prison – for conduct for which they have not been convicted either by a jury or a knowing plea of guilty.
- **And** if Republicans really want to address disparate treatment in a two-tiered system of justice, they will join us in getting the Equal Act to the President's desk. Let us finally eliminate the crack to powder cocaine sentencing disparity that has been responsible for decades of unnecessarily long prison sentences for black and brown people in this country.
- I look forward to a robust discussion with our witnesses today.
- Thank you and I yield back.