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Senate

Statement of Senator Dianne Feinstein

“Statement in Support of the Border Tunnel Amendment”

Mrs. FEINSTEIN. Mr. President, this amendment criminalizes the unauthorized construction, financing, or reckless disregard which permits construction of a border tunnel that is a tunnel between American land and another country's land; namely, Canada or Mexico or any subterranean passageway along international borders.

This amendment is cosponsored by Senators Kyl, Boxer, Talent, Cantwell, Salazar, Hutchison, and Bingaman. This amendment was part of the immigration bill. It was unanimously added to the immigration bill by the Judiciary Committee. I have tried to hotline this amendment. It was cleared on the Democratic side, and it was cleared on the Republican side with the exception of one Senator. I believe it is an important amendment. That is why I am offering it today as an amendment to this bill.

Believe it or not, today the act of constructing, financing, or using a tunnel between borders is not a Federal crime. This amendment changes that. In addition to criminalizing the

unauthorized construction, financing, or use of a border tunnel on one's land, this amendment also doubles the criminal penalties for individuals caught using a tunnel to unlawfully smuggle aliens, goods, drugs, weapons of mass destruction, or terrorists. The amendment also allows for assets involved in the offense or any property traceable to the offense to be subject to forfeiture.

Finally, the amendment directs the U.S. Sentencing Commission to promulgate or amend Federal sentencing guidelines to provide for criminal penalties for persons convicted pursuant to the language of the amendment and to take into account the gravity of this crime when considering base offense levels.

One might ask: Why is this important? I will answer that. Since September 11, 43 tunnels and subterranean passageways into the United States have been discovered--26 tunnels along the California-Mexican border, 16 tunnels along the Arizona-Mexican border, and 1 tunnel along the Washington-Canadian border. The risk to national

security that is raised by the use of these tunnels is one this body is already aware of. In fact, the Senate Appropriations Committee included report language on this topic, which reads:

Policy on tunnels along the border: The Committee is concerned with the Department's lack of a clear policy regarding which agency is responsible for securing, closing, and ultimately filling tunnels which are discovered crossing under our land borders. It appears decisions regarding the handling of tunnels are made on an ad hoc basis, depending on which agency discovers the tunnel and has the resources to fill it. With nearly four dozen known tunnels along our borders, it is imperative a policy regarding tunnels be developed.

And it goes on. It asks that this policy be developed not later than February 8.

This report language in the appropriations bill is a good first step, but it is just that. The cosponsors of this amendment and I believe that we send a further message that border

tunnels are a problem and they must be dealt with. As I mentioned, 43 border tunnels have been discovered in the United States. These tunnels range in complexity from simple gopher holes a few feet long at the border to massive drug-cartel-built “megatunnels” costing hundreds of thousands of dollars to construct.

I recently visited a border tunnel on the Mexican-San Diego border. Let me tell you what I found. I found a tunnel that was extraordinarily sophisticated. It was six football fields long. It went under other buildings. It went under the border. The American side was a large warehouse, brand new, huge warehouse, half a long square block, kept empty, small rooms inside the warehouse. Inside one room, which I will show you in a minute, was a hatch. Down the hatch was a tunnel, a concrete floor, ventilation, a pump to drain it, and electricity, as we can see.

This was the tunnel interior.

This is a picture of the interior. We can see the concrete. At one end of the tunnel was 2,000 pounds of marijuana, and at the other end was 300 pounds of marijuana.

This was the hatch in a room, and it looked very benign. You simply lifted up two floor tiles, and under those floor tiles, you descended about 10 feet and there was this huge apparatus which clearly had been functioning for a substantial period of time. I found it just amazing.

The building, interestingly enough, was sold about a year ago to an individual who never leased it out. I have always wondered: Why wouldn't you lease out a warehouse? That question still has not been answered to my satisfaction.

I also learned there is no law against it. There is no law that says you have to do due diligence on your property if it is on the border to see that somebody doesn't come along and dig a tunnel such as this and smuggle aliens, smuggle drugs, possibly smuggle terrorists, possibly smuggle weapons. This is a way to do it. Therefore, I believe this amendment belongs in this bill.

My hope, given the importance of criminalizing this action, is that this amendment will be included in the managers' amendment. We will still be delighted if that is the case. I am not sure that is possible. I believe to allow another period of time to go by with no law that says it is illegal to build a border tunnel unless you are authorized to do so, and has some sanctions to it, is really long overdue. It would be terrible if we found out one day that a group of 15 or 16 terrorists came in from Mexico or came in from Canada to the State of Washington through a border tunnel and we had done nothing about it.

This amendment also says that the owner of property along the border must be reasonably aware, must do their due diligence to see that their property is maintained and a border tunnel is prevented.

I am hopeful this amendment will be accepted and, if not, I will certainly ask for the yeas and nays.