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## Senate

### Statement of Senator Dianne Feinstein

*"Statement in Support of Comprehensive Immigration Reform"*

Mrs. FEINSTEIN. Mr. President, shortly the Senate is going to be confronted with a vote on two bills, one of them being the leader's bill which deals with enforcement on the border, and the other the Judiciary Committee bill which essentially incorporates provisions of the McCain-Kennedy bill into a broad and comprehensive bill which will, I believe, be before the Senate for discussion and amendment.

The bill approved by the Judiciary Committee is a bipartisan bill. It had a 12-to-6 vote in the committee. It is the first step forward in a very difficult and consequential process to address what has become one of the most contentious issues in American life.

If this bill is approved by the full Senate, it will then have to go to a conference committee and be reconciled against another bill, namely the House bill, which is very onerous in many of its provisions.

The reconciliation of these two bills is going to be extraordinarily difficult to

achieve, and it remains uncertain whether any bill can be enacted into law in this current congressional session.

Any legislation approved by Congress, I think, has to take into consideration the reality of today's immigration world in America. It is very different from the 1990s, it is very different from the 1980s, and it is very different from the 1970s. There are very strongly held views on both sides. Most, though, of what is attempted by Federal agencies responsible for the administration of immigration services today and responsible for the protection of our borders has more often than not failed, and we have to deal with that failure.

Employer sanctions, which are the seed of current immigration laws, have failed. Border control is spotty at best. Naturalization takes years. Detention facilities are inadequate. And despite our attempts to gain operational control of our border and to secure the interior of the United States so that everyone plays by the rules, the Government has essentially failed.

We now have 10 million to 12 million undocumented people living in the United States. They have come here illegally. They live furtively. Many of them have been here for 20 to 30 years. I know many. They own their homes. They pay taxes. Their children were born in this country and educated in this country. This is the only home they know. They want to live by the law, but they have no way currently to live by the law.

Employer sanctions, I mentioned, do not and, I believe, in our global economy, will not work. That is evidenced by the fact that in 2004, only 46 employers in the United States were criminally convicted for employer sanctions out of 3,258 cases initiated.

I have watched in California. On the few occasions where immigration officials have gone to agricultural worksites and arrested employers, the public reaction has been entirely negative.

Both you and I know, Mr. President, that a law is only as

good as the ability to enforce it. There is virtually today no ability to enforce employer sanctions in the United States of America. Therefore, a more punitive immigration philosophy that is based and dependent upon employer sanctions as working doesn't work and clearly creates a situation whereby there is disorganized chaos in the immigration world.

Another reason for this is our borders are a sieve, porous through and through. The Senator from Arizona correctly mentioned there are 14 miles on the California border with Mexico where there is a two-layer fence. It is an immigration border control process known as Operation Gatekeeper. It was very controversial when put into play, but it works. And he is correct, immigrants coming in illegally in that corridor have been deterred.

But what has happened is, it has simply pushed them east into unfenced portions of the border, and those portions of the border where the desert and the heat wreak considerable destruction upon anybody crossing.

A concern with porous borders has also brought attention to a classification of aliens known as "other than Mexicans." In 2005, Border Patrol agents apprehended 165,175 "other than Mexicans" at the border, 155,000 of them on the southern border.

The concern here is that many of these people are increasingly from terrorist-

supporting countries, and that presents a real potential national security threat to our country.

We continue to have a catch-and-release policy with respect to this limited category of people, but we don't have sufficient detention facilities. Consequently, they are released on their own recognizance pending a hearing. They are expected to show up at the hearing. More often than not, they do not show up. They simply disappear into the fabric of America, gone for all time.

I can go on and on, but I think this gives an accurate view of what has become an extraordinarily dysfunctional immigration system, and it has also made me realize that while we need strong border enforcement, it alone is not the only solution to the problem of illegal immigration.

The House bill, which focuses only on enforcement and criminalization of undocumented aliens, isn't the solution. We need to be much more realistic and comprehensive.

Mr. President, the Senate Judiciary Committee passed a bill, and I must tell you, I regret the way it was done. It was a kind of forced march, hour after hour of amendments on a bill that is very complicated, that I believe has actually come to the floor somewhat prematurely. I don't believe there is yet a consensus in this body, and I hope the debate that takes place can be a respectful debate so Members will feel free to open

their minds and then to change them if the facts warrant that.

But this bill is a beginning. It seeks to address the overall problem in a much more comprehensive and practical way.

First with regard to border enforcement. The bill doubles the number of Border Patrol agents. It adds 12,000 over 5 years. Senator Kyl and I had testimony in the Terrorism and Technology Subcommittee from the head of Border Patrol that today there are 11,300 Border Patrol agents. This more than doubles that number over the next 5 years.

It also would add an additional 2,500 new ports of entry inspectors in this same period so that the ports of entry are strengthened and legal immigration is able to be handled in a more prompt manner.

It criminalizes the act of constructing or financing a tunnel or subterranean passage across an international border into the United States. Most people don't know this, but this has become a real problem. There are 40 such tunnels that have been built since 9/11, and the great bulk of them are on the southern border. Large-scale smuggling of drugs, weapons, and immigrants takes place today through these tunnels.

I recently visited a tunnel running from San Diego to Tijuana, and I was struck by the inordinate sophistication of the tunnel. It was a half mile long. It went 60 to 80 feet deep, 8 feet

tall. It had a concrete floor. It was wired for electricity. It had drainage. At one end, 300 pounds of marijuana were found, and at the other end, 300 pounds of marijuana.

What was interesting is that the California entry into the tunnel was a very modern warehouse, a huge warehouse compartmented but empty and kept empty for a year. You went into one office, and there was a hatch in the floor. It looked much like the hatch which Saddam had secreted himself in. But when you lifted that hatch and you looked underground, you saw a very sophisticated tunnel. It went under other buildings all the way across the double fence into Mexico and up in Mexico in a building as well.

Today, interestingly enough, at this time, there is no law that makes building or financing such a tunnel a crime. A provision in this bill includes language from the Feinstein-Kyl Border Tunnel Prevention Act which would make the building or financing of a cross-border tunnel a crime punishable by up to 20 years.

This bill also authorizes additional unmanned aerial vehicles, modern cameras, sensors, and other new technologies to allow the Department of Homeland Security to work with the Department of Defense so the latter can carry out surveillance activities at the border to prevent illegal immigration.

So this bill is very strong on border enforcement. But it

doesn't just leave it there, as the majority leader's bill does. It says, that is only half the problem; you have to deal with the other half of the problem, and there is the rub. That is the difficult part, and that is the controversial part as well.

The bill we have from the Judiciary Committee seeks to remedy the very real needs of our economy which, as much as we might want to, cannot be ignored. Our global economy has changed the face of the American workforce. I am not going to comment on whether this is good or bad. In some cases, it is one or the other. In some cases, it is mixed. But the fact of the matter is the needs are different and the workforce is somewhat different.

Let me give you a large industry: Agriculture. There are about 1,600,000 workers in this country who work in agriculture. In my State, there are 566,000. I would hazard an informed guess that half of the 566,000 are here in undocumented status. I have had farmer after farmer, grower after grower tell me they cannot farm, they cannot grow without this workforce. I didn't believe it, so I got in touch with 58--we have 58 counties--58 welfare departments and asked them to post notices saying: Please, there are jobs in agriculture. Here is where to come. Here is to what expect. Guess what. Not a single person responded anywhere in the 58 counties of California.

That was pretty convincing evidence to me that Americans don't choose to do this work. It

is the undocumented workforce who has been the mainstay of American agriculture, whether through the H-2A program coming cyclically or whether it is through a large contingent of undocumented workers who remain in this country year after year and do this work.

Under this program--and this was an amendment that I made after negotiations with Senator Craig who has been one of the Senate leaders on the agriculture jobs program--and I was very pleased to negotiate with him and very delighted to see that he really cared enough to spend the day Monday in the Judiciary Committee. Between us, and with the committee's help, we have worked out a program whereby an undocumented worker could apply for a blue card if that worker could demonstrate that he or she has worked in American agriculture for at least 150 workdays within the previous 2 years before December 31, 2005. After receiving blue cards, individuals who have then worked an additional period in American agriculture for 3 years, 150 workdays per year, or 100 workdays per year for 5 years, would be eligible for a green card. Their spouses could work, and their children could remain in the country with them.

What would be the result of this? The result is that American agriculture would have a stable base of employment which is legal, which has the opportunity to bring people out of the shadows into the bright light of day, assume additional

responsibilities, grow in the process, and raise their families. I think that is healthy for America, not unhealthy.

Also, we reform the current H-2A program, which is the agricultural guest worker program, which employs, I would say around 30,000 people and is used largely in the tobacco-producing States. The way this is reformed is it makes it easier for an employer to apply for workers through an attestation system, the paperwork is simpler, the housing requirements are changed to make it easier. In general, the bill updates the H-2A agricultural program.

Returning to the larger bill, I suppose the most contentious part is what should happen to the 12 million people who are living here in the shadows, undocumented. Many would say they are here illegally; they ought to go back. Well, they are not going to go back. They are going to remain living furtively, and they are going to remain in the shadows. And most of them work.

The question before this body is: Does that make sound public policy sense over a substantial period of time? These immigrants live furtively. They are subject to work abuse, exploitation, threats, and blackmail. This bill would provide them with an opportunity to come into the light of day. But it wouldn't be easy for them. It is not an amnesty. An amnesty is instant forgiveness with no conditions. There are conditions on this. They must pay a fine of \$2,000,

they must learn English, they must have paid all back taxes, and they must be evaluated as neither a criminal or a national security threat to this Nation.

Also, they would not go in front of anybody in the line. There are presently 3.3 million people waiting in other countries legally for green cards, and those people should and will be processed first. It is estimated it will take, believe it or not, up to 6 years to process 3.3 million. These workers, these undocumented 12 million would go at the end of that line, and then one by one, they would come through that line. If they have worked steadily for the 6-year period, if they can show they have paid all back taxes, if they have avoided any criminal convictions, if they have learned English in that time, they would be granted a green card. Therefore, they come out of a furtive lifestyle, hidden and in secret, living in fear that tomorrow they could or might be deported.

Over the years in the Senate, one of the things that we can do is put forward a private bill. If we see a family or an individual who we believe is an exceptional circumstance, we can try and get a private bill passed for them, and when we introduce the bill, their deportation is stayed. It is very hard to get a private bill through. Many Members don't do private bills. I met some of the families. I want to give you three cases that I think are eloquent testimony to what is happening amongst the 12 million.

Let me share with you a family. Their last name is Arreola. They live in Porterville, CA. I have filed a private immigration relief bill for them over 2 sessions. I didn't get the bill passed, but their deportation has been stayed. Mr. and Mrs. Arreola came to the United States from Mexico illegally in the 1980s to work in agriculture. They have five children, two brought to the United States as toddlers, and three born in the United States. They range from 8 years old today to 19, and they know no other home but this country.

Their eldest daughter, Nayely, is a bright, engaging student. I have met her and talked with her. She is the embodiment of the American dream and what can happen when we give children a chance to excel in a loving, nurturing environment. She was the first in her family to graduate from high school and the first to go to college. And on a full scholarship. She goes to Fresno Pacific University. Mrs. Arreola works as a produce packer and Mr. Arreola now has an appliance repair business. They have no criminal background. They own their home. They pay their taxes. For Nayely, this bill offers a glimmer of hope that her family, once and for all, can come out of the shadows. They don't have to have that daily fear of deportation. They have been here for 20 years. They are and will be legal, productive citizens.

One other example. Shigeru Yamada is a 21-year-old Japanese national living in Chula Vista, CA. He is facing

removal from this country due to a tragic circumstance relating to the death of his mother. He entered the United States with his mother and two sisters in 1992 at the age of 10. He fled from an alcoholic father who had been physically abusive to his mother, the children, and even his own parents.

Tragically, Shigeru's mother was killed in a car crash in 1995, and he was orphaned at the age of 13. The death of his mother also served to impede the process for him to legalize his status. He could not legalize his status. At the time of her death, his family was living legally in the United States. His mother had acquired a student visa for herself and her children. Her death revoked his legal status in the United States.

In addition, his mother was also engaged to an American citizen at the time of her death. Had she survived, her son would have become an American citizen through this marriage. Instead, today, he is an illegal immigrant leading a model American life. He graduated with honors from Eastlake High School in 2000. He has earned a number of awards, including being named an "Outstanding English Student" his freshman year. He is an All-American Scholar, and he is earning the United States National Minority Leadership Award. He was vice president of the associated student body his senior year of high school. He is popular and he is trustworthy. He is an athlete. He was named the "Most Inspirational Player of the Year" in junior varsity baseball and

football as well as varsity football. After graduating, he volunteered for 4 years to help coach the school's girl's softball team.

Sending him back to Japan today would be an enormous hardship. He doesn't speak the language. He is unaware of the Nation's cultural trends. He is American, raised here, educated here. He is one who is deserving, who would be helped by this legislation.

I see the minority leader, and I know he has a very busy agenda. Regretfully, I have a little bit more, so I will finish up.

Let me give a third example of the type and character of individuals that this bill would legalize. The Plascencias are Mexican nationals living in San Bruno, CA. They are undocumented. They face removal from the country due to the fact that they have received ineffective assistance of counsel. They have four children, all born in this country. The mother and father are subject to deportation; the children are not. They arrived in this country in 1988, and they have worked hard. Mrs. Plascencia studied English. She is now taking nursing classes at the College of San Mateo. She worked for 4 years in the oncology department of Kaiser Permanente Hospital, where she was a medical assistance.

Mr. Plascencia works at Vince's Shellfish Market. During the last 13 years he has worked his way up from part-time employee to his current

supervisory position. He is now the foreman in charge of the packing department.

The Plascencia family has struggled to become legal residents for many years. Based on the advice of counsel, whom they were later forced to fire for gross incompetence, they applied for asylum. The application was denied, and they were placed in removal proceedings.

Their children--Christina, 13; Erika, 9; Alfredo, 7; and Daisy, 2--are entitled to remain. Their eldest daughter, Christina, is enrolled in Parkside Intermediate School in San Bruno, where she is an honor student. Erika and Alfredo are enrolled in Belle Air Elementary School. They are doing well. They have received praise from their teachers.

This family has worked hard to achieve the financial security their children now enjoy. This includes a home they purchased 3 years ago in San Bruno, CA. They own their car. They have medical insurance. And they have paid their taxes.

It is very clear to me and I think to a majority of Americans that this family has embraced the American dream and their continued presence in our country would do much to enhance the values we hold dear. So I believe that by presenting a pathway for the 12 million to become legal, this bill offers the only realistic option. Think about it. How do you find 12 million people, and what do you do when you find them, if you do? If brought across the

border, they return the next day. This is their home. This is their work. There are no adequate facilities to detain them. And most, today, have become a vital and necessary part of the American workforce--in agriculture, in restaurants, in hotels, in landscaping, and throughout our economy.

We need to build a border infrastructure that is modern and effective. We can do that. Operation Gatekeeper has shown irrefutably we can, in fact, enforce our borders if we have the will to do so and we are willing to spend the money to do so. But we also need to find an orderly way to allow those people who are already here, who are embedded in our communities and in our workforce, to be able to continue to remain. This bill does that.

I know this is tough for everybody because I know emotions run high and it is really hard to change your mind on this subject because there are so many conflicting pressures. But we have an opportunity to chart a new destiny for a lot of people. We have an opportunity to do something which has a chance to work, which is real, which meets the needs of real people out there, and which can stop the illegal infusion through our borders in the future if we act wisely, well, and effectively.

I yield the floor.