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4 MARKUP OF H.R. 4119, THE BORDER TUNNEL PREVENTION ACT OF

5 2012

6 Tuesday, March 6, 2012

7 House of Representatives

8 Committee on the Judiciary

9 Washington, D.C.

10 The committee met, pursuant to call, at 10:16 a.m., in
11 Room 2141, Rayburn Office Building, Hon. Lamar Smith
12 [chairman of the committee] presiding.

13 Present: Representatives Smith, Sensenbrenner, Coble,
14 Gallegly, Goodlatte, Lungren, Chabot, Franks, Jordan,
15 Chaffetz, Griffin, Marino, Ross, Adams, Quayle, Amodei,
16 Conyers, Scott, Watt, Lofgren, Jackson Lee, Waters,

17 Pierluisi, Quigley, and Polis.

18 Staff present: Richard Hertling, Staff Director and
19 Chief Counsel; Travis Norton, Parliamentarian; Sarah Kish,
20 Clerk; Anthony Angeli, Counsel; Perry Apelbaum, Minority
21 Staff Director; and Ashley McDonald, Counsel.

22

23 Chairman Smith. The Judiciary Committee will come to
24 order. Without objection, the Chair is authorized to
25 declare a recess of the committee at any time.

26 The clerk will call the roll to establish a quorum.

27 Ms. Kish. Mr. Smith?

28 Chairman Smith. Present.

29 Ms. Kish. Mr. Sensenbrenner?

30 Mr. Sensenbrenner. Present.

31 Ms. Kish. Mr. Coble?

32 Mr. Gallegly?

33 Mr. Gallegly. Present.

34 Ms. Kish. Mr. Goodlatte?

35 Mr. Lungren?

36 Mr. Chabot?

37 Mr. Issa?

38 Mr. Pence?

39 Mr. Forbes?

40 Mr. King?

41 Mr. Franks?

42 Mr. Franks. Here.

43 Ms. Kish. Mr. Gohmert?

44 Mr. Jordan?

45 Mr. Poe?

46 Mr. Chaffetz?

47 Mr. Chaffetz. Present.

48 Ms. Kish. Mr. Griffin?

49 Mr. Marino?

50 Mr. Gowdy?

51 Mr. Ross?

52 Ms. Adams?

53 Mr. Quayle?

54 Mr. Quayle. Here.

55 Ms. Kish. Mr. Amodei?

56 Mr. Conyers?

57 Mr. Conyers. Present.

58 Ms. Kish. Mr. Berman?

59 Mr. Nadler?

60 Mr. Scott?

61 Mr. Scott. Here.

62 Ms. Kish. Mr. Watt?

63 Ms. Lofgren?

64 Ms. Kish. Ms. Jackson Lee?

65 Ms. Jackson Lee. Present.

66 Ms. Kish. Ms. Waters?

67 Mr. Cohen?

68 Mr. Johnson?

69 Mr. Pierluisi?

70 Mr. Quigley?

71 Mr. Quigley. Present.

72 Ms. Kish. Ms. Chu?

73 Mr. Deutch?

74 Ms. Sanchez?

75 Mr. Polis?

76 Mr. Polis. Present.

77 Mr. Coble. The gentleman from Ohio?

78 Am I recorded, Madam Clerk? Present.

79 The gentleman from California?

80 Mr. Lungren. Here.

81 Mr. Coble. The gentleman of Arkansas?

82 Mr. Griffin. Present.

83 Mr. Sensenbrenner. [Presiding.] The clerk will report.

84 Ms. Kish. Mr. Chairman, 15 members responded present.

85 Mr. Sensenbrenner. A working quorum is present.

86 Pursuant to notice, the Chair calls up the bill H.R.
87 4119 for purposes of markup. The clerk will report the
88 bill.

89 Ms. Kish. H.R. 4119, "To reduce the trafficking of
90 drugs and to prevent human smuggling across the Southwest
91 Border by deterring the construction and use of border
92 tunnels."

93 Mr. Sensenbrenner. Without objection, the bill is
94 considered as read and open for amendment at any point.

95 [The information follows:]

96

97 Mr. Sensenbrenner. I will now recognize myself and the
98 ranking member for an opening statement. I ask unanimous
99 consent my opening statement be put in the record.

100 [The information follows:]

101

102 Mr. Sensenbrenner. And I yield my time to the gentleman
103 from Arizona, Mr. Quayle.

104 Mr. Quayle. Thank you, Mr. Chairman. And I would like
105 to thank the chairman for holding this markup today.

106 It has been a pleasure to work with Congressman Reyes,
107 Senator Kyl, and Senator Feinstein on this bipartisan piece
108 of legislation, which provides enhanced investigative and
109 prosecutorial tools to help law enforcement counter
110 sophisticated transnational criminal organizations. This
111 legislation is vital to our country and my home State of
112 Arizona to combat these cross-border tunnels that are used
113 by ruthless criminal organizations.

114 For instance, the Sinaloa cartel covers the majority of
115 the drug quarters on both sides of the Arizona-Mexico border
116 and extends its reach into much of the United States,
117 according to the Department of Justice. The majority of
118 these tunnels in Arizona is directly related with or has the
119 consent of the Sinaloa cartel.

120 The DOJ's National Drug Intelligence Center reported in
121 its 2011 drug market analysis for Arizona that the Sinaloa
122 cartel dominates drug-trafficking routes in Sonora, Mexico,

123 and also controls the drug trafficking corridors in Arizona
124 adjacent to Sonora.

125 The Sinaloa cartel and other similar drug-trafficking
126 organizations have used these border tunnels to illegally
127 transport narcotics, people, and dangerous items into the
128 United States, where criminal organizations earn substantial
129 profits off of the smuggling of illicit goods.

130 Recent discovery of border tunnels demonstrate that
131 criminal organizations will spend a considerable amount of
132 money to smuggle those goods into the United States. Many
133 of these new tunnel discoveries include ventilation tubing,
134 electricity, and resemble a modern-day mining shaft.

135 Just last week, officials in Nogales discovered a 110-
136 foot long border tunnel, and Mexican authorities seized 550
137 pounds of marijuana.

138 As a result of these drug-trafficking techniques,
139 Phoenix has become one of the main distribution centers of
140 illegal drugs to dealers across the country. And without
141 enhanced investigative and prosecutorial tools to stop the
142 flow of illicit drugs at the border, these criminal
143 organizations will always be one step ahead of law

144 officials.

145 While many members of the committee do not hail from a
146 border state, this problem affects every town and every city
147 in this country, and I strongly encourage my colleagues to
148 support this legislation.

149 And I yield back the balance of my time.

150 Chairman Smith. [Presiding] Thank you, Mr. Quayle.

151 The gentleman from Michigan, the ranking member of the
152 Judiciary Committee, Mr. Conyers, is recognized.

153 Mr. Conyers. Thank you, Chairman Smith.

154 Before I begin, I would like to advise or notify all of
155 my friends on the Judiciary Committee about the passing of
156 our colleague Donald Payne of New Jersey. It is with great
157 sadness that I learned of this. We have lost a dear
158 colleague, a champion for social justice and civil rights.
159 And I personally remember the first time he ran in 1988. I
160 went to Newark to campaign in his behalf.

161 During his tenure in the Congress, he has served as the
162 chairman of the Congressional Black Caucus. He was the
163 ranking member of Education and Labor Committee, as well as
164 a member of the Foreign Affairs Subcommittee on Africa.

165 We have gone to Haiti on more than on one occasion. I
166 think Chairman Smith and former Chairman Sensenbrenner may
167 have been on some of those codels in which he was a part of.

168 And so we send our prayers and thoughts to his family,
169 his friends, his staffers and former staffers. And I am
170 deeply surprised by this, because we were all, just a few
171 weeks ago, were seeing him going about his congressional
172 duties.

173 And so I would yield now the balance of my time to the
174 distinguished gentlelady from Houston, Texas, Sheila Jackson
175 Lee.

176 Ms. Jackson Lee. I thank the chairman very much. And I
177 would like to ask unanimous consent from the chairman, if we
178 would just have a moment of silence after the remarks of Mr.
179 Conyers on the loss of our very, very dear colleague.

180 Mr. Chairman?

181 Chairman Smith. I thought we were underway with our
182 moment of silence. I certainly concur with that.

183 Ms. Jackson Lee. All right, if we could. Thank you.

184 [A moment of silence.]

185 Ms. Jackson Lee. Thank you.

186 Chairman Smith. Thank you, Ms. Jackson Lee.

187 The gentleman from Virginia -- did the gentlewoman from
188 Texas still have additional comments to make?

189 Ms. Jackson Lee. Yes, on the legislation, I believe.

190 And I am associating myself with the comments of our
191 colleague, with Mr. Conyers. The pain is deepened for some
192 of us who had the opportunity to visit him in the hospital
193 just recently. I can tell you that he continued to be a
194 valiant servant of the people, and we will miss him.

195 With that in mind, let me just briefly acknowledge the
196 legislation that is before us and thank the chairman for
197 yielding to me.

198 Under H.R. 4119, this is legislation that my colleague
199 and friend from Texas initiated in 2011 and again in 2012.
200 I want to acknowledge Mr. Quayle, Mr. Dreier, Mr. Thompson,
201 and certainly the ranking member and the full committee
202 Chair, for legislation that speaks to an issue on the
203 borders. And this particular legislation makes the
204 construction or use of tunnels a predicate offense for
205 authorization for interception of wire, oral, or electronic
206 communications; provides for criminal forfeiture of property

207 involved in tunneling and civil asset forfeiture with
208 respect to merchandise introduced into the United States
209 through a tunnel.

210 I had intended to offer an amendment for the inventory
211 of that merchandise, but that is covered in previous
212 legislation. And it includes a border tunnel offense within
213 specified unlawful activity under money laundering and
214 provisions.

215 We know that reports of border tunnels have increased.
216 These tunnels range from unsophisticated small hand-dug
217 tunnels no wider than 16 inches in diameter to well-
218 engineered tunnels equipped with lighting and used to
219 transport drugs. The media has reported on some of these
220 elaborate tunnels recently.

221 These border tunnels are already illegal under current
222 law; 18 U.S.C. 555 prohibits knowingly constructing or
223 financing the construction of a tunnel or subterranean
224 passage that crosses the border between the United States
225 and another country. A violation of this section carries a
226 penalty and a fine and up to 20 years in prison.

227 Current law also provides that any person who uses such

228 a tunnel to unlawfully smuggle an alien, goods, controlled
229 substances, and -- illegal goods, controlled substances,
230 weapons of mass distraction, or a member of a terrorist
231 organization, subject to a maximum term of imprisonment that
232 is twice the maximum term of imprisonment that would have
233 otherwise been applicable had the unlawful activity not made
234 use of such a tunnel.

235 H.R. 4119 amends Section 555 to add a new Subsection
236 (d), which would apply the same penalties as those
237 prescribed for offense to any person who attempts or
238 conspires to use, construct, or finance an unauthorized
239 tunnel.

240 It also makes the construction or use of illegal
241 international border tunnels a predicate offense for
242 authorization.

243 In addition, it provides for criminal forfeiture of
244 property involved in international border tunnel and civil
245 asset forfeiture with respect to merchandise introduced into
246 the United States through such a tunnel.

247 Finally, it includes a border tunnel offense within a
248 specified unlawful activity.

249 As I indicated, I planned to offer an amendment about
250 the inventory of those items found, but I believe it is
251 already covered.

252 This is an important initiative, because we do want to
253 protect the border in places such as Arizona, California,
254 New Mexico, Texas, and others. We also know that the
255 intrusion into the United States illegally is against the
256 law, obviously. And we want to be able to give additional
257 tools to our Customs and our Border Patrol, rather, and our
258 ICE, and those who are dealing with issues of the
259 trafficking of weapons and drugs, the DEA and ATF.

260 This particular legislation will do so. Since 2006,
261 these efforts have resulted through the work of these
262 organizations and these law enforcements in 5,200 criminal
263 arrests and the seizure of more than half-a-million pounds
264 of illegal drugs.

265 The Document and Benefit Fraud Task Force, which
266 partners authorities from ICE with State and local officials
267 in 18 different cities, resulted in 1,643 felony convictions
268 and \$22.6 million in seized assets.

269 In conclusion, I would make the argument that our

270 Federal agencies are working. This particular initiative
271 will give them additional tools.

272 This also impacts on individuals who are attempting to
273 come to the United States, and I believe, for a long time,
274 we are overdue, again, on addressing the question of
275 comprehensive immigration reform in a manner that aside from
276 the criminal activities that this particular initiative will
277 address, which I support, will provide a roadmap, will
278 provide a structure, so that the valedictorian of a high
279 school in Miami, who has an above 4-point average, who has
280 been declared brilliant by her teachers, who has thousands
281 of students petitioning for her to stay, we do not have to
282 see these kind of stories, or a mother in India is blocked
283 forever from coming to be reunited with her young children
284 and her husband. These kinds of stories are frightening.
285 These kinds of stories, as well, need to be addressed by
286 passing comprehensive immigration reform.

287 With that, Mr. Chairman, I yield back.

288 Chairman Smith. I thank you, Ms. Jackson Lee.

289 The gentleman from Michigan, Mr. Conyers, is recognized.

290 Mr. Conyers. Mr. Chairman, I ask unanimous consent to

291 put my statement in the record as well.

292 Chairman Smith. Okay, without objection, the ranking
293 member's entire statement will be made a part of the record.

294 [The information follows:]

295

296 Chairman Smith. And I will recognize myself for an
297 opening statement.

298 I thank the sponsors of this legislation, Mr. Reyes of
299 Texas, Mr. Quayle of Arizona, for their work on this issue.
300 This is a bipartisan, bicameral bill.

301 Similar legislation, sponsored by Senators Feinstein,
302 Kyl, and others passed the Senate by unanimous consent in
303 January. For parliamentary reasons, we are unable to take
304 up the Senate-passed bill.

305 Border tunnels are an unfortunate testament to the
306 ingenuity and determination of the Mexican cartels to bring
307 destructive and deadly drugs into the United States. This
308 legislation strengthens existing law to combat the
309 construction of cross-border tunnels.

310 Cross-border tunnels have become such a consistent
311 threat, particularly in California and Arizona, that multi-
312 agency task forces have been established to address the
313 problem. These task forces include officials from
314 Immigration and Customs Enforcement, Customs and Border
315 Protection, the Drug Enforcement Administration, and State
316 and local law enforcement as well.

317 Since the 1990s, law enforcement agents have discovered
318 almost 150 tunnels between Mexico and the United States.
319 All but 10 of those tunnels were discovered in the last
320 decade.

321 Cross-border tunnels are far from simple.

322 In November 2011, Federal law enforcement shut down two
323 sophisticated tunnels that led from an area near Tijuana's
324 airport to an industrial park in California. These tunnels
325 were equipped with advanced rail, electrical, and
326 ventilation systems used by drug smugglers. The entrances
327 to both tunnels were discovered inside warehouses in Otay
328 Mesa, south of San Diego, California.

329 Mining engineers and architects employed by the drug
330 cartels constructed the tunnels and dug directly into the
331 foundation of a front company's rented warehouse. About 49
332 tons of marijuana were seized.

333 The Drug Enforcement Administration describes marijuana
334 as, quote, "the top revenue generator for Mexican drug
335 trafficking organizations, a cash crop that finances
336 corruption and the carnage of violence year after year," end
337 quote. The profits from marijuana trafficking finance the

338 drug cartels' other drug enterprises.

339 H.R. 4119, the Border Tunnel Prevention Act of 2012,
340 improves existing law that criminalizes the construction,
341 financing, and use of unauthorized tunnels or subterranean
342 passages across the U.S. border. The bill amends Section
343 555 of Title 18 to prohibit attempts or conspiracies to use,
344 construct, or finance a cross-border tunnel. The bill
345 authorizes law enforcement agents to seek a judicial wiretap
346 when they investigate border tunnels, and allows prosecutors
347 to pursue money-laundering charges when money is seized in
348 connection with a border tunnel.

349 The bill also permits both civil and criminal forfeiture
350 of both cash and merchandise that enters the United States
351 through a cross-border tunnel.

352 When Congress enacted the border tunnel statute in 2007,
353 it omitted these changes. H.R. 4119 simply corrects this to
354 ensure that investigators are equipped with the ability to
355 locate and shutdown these tunnels and hold these dangerous
356 criminals accountable.

357 Drug cartels will stop at nothing to get their
358 destructive products into the U.S. In the last 5 years, 40

359 tunnels have been discovered in California, 74 in Arizona.
360 In fiscal years 2010 and 2011, enforcement along the
361 Southwest border seized more than \$108 million in a local
362 currency and more than 7.7 million pounds of drugs. This
363 represents an increase of more than 60 percent in illegal
364 currency seizures and more than 30 percent in illegal drug
365 seizures compared to the previous 2 years, according to the
366 Office of National Drug Control Policy.

367 Border tunnels are primarily used to traffic drugs
368 across the U.S. border, but there is nothing to prevent
369 other criminals or even terrorists from exploiting this
370 technology for their purposes. It is time for Congress to
371 invest in law-enforcement's fight against transnational
372 organized crime and the drug cartels' construction of cross-
373 border tunnels.

374 This bill reaffirms our determination to bring an end to
375 cross-border tunnels. It gives law enforcement the tools it
376 needs to investigate and prosecute those who construct,
377 finance, and use cross-border tunnels.

378 I urge my colleagues to support the bill. I yield back
379 the balance of my time, and recognize the gentleman from

380 Virginia, the ranking member of the Crime Subcommittee, Mr.
381 Scott.

382 Mr. Scott. Thank you, Mr. Chairman.

383 Mr. Chairman, the ranking member, Mr. Conyers, entered
384 his statement into the record. In that statement, he
385 pointed out that, in his support for the bill, pointed out
386 that I would be talking about the redundancies in the bill.
387 He stated that he does not see redundancy as particularly
388 harmful, but I think it is at least appropriate to point out
389 some of the redundancies.

390 The bill prohibits conspiracies involving smuggling
391 terrorists or weapons of mass destruction or narcotics or
392 trafficking victims through tunnels. It prohibits run-of-
393 the-mill immigration and smuggling of goods and merchandise.

394 But as the ranking member points out, and as we have
395 seen in the findings of the bill, all of these are already
396 illegal. In fact, after you read the findings of the bill,
397 it is hard to imagine what behavior could be proscribed in
398 the bill that is not already illegal.

399 Now, it makes attempts illegal, but whatever evidence
400 you can have to sustain an attempt would also undoubtedly be

401 enough to get a conviction for conspiracy.

402 Laura Duffy, the U.S. Attorney for the Southern District
403 of California, stated in congressional testimony that in
404 prosecuting tunnel-related crimes, the Department of Justice
405 often uses a range of drug charges under Title 21, because
406 those charges carry stiff mandatory minimum sentences. And
407 when you start doubling drug penalties under the provisions
408 of the current border tunnel law, you get into sentences of
409 many decades.

410 The wiretap provision is interesting, because there is
411 no restriction on wiretaps outside of the United States, and
412 most of the tunnels start on that side of the border. So it
413 is unclear, in the absence of hearings, what that
414 authorization would add.

415 Mr. Chairman, while I think border tunnels are a
416 problem, I think we already have adequate laws and very
417 harsh penalties to deal with the problem.

418 And I yield back.

419 Chairman Smith. Thank you, Mr. Scott.

420 Are there other members who wish to comment on this
421 legislation?

422 Are there any amendments to this legislation?

423 If not, a reporting quorum being present, the question
424 is on reporting the bill favorably to the House.

425 Those in favor, say aye.

426 [A chorus of ayes.]

427 Chairman Smith. Opposed, no.

428 [No response.]

429 Chairman Smith. The ayes have it, and the bill is
430 ordered reported favorably.

431 Congratulations to Mr. Quayle and Mr. Reyes.

432 Without objection, the bill will be reported, and staff
433 is authorized to make technical and conforming changes.

434 Members will have 2 days to submit views.

435 [The information follows:]

436

437 Chairman Smith. That concludes our business today. I
438 thank all members for their presence at this markup, and we
439 stand adjourned.

440 [Whereupon, at 10:41 a.m., the committee was adjourned.]