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HEARING TO EXAMINE THE PROSECUTION OF IGNACIO RAMOS AND JOSE COMPEAN

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 17, 2007

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HEARING TO EXAMINE THE PROSECUTION OF IGNACIO RAMOS AND JOSE COMPEAN

TUESDAY, JULY 17, 2007

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 10 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Dianne Feinstein, presiding.

Present: Senators Feinstein, Kyl, Sessions, Cornyn, and Coburn.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. This hearing will come to order. I want to welcome the witnesses. I want to state the ground rules.

This is an emotional subject. I would request that everybody keep their composure at all times. This is not a hearing to judge innocence or guilt. It is a hearing to try to ascertain fact.

With respect to the jurisdiction of the Senate, there are a few issues involved in this case that are within our jurisdiction. One of them is a certain law called 18 U.S.C. 924(c). Another is a policy memo of the Department of Justice which will become clear, and, of course, always limited—excuse me, negotiation for limited immunity with someone who has trafficked drugs.

On October 19th last year, a Federal district judge in El Paso sentenced Border Patrol Agents Ignacio Ramos to 11 years and 1 day and Jose Alonso Compean to 12 years in Federal prison. The length of these sentences has raised concerns about the discretion of prosecutors in the charging of offenses and the impact of mandatory minimums those charges carry.

Today's hearing is to explore the facts, as I said, and better understand what transpired. Some of the facts that we know are not in dispute. A Mexican national named Osvaldo Aldrete Davila crossed the border illegally into El Paso, driving a van that contained 743 pounds of marijuana. That chart shows that 750 pounds of marijuana assembled by the Border Patrol.

When Border Patrol agents started following him, Aldrete Davila turned back toward Mexico, but crashed his van and then tried to fleet on foot. Aldrete Davila was stopped. A scuffle took place. He then broke away. He was then fired upon by Agents Compean and Ramos before he finally escaped into Mexico.

No written report of the shooting, as required, was made at the time by any of the Border Patrol agents. Later, when an Arizona

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Border Patrol agent learned of the incident, he reported it to his supervisor, and an investigation was opened.

A few weeks later, U.S. investigators went to Mexico and offered Aldrete Davila immunity from prosecution for his drug smuggling plus medical care in the United States if he would return to testify against Agents Ramos and Compean. Agents Ramos and Compean were arrested, and prosecutors later amended their indictment three times, adding new criminal charges each time for a total of 12 charges. Significantly, one of the charges added a firearms offense under U.S.C. 924(c), which carried a 10-year mandatory minimum in addition to whatever other penalties the court would decide to use.

The defendants were found not guilty of the most serious charge—assault with intent to commit murder—but convicted of all other counts. Agents Ramos and Compean will remain in prison for more than a decade. Their only hope is to win appeal or for the President to grant them a pardon or commute their sentences. Meanwhile, it is reported that Osvaldo Aldrete Davila has filed a civil lawsuit in the United States and is seeking $5 million in damages based on the shooting.

This case has generated strong emotions on both sides. Critics claim that this is a prosecution that shows how the Government's priorities are out of whack when it immunized a drug trafficker so that he can testify against the border agents from whom he admittedly fled. Supporters claim that rogue agents must be stopped and that cutting a deal with a wrongdoer who is a key witness is sometimes necessary in these situations.

It is true that the bullet left Aldrete Davila permanently injured, but it is also true that Aldrete Davila was not an innocent who was caught in the wrong place at the wrong time.

I asked my staff to give me an idea of what the amount of marijuana looked like, and, again, you have it there.

I find it hard to believe that someone trusted with $1 million of drugs is simply an amateur drug mule. So I hope this hearing will help us better understand the facts of the case as well as 18 U.S.C. 924.

We should also look at an Attorney General's policy rule issued in 2003 that states that Federal prosecutors must charge and pursue the most serious readily provable offense or offenses. As I said, while people have argued both sides, I have not heard many people argue that Agents Ramos and Compean deserve the length of these sentences.

I understand that U.S. Attorney Johnny Sutton has suggested that he was compelled to file charges that carried the 10-year mandatory minimum in order to comply with this DOJ policy I have just read. Specifically, that is the September 2003 rule from then Attorney General Ashcroft that requires the charging and pursuit of these offenses.

I think it will be fruitful for us to explore that policy today to see if prosecutorial discretion is being unduly restricted by DOJ policies in an overly rigid reading of the law. When Congress enacted mandatory minimum sentences, we certainly knew that the charges filed would automatically drive the sentence. But Congress never said that the charges themselves must automatically be filed.

The power of the prosecutor has long been heralded as one of the most significant powers in our Government. In it lies decisions that can have a huge impact, like in this case, where one charge can significantly drive up the sentence by 10 years.

I am very concerned about having in place a policy at the Department that takes discretion away from the prosecutors and mandates that all cases must be charged to their fullest without any consideration of the facts and circumstances and whether any lenience is warranted. We do not want or expect prosecutors to be robots. Prosecutorial discretion has been a fundamental part of our criminal justice system for centuries, and where there are mandatory minimums, it seems to me that it is even more important for prosecutors to retain discretion to determine what charges make the most sense in such a case.

There are also a number of other issues specific to this case which are worth exploring. I hope to find out if the prosecutors considered bringing administrative actions against Agents Ramos and Compean or asking them to resign instead of filing criminal charges against them and trying to put them in prison. If that was not considered, why wasn't it?

I hope to find out why the Government struck the deal that it did with Aldrete Davila. In particular, I hope to find out if the Government considered asking Aldrete Davila to waive his civil claims against the United States as part of an immunity deal. If not, why not? There are reports that he is now asking the $5 million for his injuries. I would like to learn more about the potential exposure that our Federal Government faces on that claim.

We have also learned that, despite his immunity deal, Aldrete Davila refused to provide any information on his drug source and refused to provide the names of others who talked about putting together a hunting party that would retaliate for the shooting.

I would also like to find out why the Government entered into an immunity deal in which Aldrete Davila got to pick and choose which information he provided.

I understand the Government argues that Aldrete Davila refused to give information because he was afraid of retaliation. But that risk is true in any number of cases in which a person agrees to cooperate. Normally, when a person is given immunity, he is supposed to cooperate fully.

We have also learned that Mr. Aldrete Davila re-entered the United States on at least ten other occasions between March and November 2005, and that the documentation provided by the Federal Government allowed him to cross the border legally at any time without notifying anyone in the Government ahead of time.

The Government admits that Aldrete Davila crossed the border at least one time without any notice and, therefore, was in the United States unsupervised. I would like to hear more about the policy that allows for this kind of unsupervised passage into our country and why someone who was known to smuggle in drugs would be given such flexibility.

I welcome the witnesses and look forward to their testimony here today, and now I would like to recognize the distinguished Ranking Member of this hearing, the Senator from Texas, Senator Cornyn.

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Madam Chairman. I know we have Senator Kyl, the Ranking Member of the Subcommittee, here. I have an opening statement, but I would be glad to—

Senator KYL. Go ahead.

Senator CORNYN. I want to express my gratitude to you, Senator Feinstein, and to Chairman Leahy for scheduling this hearing. We have been hoping that this day would come for a long time, and I am glad it is here. I know you have taken a serious interest in this case, as have I, and I look forward to hearing the testimony today.

The U.S. Senate has just completed two rounds of debate on comprehensive immigration reform. I believe the latest effort failed in large part because the American people from across the political spectrum simply do not have confidence in the Government's commitment to enforce the law, be it at the border, in the interior, or at the workplace. I think the public's interest in the case of Border Patrol Agent Ramos and Border Patrol Agent Compean is symptomatic of that distrust because the public sees two Border Patrol agents serving long prison sentences while an admitted drug dealer goes free.

I think this hearing will serve an important purpose because it will air for the American people, for the first time publicly in this venue, the facts of the case so they can hear them and they can make a judgment for themselves about the most controversial aspects of the case.

We all know that law enforcement officers hold a special place in our criminal justice system. Anyone who can arrest someone and throw them in jail holds enormous power and must be held to account when they act improperly because, of course, no one is above the law.

At the same time, it is important to remember that a law enforcement officer should be treated no worse than any other citizen before the bar of justice. In other words, no special breaks, no special burdens by virtue of their status as a law enforcement officer.

It is in this light that I have developed some serious concerns about the judgment calls made during the prosecution of this case. I want to find out if the prosecution offered the drug dealer—find out if the prosecution allowed the drug dealer to violate the terms of his immigration agreement without consequences. Did the drug dealer commit perjury without consequence? Did the Government feel the need to prosecute these two agents, as opposed to disciplinary action to a degree that they were willing to provide the drug dealer unlimited and unescorted parole visas for various 30-day periods to do who knows what, including possibly transporting additional narcotics?

Did the Government use the threat of severe criminal charges in a vindictive manner? That is, did the Government bring that charge only after the agents declined to negotiate a plea agreement? And, ultimately, is this the regular practice at the Department of Justice such that they could have been made—so that they would have made the cases against non-police officers?

These questions are not designed to quibble with the jury's decision in the case. Jurors provide a critical function in our judicial system, and their hard work and verdicts are to be respected until and unless such time as they are reversed on appeal. But the jury can only weigh evidence that they actually hear and are allowed to consider.

I would note that some jurors have since come forward to state that the evidence that they were prevented from hearing would have changed that verdict. Rather, my questions are designed to examine whether the prosecution of Agents Ramos and Compean was handled the same as other defendants or were they treated differently because of their status as law enforcement officers.

Madam Chair, I thank you again for your perseverance and your willingness to convene this hearing, and I look forward to hearing the testimony from the witnesses.

Senator FEINSTEIN. Thank you very much, Senator, and I look forward to working with you on this as well.

Senator Kyl.

Senator KYL. Madam Chair, I have an opening statement, but respecting the time of my good friends and former House colleagues here, what I would like to do is to have you turn to them after any other opening statements here. I will give about half of my opening statement orally when this panel has concluded and put the rest of it in the record. And I apologize in advance. I am, as we all are, scheduled about three different ways this morning, and I may have to be kind of coming in and out. But I did want to hear the testimony of these two witnesses, who are among the most conscientious and dedicated public servants that I have ever served with, and having worked with both of them in the House of Representatives, I could tell a lot of stories about both of them and their dedication to the people of this country. They are both patriots.

Senator FEINSTEIN. Thank you very much, Senator.

Senator Coburn.

STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator COBURN. I will just submit an opening statement for the record.

Senator FEINSTEIN. Thank you very much.

[The prepared statement of Senator Coburn appears as a submission for the record.]

Senator FEINSTEIN. And now we will turn to the first panel. I will begin with Congressman Hunter, because he was here first, Congressman Rohrabacher.

Duncan Hunter represents California's 52nd District, consisting of eastern and northern San Diego County. He was elected to the House of Representatives in 1980. His first assignment was to the House Armed Services Committee where he is presently Ranking Member. Prior to his current position as Ranking Member, Congressman Hunter served as the Chairman of the full Committee from 2003 to 2007. He is a Vietnam veteran, served in the 173rd Airborne and 75th Army Rangers.

I will introduce Congressman Dana Rohrabacher at this time. He represents California's 46th District, stretching along the Pacific

coastline of Orange County and Los Angeles. Congressman Rohrabacher is currently in his ninth term in the House and is serving as Ranking Member of the Oversight and Investigations Subcommittee of the House International Relations Committee. Prior to his first election to Congress in 1988, he served as Special Assistant to President Reagan. For 7 years, he was one of the President's senior speech writers. I should mention he was an editorial writer for the Orange County Register as well.

So we welcome you both to the other side, as they say, and, Congressman Hunter, would 5 to 7 minutes suffice? Fine. Please proceed.

STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Representative HUNTER. Chairman Feinstein and Senator Cornyn, Senator Kyl, and Senator Coburn, thanks for letting us come—

Senator FEINSTEIN. Could you press your microphone and see that it is on and pull it close?

Representative HUNTER. OK. Thanks for letting Dana and I come over and talk to you about this case. I think you have framed the case extremely well, Senator Feinstein, the circumstances, and let me just start out by saying I think that the prosecution and the resultant 11 and 12 years, respectively, for Agents Compean and Ramos comprise to me the most severe injustice I have ever seen with respect to the treatment of U.S. Border Patrol agents or, I might add, the treatment of any uniformed officers. And I say that as a guy who has been on the Armed Services Committee now for 26 years, I have seen lots of prosecutions under the UCMJ. But the totality of the circumstances, that is, the wounding of a drug dealer who has just brought in 750 pounds of narcotics, and the resultant 11- and 12-year sentences in the Federal penitentiary, which is about 2½ years more than the average convicted murderer does behind bars, essentially being given murder sentences for this action, which turns on a split-second judgment—and if you take away all of the underbrush, it turns on a split-second judgment as to whether or not the drug dealer, when, according to the agents' testimony, he whirled and had what looked to them like a gun in his hand, and he claimed, having been given immunity and being brought back from Mexico to testify, he claimed he did not have a gun in his hand. But that split-second judgment basically means the difference between being given a medal for accomplishment or for valor or being given 11 and 12 years in the penitentiary.

And so the first thing I would say is that that is not a burden that we can put on Border Patrol agents, or we are going to get to the point where no one will volunteer for this force.

Now, let me just offer a couple of things, and I apologize because I have to leave early, but let me just offer a couple of thoughts.

First, if you believe in full the testimony of the drug dealer, if you accept his statement as fact throughout, the 11- and 12-year sentences are extremely unjust. Extremely unjust. You have a wounded drug dealer who, according to the police documents that I have seen, or the prosecutorial documents that I have seen, did, in fact, enter the United States subsequently with another load of

narcotics for which he was not prosecuted. And that brings up two facts that I think you should make a point of inquiry with the Government.

First, the Government always has an obligation when a conviction turns on the credibility of a witness, and that credibility of that witness is subsequently impaired by something that he does—and, in fact, if it is a fact that this drug dealer brought in a subsequent load of narcotics, that certainly is a factor that should have been brought to the attention of the court. And I would recommend that you ask the Government why they didn't bring this subsequent load of narcotics—after the drug dealer had been given immunity, why that was not brought to the subsequent attention of the court, because it is the trustworthiness, the credibility of the witness, the drug dealer, which was utilized to convict Compean and Ramos.

The second factor that I would urge that you ask the Government about is this: I have looked at the statement, this so-called rebuttal statement by the U.S. Attorney. Eight times in that rebuttal statement, it states conclusively that the drug dealer was unarmed. I have read the transcript of the case. There is nothing in the transcript that indicates that there is any proof that he was unarmed. He was never frisked. He was never searched. And the other Border Patrol agents who were watching this from afar, the one who testified was watching from hundreds of yards away. So there is absolutely no proof that he did not have a gun except his own statement. And if you look at the motivation that he might have, what greater motivation than being given immunity, being set up for a multi-million-dollar civil case against the U.S. Government, and being the key witness in a prosecution that sends the hated Border Patrol agents to prison.

Now, I wanted to tell you, after they went to prison—that was, I believe, the 17th of January. The day they went in, I called up Harvey Lappins, who was the head of the Bureau of Prisons, and he had just gone home, but I talked to his administrative assistant, and I said, "These guys are going to get beaten up in prison." The prison has a large population of drug dealers, they hate the Border Patrol, and they are going to be beaten up unless you segregate them." The assistant assured me that he would convey that to the Director, Mr. Lappins, very quickly, that night.

The next day I got a call back from Mr. Lappins' staff, and they said, "Good news. The Border Patrol agents have been segregated from the general population, and they will be safe." And they sent me subsequently a letter—and I would like to offer this for the record—that says they are under a special program in which their safety will be assured. And I would like to offer that to the record, Senator.

Senator FEINSTEIN. That will be included in the record. Thank you.

[The letter appears as a submission for the record.]

Representative HUNTER. What Mr. Lappins or his assistant did not tell me was that a few days later, Mr. Ramos would be put back in the general population, and he was promptly beaten up. And it was not guards that stopped the beating. It was another inmate.

So these two agents have now done 6 months in the Federal penitentiary. I have never seen a case so compelling for a pardon or a commutation.

Now, after they were put in and the President did not pardon them, I introduced a bill. I had our lawyers come in, and I asked them if Congress could issue a pardon, if we could do a bill that would effect a pardon. They researched the cases, and they said there are some cases that indicate actually that you can and some that indicate you cannot. And since they were already incarcerated, I said let us go ahead and draft one. We have drafted one. We introduced it. We have at this point precisely 100 cosponsors.

But I think this is a case which calls out for a pardon or for a commutation, but especially, Chairman Feinstein, I would make sure that you get a response from the Government as to why, after the drug dealer was focused on in an investigation before bringing in a second load of narcotics, that fact, which obviously goes to his credibility and his trustworthiness in this case, in which his testimony was the key driver of these two convictions, why that fact was not communicated to the court.

Now, the Government may say that that did not result in a conviction. In fact, they did not indict as a result of that, but I have read the police report with respect to that. But that certainly does trigger an obligation, a duty on their part to report an activity which goes straight to the credibility of the key witness to the Government. And I do not think they did that.

And the second thing that, of course, I think you should question them on strongly is this: Again, their statement has seven references to—states conclusively seven times that the drug dealer was unarmed. And, of course, that is a key element in this case. There is no evidence that he was unarmed. He was not frisked. He was not searched. Nobody was close to him except the two agents, Ramos and Compean.

The last thing I would say—and I appreciate you letting me go early, Chairman Feinstein. I appreciate your attention to this case, incidentally. This is a very critical case. You know, we built that fence in San Diego, and we had tons of cases just like this—not exactly like this, but beatings, times when Border Patrol were rocked, people came across in vehicles. And the separation that we achieved by having a double fence with a road in between eliminated those. And we also had an average of eight to ten murders a year right there on the San Diego border. Most of the time the people being murdered by the gangs that roamed that border were the people coming in illegally. When we put the double fence up, the murders went from an average of eight to ten a year to zero. And incidents like this on our part of the border went to zero. And if you look at the border fence that we passed into law, that is mandated to be constructed in Texas, it appeared to me that the fence includes this area where you are now having these drive-throughs like the one which is the subject of the discussion this morning. It is now the law that we build all 854 miles of border fence. I think we need to get on with it.

Thank you for allowing me to testify, Chairman Feinstein, and thank you for your great interest in this case. And, Mr. Cornyn, I appreciate the hospitality.

I apologize for having to leave early, but I wanted to let you know how strongly I feel.

[The prepared statement of Representative Hunter appears as a submission for the record.]

Chairman Feinstein. Well, thank you very much for the testimony, for being here, and I will go to Congressman Rohrabacher.

STATEMENT OF HON. DANA ROHRABACHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Representative ROHRABACHER. Well, first and foremost, let me thank you, Senator Feinstein. You have my respect and my appreciation for holding this hearing.

As we meet today, it should not escape our attention that the two veteran Border Patrol agents that we are speaking about are in their 180th day of solitary confinement. It just tears at your soul to think that these two men, who had 5 years and 10 years of service to the Border Patrol, respectively, these men who put their lives at risk every day trying to do one of America's toughest law enforcement jobs, these men are now in solitary confinement for an activity that stems from their interdiction of a drug dealer. Both of these men are military veterans; both have unblemished work records. Officer Ramos, in fact, was nominated to be Border Patrol Agent of the Year.

Then on February 17, 2005, Officers Ramos and Compean interdicted a drug smuggler who had just penetrated our border with 743 pounds of narcotics. A high-speed chase ensued followed by a physical altercation. Agent Compean ended up on the ground. The drug dealer ran toward the border, and as he did, he was turning and, according to the officers, had what appeared to be a shiny object in his hand. And there is no reason to believe that that object was not a gun. Yet it appears that the word of the drug dealer was taken over the possibility of the fear of these two law enforcement officers that they were being put in great jeopardy.

Shots were fired and in the aftermath, certainly—and we all admit this—the prescribed Border Patrol procedure was not followed. Ramos and Compean did not do their paperwork. Ramos and Compean and their supervisors, not believing the drug dealer had been hit, decided to forego the hours and hours of laborious paperwork that is required after shooting incidents. Now, that was a wrong decision on their part. But it is understandable as well. They did not think anybody had been hit. They just did not want to spend 6 or 7 hours of their time and the FBI's time and everybody else's time to go through these procedures. That procedural violation, that decision, deserved a reprimand. That decision that deserved a reprimand was turned into a felony by the U.S. Attorney's Office.

Prosecutors in this country are given great discretion, and who will be granted immunity and who will be prosecuted is their call. In this case the U.S. Attorney's Office decided to give immunity to a professional drug smuggler, accept his word that, even though he was in possession of a million dollars worth of drugs, that he was unarmed and then throw the book at the Border Patrol agents, turning into a felony what should have been addressed, at most, by a 5-day suspension for the violation of procedures.

It is totally disingenuous for anyone involved in prosecuting Ramos and Compean to suggest that they had no choice. The choice was prosecuting the drug smuggler for his heinous crimes or prosecuting the Border Patrol agents. Going after the agents required turning reality on its head, trying to turn our protectors into bad guys, exaggerating the importance of not spending the hours muddling through a shooting report when they thought no one had been hit.

The prosecutors decided to go after the good guys and gave the bad guy immunity. The prosecutors then, let us note, began to vilify the Border Patrol agents in order to justify their decision. Mr. Sutton has, for example, repeatedly referred to the agents as "corrupt" in broadcast interviews. When challenged about this, he simply defined "corrupt" in a way that no one else uses the term. Now, we have heard that before from this administration, and it is unacceptable, especially when you consider the impact that that had on the lives of these people, these two Border Patrol agents, who have unblemished records on their job. But it was Mr. Sutton who stood by as Congress was lied to with the claim that these two fine Americans of Mexican descent supposedly bragged that they wanted to go out and "shoot Mexicans" that day. This later was proven to be a bald-faced lie. Now, who is being prosecuted for lying to Congress? That was said directly to Members of Congress who were investigating this incident. This lie was in print on numerous occasions. Why did Mr. Sutton let such a vicious lie simply stand? Why didn't he correct the record?

Then one must consider that Mr. Sutton has continuously described the incident as Ramos and Compean shooting an unarmed man in the back and lying about it. Was Mr. Davila an unarmed man? No. He was not just a man. He was a criminal member of a drug cartel. And he was not shot in the back. He was shot in the buttocks and the entry wound of the bullet was consistent with the agents' testimony, as well as that of the army surgeons who removed that bullet, that he was turned—he was not shot in the back. He was turned with his hand extended as if something was in his hand. I wonder what that was. The agents had exactly one split second to decide if their lives were in danger.

And, finally, let us not forget the worst lie of all, the one that was told to the jury, when the U.S. Attorney's Office permitted the prosecutor to describe the drug smuggler as a one-time offender trying to earn enough money to pay for medicine for his sick mother. Mr. Sutton may use pejorative words to describe the drug smuggler now, but it was his prosecutors who insisted to the judge that the jury not be permitted to hear the information directly tying the drug dealer to a second cross-border drug shipment. Now, someone is getting railroaded here. The jury was not able to hear that this drug smuggler had been fingered in a second drug shipment, and it was the U.S. Attorney's Office that insisted to the judge that the jury not be permitted to hear that evidence.

This Committee may want to ask Mr. Sutton about the date of free border crossing pass that was provided by his office, provided to the drug smuggler, and we might want to determine if the date on that pass coincides with the date of the second drug shipment, because those of us on the House side who have been trying to get

to the bottom of this cannot get an answer out of Mr. Sutton about this.

Mr. Sutton's office has stonewalled our investigation in the House, and that is why, Senator Feinstein, we are so grateful to you for stepping forward today. Mr. Sutton's office has even insisted that we obtain a privacy waiver signed by the drug smuggler before they can release the information as to the dates that were on the drug smuggler's pass. I do not know what contempt of Congress is, but that sounds like it to me.

This Committee may want to ask Mr. Sutton if all the facts remained the same, but instead Mr. Davila turned out to be a terrorist—let us say instead of all of these narcotics that Mr. Davila was instead smuggling across the border a van that was filled not with marijuana, but let us say Mr. Davila had a van that was filled with a dirty bomb headed for an American city. Ramos and Compean, would they be sitting in Federal prison right now for violating a terrorist's civil rights, or would they be heralded as the true heroes who they are?

In summary, the Ramos and Compean case is the worst miscarriage of justice that I have witnessed in the 30 years I have been in Washington. The decision to give immunity to the drug dealer and throw the book at the Border Patrol agents was a prosecutorial travesty. The whole episode stinks to high heaven. Two of America's brave Border Patrol defenders have had their lives and the lives of their families—and their families are here with us today—destroyed by what I see as an elitist, arrogant, and overreaching prosecutor who believes that protecting the civil rights of illegal alien criminals is worth destroying the lives of our law enforcement officers for minor procedural violations.

With that, I appreciate at long last the opportunity to try to do something to help these brave law enforcement officers. As I say, as we speak, Madam Chairman, they are in their 180th day of solitary confinement because this administration that will give Scooter Libby a commutation of his punishment, this administration let Scooter Libby go, but these two defenders of our border have to go in solitary confinement. I pleaded with this administration at least go to the judge and ask him to let these fellows go until their appeal is heard, because their lives are in danger. That request was turned down and, I might say, very abruptly and arrogantly. And as we now see, Scooter Libby can be set free. Two Border Patrol agents who languish in solitary confinement, whose lives are in danger, their lives do not count a bit with this administration. And I appreciate that you, Senator Feinstein, care about these people as individuals and are holding this hearing because of that.

Thank you very much.

[The prepared statement of Representative Rohrabacher appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much, Congressman Rohrabacher.

I have no questions. Do other members of the panel have questions of the Congressman? If not, then, we thank you for coming over to this side. We excuse you, and we will proceed with the next panel.

Senator FEINSTEIN. I would ask T.J. Bonner to come forward, and I will introduce the next panel in aggregate, and then we will go right down the line, if that is agreeable.

Mr. Bonner is currently the President of the National Border Patrol Council. This is a union within the American Federation of Government Employees which represents approximately 11,000 non-supervisory Border Patrol employees. Mr. Bonner has held this position since 1989 and has been a Border Patrol agent in the San Diego, California, area since 1978.

Deputy Chief Barker retired from the U.S. Border Patrol in July 2006 after more than 28 years of service. At the time of his retirement, he was the national Deputy Chief of the Border Patrol in Washington, D.C., where he had served since May of 2005. Prior to that, he served in a number of key leadership positions in the Border Patrol, including the position of Chief Border Patrol Agent in the Laredo and El Paso, Texas, sectors. Before joining the Border Patrol in 1978, he was a police officer and acting detective for 5½ years with the Jersey City Police Department Narcotics Squad.

David Botsford is currently serving as appellate counsel for Mr. Ramos. We asked the defense attorneys at the trial if they wished to come and testify on behalf of their clients. We learned that they are prohibited from doing so by the judge. However, Mr. Botsford has volunteered to testify. He is a member of the State Bar of Texas where he received Outstanding Criminal Defense Lawyer of the Year in 1993, and he has previously served as the President of the Texas Criminal Defense Lawyers Association. He has been listed as a "SuperLawyer" and as one of the five "Go-To" Lawyers in Texas Criminal Defense Practice by the publication Texas Lawyer. He is also listed in "The Best Lawyers in America."

David Aguilar is not present. Is Mr. Aguilar going to testify? Oh, he is on the third panel, I guess. All right.

So we will proceed with these witnesses at this time. Mr. Bonner, you are first up. Welcome.

STATEMENT OF T.J. BONNER, PRESIDENT, NATIONAL BORDER PATROL COUNCIL, CAMPO, CALIFORNIA

Mr. BONNER. Thank you. Chairwoman Feinstein, Ranking Member Cornyn, other distinguished members of the Committee. The National Border Patrol Council appreciates very much the holding of this hearing to get to the bottom of this matter. This is something that has weighed heavily on the minds of not just law enforcement officers across America but ordinary citizens who look at the facts of this case and wonder how two Border Patrol agents who were simply doing their job and defending themselves against an armed drug smuggler ended up being prosecuted, convicted, and sentenced to 11 and 12 years in prison. This is a travesty of the highest order.

The Government claims that it prosecuted these two agents because they shot an unarmed man in the back, covered up, destroyed evidence, and filed false reports. All of that hinges on whether that person was, in fact, unarmed. In order to reach the conclusion that Osvaldo Aldrete Davila was unarmed, you have to discard the physical evidence—the bullet that entered through his body at an angle; you have to ignore the laws of physics; you have

to ignore the sworn testimony of two law enforcement officers, and place absolute, complete faith in the word of a career criminal.

Make no mistake about it. Osvaldo Aldrete Davila was not a simple mule, as the prosecution tried to claim, who was looking to earn $1,000 so that he could care for his sick mother. The cartels are not that stupid. They do not throw the keys to a van with $1 million worth of marijuana to someone whom they do not know and say, "Just drive around, kid, and you will figure it out. Someone will pick you up and escort you into the safe house, and then we will give you $1,000." They are not that foolish. And anyone in our Government and our system of justice who honestly believes that, you have to really question their intelligence. And I do not question the intelligence of the folks in that office. They are far smarter than that.

He was armed. In my 29 years of experience as a law enforcement officer, having captured loads of narcotics and being familiar with many other loads of narcotics that have been captured, when you are dealing with that quantity, they are inevitably, almost invariably armed—perhaps not to shoot it out with law enforcement officers, but certainly to protect against being ripped off by the competition.

This is a very troubling case, and you will hear the other prong of the testimony is that they tried to cover this up. There was no cover-up here. They were required by policy to orally report the fact that they had discharged their firearms. They did not do that, for whatever reason, but that is not a crime. That is an administrative violation that merits no more than a 5-day suspension.

Another part of their case rests on the fact that Agent Compean picked up his shell casings. One of the things that no one ever did was to test him afterwards to see whether he was suffering from post-traumatic stress disorder. Everyone who testified at trial said that Joe Compean was walking around in a fog, in a haze. He had just been assaulted. He has just seen his life flash before his very eyes because someone pointed a weapon at him. And he was clearly suffering from what used to be called "shellshock," is now called "post-traumatic stress disorder." No one tested him for that. He reverted to his training. At the firearms range, we are taught, after you fire your weapon, you pick up your shell casings and you throw them into the nearest receptacle. He looked around, there was no near receptacle, so he threw them into the drainage ditch. If he really intended to destroy this evidence, he would have taken it as far away as possible and completely destroyed it, taken it to a smelter, had it melted down. There was no intent there to destroy or to cover up, and there was no filing of a false report. The Border Patrol firearms policy specifically precludes agents from mentioning the fact of a shooting in a written report. That is done by the investigator.

The wrongdoing here was bringing 743 pounds of marijuana into the country. That is a felony. And the person who did that was granted immunity by our Federal Government, and when he was subsequently implicated in another 753 pounds of marijuana, not only was that fact ignored, but it was suppressed. The Government argued that the court should not let the jury hear that evidence,

and the jury did not hear that evidence, and it would have had a bearing on the outcome.

In conclusion, the ramifications of this go far beyond those two agents, far beyond just the Border Patrol where morale has been decimated and now we are suffering the effects of that. We cannot hire the number of agents that the President wants, that the Congress wants. We are falling so far behind. One of our recruiters relayed to me that someone came up to him after the standard recruiting pitch and he said, "You would have to be crazy to join this outfit. You eat your own."

That is a sad commentary that the public has so little faith in our system of justice, and millions of Americans have petitioned this President for executive clemency, and he ignores that.

The effects of this are so far-reaching. I would implore you to use your power to order an investigation, appoint an independent counsel to look into this, go in, subpoena, get to the heart of this matter, because the fabric of our system of justice depends on resolving this matter expeditiously.

Thank you very much.

[The prepared statement of Mr. Bonner appears as a submission for the record.]

Senator FEINSTEIN. Thank you, Mr. Bonner.

Former Deputy Chief Barker.

STATEMENT OF LUIS BARKER, FORMER CHIEF PATROL AGENT, EL PASO BORDER PATROL SECTOR, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Mr. BARKER. Good morning, Chairman Feinstein, Ranking Member Cornyn, and distinguished members of this Committee. Thank you for inviting me to this important hearing. You went through my biography, but one thing I would like to add is I was also a military policeman stationed with the U.S. Army stationed at Fort Bragg, North Carolina. Also, I am currently providing leadership and integrity training and anti-corruption training to senior managers or mid-level managers at CBP under contract, and also I train first-line supervisors at the Leadership Development Center, again, under contract with CBP. So I would like the record to reflect that.

Senator FEINSTEIN. Thank you.

Mr. BARKER. As a senior leader in the Border Patrol, I was extremely proud of the men and women who serve to protect this Nation and who I had the honor to lead. Today, even in retirement, I am still proud of the great work that these men and women do in defense of the homeland. Day after day they do this difficult and dangerous job of securing our Nation's borders under extreme conditions, and do it with a personal pride and dedication that is to be applauded. They literally put their lives on the line every day, yet do great things to make us proud. They are genuine heroes and certainly deserving of your support and that of the American people.

To prepare them for the dangers and rigors of the job, each agent undergoes extensive training, to include firearms training and the use of force. This training instills professionalism and makes every

agent understand that he or she will be held to a higher standard and that they must obey the laws of the land and of the community in which they live. Every agent that entered on duty when I was Chief Patrol Agent in the El Paso Sector had this reinforced to them by me before going to the Border Patrol Academy and again upon their return from the academy and before reporting to field duties. They are told about the trust that is placed in them to enforce the laws within the limits authorized—a trust that, if violated, has enduring consequences. The motto of the Border Patrol is "Honor First," an ideal that is instilled in every agent from the day they walk through the door of any sector in the Border Patrol, and woven into the training and indoctrination at the Border Patrol Academy. It is something that has sustained the Border Patrol.

During my tenure as Chief Patrol Agent of the El Paso Sector, there have been numerous incidents where officers have discharged their weapons, but most of them accidental. Of these weapons discharges, six were incidents where agents used deadly force to defend themselves from a threat against them resulting in two fatalities. The Firearms Policy mandates the reporting of every shooting incident, accidental or otherwise, for proper investigation and disposition. For this reason, the scene must be secured and proper notification must be made to bring the investigative resources to bear. Every agent understands the requirement to notify supervisors of any discharge of a service firearm and the implications of not doing so.

On or about March 4, 2005, we received a memorandum from an agent in the Tucson Sector informing us of a shooting incident connected with a narcotic seizure that occurred in the El Paso Sector on February 17, 2005, approximately 2 weeks earlier. At that point in time, we had no recent report of shootings, so the information in the memorandum was surprising to us. After checking the records and making some inquiries, we had reason to believe that the allegations in the memorandum had some merit. We immediately made the proper notifications and made an initial report to the Office of Inspector General because of the seriousness of the allegations. As we all know, the events of February 17, 2005, resulted in the conviction and sentencing of former Agents Ignacio Ramos and Jose Compean.

Osvaldo Aldrete Davila, "the victim"—and I use it in quotes because he is not deserving of the title because of his trade, a trade that supplies nothing but misery to those who are trapped in the clutches of his product; he deserves no sympathy and I give him none. Only the circumstances make this characterization possible. I do, however, feel for Agents Compean and Ramos and their families for what they have endured and will endure as a result of the terrible choices they made on February 17, 2005. Though there is an emotional connection in this case, those of us in leadership and those having the responsibility to apply the rule of law cannot abdicate our responsibilities. Agent misconduct, even criminal misconduct, does occur despite our best efforts in selection and training, but we do everything to deter it and act decisively when it occurs. It saddens me because had the two agents behaved with the integrity and honor that we instill, following procedure, disclosing the shooting, not tampering with the evidence and encouraging oth-

ers to do so, the results might have been very different. In fact, in my experience, almost every agent-involved shooting is resolved in the favor of the agent without criminal charges. So to suggest that the Border Patrol "went after" these agents for administrative violations is baseless, and I believe the facts of this case support this premise.

Agents Compean and Ramos used deadly force when it should not have been applied; they shot a person in direct violation of the policy and contrary to the training that they have received in this regard. From the statistical information I gave earlier, it is obvious that this was not the first time agents used deadly force in the El Paso Sector. The differences between this case and the others are glaring: Agents involved in other shooting cases reported them, cooperated with the investigation allowing it to run its course, and an investigation which generally supported the agents' decision to use deadly force. These agents destroyed evidence, filed an incomplete report on the incident in an effort to keep this shooting and the circumstances surrounding it from the leadership. Additionally, their actions prevented the proper investigation of this case—an investigation which I said generally supports the actions of the agents.

On April 28, 2005, when Agent Compean came before me to make his oral reply to the proposal to indefinitely suspend him, I asked him why he did not report the shooting. He said, and I quote, "I didn't." He continued to say that he knew that it was wrong for them not to report and continued to say that if they thought that the suspect had been hit, he would have. He also said that he knew that they would get in trouble—a thought that was confusing to me since I have established that when an action is appropriate, the investigation invariably proves this absolving the agent of any liability.

This has been a tragedy with emotional undercurrent, but there should be no mistake about it: It begins and ends with the actions of Agents Compean and Ramos; not the prosecutors, not the judge or the jury, as has been suggested. The "distorted facts" have compounded this already tragic situation by tarnishing the reputation of other people who did the right thing. The U.S. Attorney, through his office in El Paso, has been a strong supporter of the agents in the El Paso Sector, making it clear, by its prosecutions, that assaults on agents will not be tolerated. They have also been on the front lines in those cases where agents have used deadly force under circumstances that warranted it or taken actions that have resulted in injury or death, and they have worked vigorously in supporting the agent. Conversely, they are also intolerant of official criminal misconduct or corruption as they should.

Finally, it is suggested that this case will make agents hesitate in situations where deadly force is warranted. The facts do not support this contention since in the last 2 months—

Senator FEINSTEIN. Would you conclude, please, Deputy Chief Barker. You are 2 minutes 36 seconds over time.

Mr. BARKER. I have just three more lines.

Senator FEINSTEIN. Thank you.

Mr. BARKER. The facts do not support this contention since in the last 2 months agents have discharged their weapons against assail-

ants in self-defense on three occasions in El Paso, resulting in injury to one. Agents have always defended themselves, and I have no doubt that they will continue to do so when there is a threat.

I thank you for this opportunity, and I look forward to answering any questions that you may have.

[The prepared statement of Mr. Barker appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much.

Mr. Botsford.

STATEMENT OF DAVID L. BOTSFORD, APPELLATE COUNSEL FOR MR. RAMOS, AUSTIN, TEXAS

Mr. BOTSFORD. Good morning, Chairwoman Feinstein—

Senator FEINSTEIN. Would you relocate the mike and see that it is on?

Mr. BOTSFORD. That should be on now, Senator.

Senator FEINSTEIN. It is on now.

Mr. BOTSFORD. Thank you very much. I appreciate the opportunity to be here very much.

Senator FEINSTEIN. If you could move the mike over directly in front of you.

Mr. BOTSFORD. Is that a little bit better?

Senator FEINSTEIN. Thank you. Right.

Mr. BOTSFORD. All right. First, I appreciate the opportunity to be here on behalf of Ignacio Ramos. I represent Ignacio Ramos on appeal only. I was not involved in the trial. However, I have read all 33 volumes of the appellate record, read every word, seen every exhibit. I am here to try to answer questions, and I would like to do so after making some brief comments.

As Cinderella's step-sisters taught us, no good can come from stuffing a foot into an ill-fitting shoe, and that is what this case is really about from my perspective. I have been practicing criminal defense law for 30 years in Texas. I have seen no greater tragedy than this case.

As Representative Rohrabacher said earlier, the truth is if the driver of this van had been Osama bin Laden or some terrorist, would we even be here? Would there have even been a prosecution of Ramos and Compean? I submit no, of course not. The point is however, we are not in that position. We are in a position where two agents apprehended a drug dealer, and I want to address the fact that is reflected in Mr. Sutton's written testimony that Davila could not have been prosecuted. This is at page 6 of his written statement. I take serious issue with that. Obviously, anybody that practices criminal law knows that a grand jury will indict a ham sandwich. We have all heard that phrase. And, in fact, Davila could have been prosecuted for this first load that he fled across the river. Why Mr. Sutton says that he cannot be prosecuted bewilders me because I believe any first-year prosecutor could get an indictment and successfully prosecute him. There is independent testimony that he entered the United States illegally, got into a van laden with 750 pounds of marijuana, drove into Fabens, Texas, in order to receive directions to the stash house, was attempted to be stopped by two and then subsequently three Border Patrol agents, of which one of them was Mr. Ramos. Davila did not stop. He fled,

high-speed chase, and under the Supreme Court opinion of *Scott* v. *Harris*, decided in April of 2007, we know that the agents were authorized to use deadly force to stop Davila during that high-speed chase that endangered other people.

They did not do that. They followed him to the border where Davila got out of his van and encountered Agent Compean, who was bearing a shotgun. Davila did not stop for Compean even though he was bearing a shotgun. There was an altercation. Ramos gave chase down into an 11-foot ditch. While he was in that ditch trying to get to where the alien Davila and Compean were in a struggle, there was an exchange of shots or what Ramos thought was an exchange of shots.

Agent Ramos comes out of that ditch and ultimately fires one shot—and you have heard the testimony before—as Davila was turned in a turning direction back toward him.

You know, the most inept prosecutor in the world could have prosecuted this case, so I take difference with what Mr. Sutton has put in his written statement about not being able to prosecute him.

The immunity situation is quite distressing, and I would offer for the record a copy of the March 16, 2005, letter of limited use immunity, Senator Feinstein, that was proffered to Davila, that was signed by him over the signature of J. Brandy Gardes, Assistant U.A. Attorney.

I would like to point out that—and I would ask that the record receive that.

Senator FEINSTEIN. Thank you. That will be the order.

Mr. BOTSFORD. Thank you very much, Senator.

I take great issue with Mr. Sutton's statement on page 6 of his testimony that the court ruled that the second load of marijuana that we have heard allusions to, the October load, as Mr. Sutton refers to it, was not relevant to the issues at the trial, and that ties into this immunity agreement because, in fact, this immunity agreement was proffered to Davila before he was ever interviewed in the United States. This was proffered to him after one telephone conversation between an agent, Chris Sanchez, and Davila on a cell phone.

Now, the immunity agreement is what is called "use immunity," co-extensive with United States Code Section 6001, et seq. That means that once Davila signed this agreement, he had an obligation to truthfully testify and cooperate and provide evidence. Nothing he said could be used against him.

Unfortunately, Mr. Sutton's trial prosecutors represented to the district court that this immunity agreement was what would be transactional immunity for the day of February 17, 2005, only; and, therefore, the district court ruled that because Mr. Davila could take the Fifth Amendment as to the second load, the defense attorneys would not be entitled to cross-examine him on it. It was not that it was not relevant. It was based on a misrepresentation by trial counsel to the court because once you have use immunity, as the Supreme Court of the United States determined back in 1972 in *Kastigar*, once you have use immunity, you have no Fifth Amendment right left. You have to testify.

Additionally, the trial testimony reflects that Davila, the alien, the "victim," did not comply with this agreement. The testimony is

clear in the record that he refused to name where he received medical treatment in Mexico, the names of the people that picked him up on the other side of the river once he crossed back to the Mexico side, the names of his confederates, the names of individuals who were threatening to seek retribution against Border Patrol agents in the United States after this came out. For what it is worth, that immunity agreement was broached by Davila. No question about it. The record is clear.

I will also state that approximately 2 months ago, in the El Paso Times, Davila was interviewed about the sentence that was imposed upon Ramos and Compean, and even he said that it was too harsh. Even he said it was too harsh.

The last point I would like to make briefly is that relating to 924(c), 18 U.S.C., United States Code, that says that if you use or carry or discharge a gun in the course of the commission of a crime of violence, you automatically receive a mandatory minimum 10 years stacked on top of the other sentence for the other offenses. In this case, the district court had to impose that sentence, but it is the exercise of judicial discretion—and I believe both Senator Cornyn and Chairwoman Feinstein talked about prosecutorial discretion. The original indictment against these gentlemen did not include that 924(c) count. It was added. And although I was not personally involved in the communications at that time between trial counsel and Mr. Sutton's line prosecutors in El Paso, it is my understanding that a plea bargain offer was extended to Compean and Ramos, it was refused, and then the 924(c) count was added.

The Supreme Court of the United States in *Bordenkircher* v. *Hayes* and more recently in *U.S.* v. *Goodwin* has said that a prosecutor can retaliate against the defendant who wants to take you to trial and allow the ante to be upped, so to speak. But the question remains: Is that an intelligent prosecutorial discretion? I think it sends a terrible message to law enforcement. You know, if you—924(c) was originally enacted to try to encourage criminals to leave their guns at home. When you go out to commit a felony offense, leave your gun at home, or you are going to get tagged with a lot of additional time.

These agents carry guns in the line of duty. They have to carry guns. This is a 17-minute long segment of their life from the original dispatch at approximately 1:11 p.m. on the date in question until when the "all clear" is broadcast. Seventeen minutes of a high-speed chase ending up at a ditch near the border, and Ramos, unlike Compean, does not pick up his brass, does not fire 10, 11, or 12 times. He makes one shot—one shot after hearing what he believed to be an exchange of gunshots while he is down in the canal and not capable of seeing what is going on.

If we are going to require our law enforcement officers to stop and investigate who is shooting at whom and what is going on before they can rely on the actions of their fellow officers, we send a terrible message out there. A terrible message. And if I was—

Senator FEINSTEIN. Would you conclude, Mr. Botsford? You are over time.

Mr. BOTSFORD. Thank you very much. I will be glad to try to answer any questions, Senator. Thank you.

[The prepared statement of Mr. Botsford appears as a submission for the record.

Senator FEINSTEIN. Thank you very much.

My first question is of Deputy Chief Barker. What should an agent do if a fleeing drug suspect is told to stop and does not?

Mr. BARKER. If the person does not pose a threat to them, they have to use other than deadly force to try to stop them. In other words, chase them—

Senator FEINSTEIN. And how would they do that?

Mr. BARKER. To chase them. To chase them on foot. And—

Senator FEINSTEIN. And if they had tried to chase them and the chase failed and they still were yelling "Stop"?

Mr. BARKER. That does not authorize them to shoot at them, Madam Chairman.

Senator FEINSTEIN. So, in other words, any drug dealer on the border who does not obey a command and runs cannot be shot?

Mr. BARKER. Yes, ma'am, unless there are other circumstances. Just for the fact that they are running and they were drug dealers, they cannot be shot.

Senator FEINSTEIN. No wonder so much drugs are coming across the border. It is—

Mr. BARKER. Unfortunately, those—

Senator FEINSTEIN.—amazing to me.

Mr. BARKER. Unfortunately, even drug dealing—as you can see from my experience and from my career, I have been involved in drug enforcement. Even though as despicable as it is, it is not a capital offense, and agents are limited in when they can use force. And there are only three circumstances when they can.

Senator FEINSTEIN. Let me debate this, because I have read 924(c), and it is pretty clear to me that 924(c), which was additionally charged, is really—the intent of it is for the person involved in drug trade because it has got various qualifications. You get a certain amount of time if you use a machine gun or a destructive device. If you use a short-barreled rifle, a short-barreled shotgun, or semiautomatic assault weapon, that is when it is 10 years. So it is clearly written with the view of being applied to a drug dealer, to encourage that drug dealer not to carry a weapon. But in the event someone does, in the event there is a split-second decision and the arresting officer—or the officer thinks that individual is armed, my goodness.

Mr. BARKER. The question was posed of whether the person is fleeing or not where they posed—

Senator FEINSTEIN. He was fleeing. Let there be no doubt.

Mr. BARKER. Correct. And—

Senator FEINSTEIN. No one disputes that.

Mr. BARKER. Correct, and I am not familiar with 924(c). I am going by the policies that these agents have to follow in enforcing the law, whether it involves a drug smuggler or an alien. There are circumstances when they can use their firearms, use deadly force, and there must be a threat to them, must be a threat to their partner, must be a threat to an innocent third party, they can use deadly. Other than that they cannot. Unfortunately, that is just the way it is.

Senator FEINSTEIN. Thank you very much.

Mr. Botsford, you mentioned that use immunity, transactional immunity is for 1 day only, and that an individual normally has their Fifth Amendment right suspended when that kind of immunity is evoked. I did not understand it. Could you explain that once again, please?

Mr. BOTSFORD. Certainly, Your Honor—I am sorry.

[Laughter.]

Senator FEINSTEIN. That is all right.

Mr. BOTSFORD. I am just so used to talking to judges, Senator. What can I say.

Senator FEINSTEIN. It is rare around here you get that kind of compliment. Thank you.

Mr. BOTSFORD. The Government represented to the district court that this immunity agreement bestowed upon Davila applied only to the day of the events, February 17, 2005, and that, therefore, he did not have immunity as to this alleged second load.

Unfortunately, that is not accurate. The immunity agreement that was given to Davila, which is use immunity, co-extensive with the statutory grant of use immunity contained in 18 U.S.C. Section 6001 through 6003, when you have that use immunity, that means everything you say in a court of law is protected. None of it can be used against you. And, therefore—

Senator FEINSTEIN. Does that mean you can continue to bring drugs in and you have immunity?

Mr. BOTSFORD. No. That just means that he, Davila, could not take the Fifth Amendment on that second load and that, therefore, the defense attorney should have gotten to cross-examine about that second load. Therefore—

Senator FEINSTEIN. Did you find any information that they knew about the second load at the time?

Mr. BOTSFORD. Your Honor, there are certain sealed materials that I cannot address.

Senator FEINSTEIN. I am aware. That is why I asked you. Do you have any information?

Mr. BOTSFORD. Yes, separate from—I am not going to talk about any sealed materials, but there are clear indications in the record and hearings held during the course of the trial, colloquies whereby the defense did want to cross-examine Davila about the allegations of a second load. The Government line prosecutors in the courtroom represented to the court that he, Davila, should not be forced to answer questions about that second load because his immunity agreement did not cover that second load. That, unfortunately, is not accurate, as reflected by the immunity agreement.

The court ruled that Davila could take the Fifth Amendment as to the second load and, therefore, would not allow the defense attorneys to cross-examine him in the presence of the jury because then Davila would be taking the Fifth Amendment in the presence of the jury, which is kind of a no-no from a Federal judge's perspective, and it would have been unfair.

So there are definitely indications in the record that the defense counsel did want to question him and that, unfortunately, the Government line prosecutors misrepresented, in my opinion, what that immunity agreement was all about.

Senator FEINSTEIN. And why would that information be sealed?

Mr. BOTSFORD. Your Honor, you would have to—well, actually I believe there is an ongoing investigation. That is what Mr. Sutton has told us in his testimony, and I am not going to take issue with that statement at all.

Senator FEINSTEIN. That was begun at that time?

Mr. BOTSFORD. Yes, Your Honor. Yes.

Senator FEINSTEIN. OK. Senator Cornyn.

Senator CORNYN. Thank you.

Mr. Botsford, in your brief that you have filed with the Fifth Circuit, you have talked about the message that this prosecution sends to other Border Patrol agents, other law enforcement officials working along our border. You said that this prosecution sends a message to every law enforcement agent that if you shoot in the line of duty and you cannot prove that you are justified in using deadly force, regardless of whether you were mistaken in that belief, you will be prosecuted and receive at least 10 years' incarceration under 18 U.S.C. Section 924(c) stacked on top of other sentences—this despite the fact that Section 924(c) was never intended by Congress to be used to punish law enforcement officers who use their weapons in the line of duty.

Do you believe that the use of this mandatory minimum sentence against a law enforcement officer is misplaced?

Mr. BOTSFORD. I do, Senator, particularly as to the law enforcement officer that is on the job, engaged in the line of duty, and who in good faith believes a gun is being pointed at him. Remember, the law does not require that he be correct. If he has a good-faith mistaken belief that Davila had a gun, then he is entitled to use deadly force. I have no problem with 924(c) being used against the rogue cop that off duty puts on a service revolver and goes out and helps drug dealers import marijuana or commits rapes or any other type of crime. But for our law enforcement officials that are on the job doing their darnedest to do their job and who may have made a mistake—maybe they made a mistake. I was not there. But certainly it sends a terrible message to those folks. I would imagine that many, many officers are going to be hesitant to ever pull their guns.

Senator CORNYN. Well, this mandatory minimum prison sentence under Federal law for illegally possessing or brandishing or using a firearm in commission of another crime, does it logically—if, in fact, the rationale is to dissuade criminals from using a firearm in the first place and committing other crime, does it make any sense to apply that law to a police officer? For example, a Border Patrol agent, who, by virtue of their job, must possess, use, brandish, and occasionally discharge a firearm in the course of their official duties?

Mr. BOTSFORD. Senator, I do not think it does, and I do not think anybody would suggest it does, and quite candidly, it is a tragedy that it was used in this situation.

From what I have read of the legislative history, it really was not designed to apply to law enforcement officers in the first instance, ever. But it has been applied, and there are issues raised on appeal, which I do not want to talk about here today, that talk about whether these agents had fair notice that if they made a mistake in pulling their guns and ascertaining whether they could use

deadly force to apprehend a fleeing felon, that they would ever be subjected to this type of prosecution. It is an absence of fair notice.

Senator CORNYN. Let me ask you, Mr. Botsford, about the indictments that were rendered in this case. The original indictment was dated April 13, 2005. It contains three counts, none of which include a count for violating the firearms statute. Correct?

Mr. BOTSFORD. That is correct. Yes, Senator.

Senator CORNYN. There was a second superseding indictment that, instead of three counts, now is eight counts, which does include the firearm counts. That was on September 28, 2005. There was a third superseding indictment filed December 21, 2005, and then a fourth superseding indictment filed January 25, 2006.

Is it your impression or belief that these subsequent indictments, unlike the original indictment, include the 924 firearm violation which got these two defendants a 10-year mandatory minimum sentence on top of their other sentence, were used in an inappropriate or perhaps even vindictive way once the plea bargain offered by the Government was turned down?

Mr. BOTSFORD. Yes, Senator, I do. There was continuing dialog I have been informed of—again, I was not there, but I view it as the Government upping the ante trying to put more pressure on these two citizens to plead guilty to something in order to dispose of the case, which is not untypical, but I believe it is vindictive, and in this case inappropriate.

Senator CORNYN. We talked about the power that a prosecutor has, and is it your experience that prosecutors, once a plea bargain is turned down by a person charged with a crime, will vindictively up the ante in such a way that increases the likelihood of a disproportionately long sentence in order to punish the defendant for turning down the plea bargain?

Mr. BOTSFORD. I suggest, Senator, that it all depends on the individual line prosecutor involved in the case. Some prosecutors, no. Some prosecutors, yes. I do not know the back-door scenes behind the decisions to up the ante in this case. I cannot address that. Maybe Mr. Sutton can, if he was involved in them. But sometimes that definitely does happen.

Senator CORNYN. Deputy Chief Barker, let me ask you, in the case of Agent Ramos, who was down in this ditch when he heard the shots discharged by Agent Compean, it is fairly safe to say that he knew that Mr. Davila was in the country illegally, that he was associated with illegal drug traffic. He knew that there had been a high-speed chase. He had heard his fellow agent, Agent Compean, shoot on multiple occasions. He knew that there had been an altercation; that, despite carrying a shotgun, that Davila and Compean had had an altercation that Agent Compean had hit the ground; and Agent Ramos saw the person fleeing, and there was testimony that he saw a shiny object in Davila's hand which he thought was a weapon.

Are you telling us that it is unjustified for Agent Compean under those circumstances to discharge his weapon and injure this drug dealer?

Mr. BARKER. Absolutely not. Under those circumstances they could, if they see a shiny object. Again, it has been said before that we do not put—we do not supersede an agent's decision to use

deadly force when the agent believes that there is a need to do so. So if all those circumstances are there, yes.

The issue here—and being involved with the case from the beginning—there was nothing that said initially when this case happened that this person was armed. That creates the issue here. Because there was a period of time—because if an agent is—if a person is armed, an agent finds that the situation is dangerous, he lets other agents know this. One of the first things that would be said if a person uses deadly force is, "I thought the person was armed." That was never said on that day.

Senator CORNYN. Well, let us say the agent is just mistaken, with his heart pumping, adrenaline flowing. We know there have been firearms discharged. We know that there is a drug dealer who is fleeing from law enforcement agents. Let us say a Border Patrol agent is just mistaken, thinks he sees a gun, and the price of his being wrong that there is a gun and Agents Ramos and Compean do not try to defend themselves or discharge a weapon is they could be dead.

Mr. BARKER. Correct.

Senator CORNYN. Why isn't it appropriate for a Border Patrol agent, law enforcement official, to exercise their discretion under those circumstances and—

Mr. BARKER. They do.

Senator CORNYN.—use that deadly force?

Mr. BARKER. They do, and in those circumstances the agent gets the benefit of the doubt. And that is the way it always turns out.

Senator CORNYN. So what happened here is there was a factual dispute as to whether there was a weapon.

Mr. BARKER. Yes, sir.

Senator CORNYN. And you believe the jury did not believe that there was actually a weapon.

Mr. BARKER. Correct, and, in fact—

Senator CORNYN. Would that account for a mistaken belief in good faith that there was a weapon?

Mr. BARKER. Yes, sir. In fact, I would have to confess that, being involved in the case from the beginning and the facts surrounding the events on that day, I believe that there was no gun.

Senator FEINSTEIN. Senator Sessions.

Senator SESSIONS. Thank you, Madam Chairman.

I do not think, Mr. Bonner, you or anyone would dispute this rule that exists, has been established for quite a long time now, that a police officer of any kind is not entitled to shoot someone who is fleeing if they think they are not in danger or may be in danger. Isn't that just a standard rule that every officer in virtually every jurisdiction in America is taught?

Mr. BONNER. It is. And, you know, to be clear about this, it really has no relevance whether that was 750 pounds of marijuana or whether it was 750 pounds of food and clothing for orphans. The reason they shot was they believed that that individual had a weapon and was pointing the weapon at them. That is what justified the shooting.

Senator SESSIONS. Well stated, and I think that is important. Now, is there any dispute, Mr. Botsford, that this guy had a shotgun? Was that suggested? Was a shotgun ever recovered?

Mr. BOTSFORD. Agent Compean was holding a shotgun as Davila got out of his van, ran down through and up the ditch toward him, Compean yelling "Stop," along with agents on the other side yelling, "Stop." Davila did not stop. He came up and tried to—actually got into an altercation with Compean when Compean was armed with a shotgun. I mean, I think the man was dangerous. He obviously was not going to stop. He obviously had fled and led the officers in a high-speed chase from downtown Fabens back to the border. He was intent on getting away and not being apprehended.

Senator SESSIONS. And what is the Supreme Court ruling on high-speed chase and the use of force?

Mr. BOTSFORD. The most recent case was decided in April of this year, and it is by the name of *Scott* v. *Harris*. The Supreme Court determined that an officer could use deadly force to stop a fleeing felon who was in a car driving in a dangerous manner. That is a followup to the Supreme Court opinion in *Graham* v. *Connor* back in 1987 that talked about the use of deadly force in a seizure.

Senator SESSIONS. Well, you know, this thing strikes me—you used the phrase "tragedy," and I think that is a good word for it. It is almost Kafka-esque. Event after event after event broke against the officers to the point that we have ended up with a judgment that I think is excessive based on the error that they perhaps undertook and made. It is just really, really unusual.

First of all, 924(c) is designed to deal with criminals who carry firearms during the commission of felonies and crimes of violence, and drug offenses specifically. And I have used it one time against a police chief who sold drugs out of his car. I charged him with carrying a firearm during the—selling dope.

But this is quite different from that. These officers came to work with no criminal intent, no mind-set to commit any crime. Indeed, their mind-set was to enforce the law and try to create a lawful society. And in the course of this altercation and the series of events that occurred, weapons are discharged, and someone is hurt, and we end up with this extraordinary punishment.

Now, I suspect, Madam Chairman and others, that I can divine some of the thinking that goes on here, and that is that somebody somewhere concluded that some discipline needed to be applied to Border Patrol agents, that we cannot have Border Patrol agents just shooting people right and left, and that this case is particularly troublesome probably to the prosecutor because there was an attempt to cover up, apparently, and it was not reported properly through all the channels. And then to get into those cases—and I have been to them. It seems sometimes the prosecutors get more angry with a law enforcement officer who asserts all his rights and privileges than he would a dope dealer because they assume that they would do so. And it gets to be personal and things, and they ended up with this kind of sentence. So I am just heartbroken about it and not really—and I wonder about what we should do.

I would suggest, Madam Chairman, that the 924(c) provisions, as Senator Cornyn and you have suggested are not appropriate in this instance, is correct. It has been used in this fashion in my experience for civil rights violations where the essence of the civil rights violation is to use the weapon and then charge it again for double the sentence. It has been used, or at least I recall it being dis-

cussed about arson, the destructive device is one of the weapons covered by 924(c). And so you double-charge, you get a double penalty, arson itself and using a dangerous device, and then you charge them with carrying a dangerous device during a crime of violence—that is, arson.

That is sort of a double-charging event that I would be prepared to look at and see if we cannot clarify that law.

Senator FEINSTEIN. Senator Cornyn and I were just discussing that. It has been used against a police officer. I found at least one case, *U.S.* v. *Acosta*, which involves two New York police officers. I do not know the date of that, but I think it is pretty clear, if you read the law, that it was designed to be used against drug traffickers to try to encourage the drug trafficker not to carry a weapon.

Senator SESSIONS. Right.

Senator FEINSTEIN. And here it is used in a different way.

Senator SESSIONS. Well said, and I think that is pretty clearly the intent, and I would support a clarification.

How did it get to be 10 years instead of 5 years under 924(c)?

Mr. BOTSFORD. Senator, my memory of the sentencing—

Senator SESSIONS. It says—924(c), was it a 10-year—

Mr. BOTSFORD. It was 10 years because the gun was discharged as opposed to carrying. Carrying a gun is 5 years.

Senator SESSIONS. Right.

Mr. BOTSFORD. Discharging is 10, and then where injury occurs, and if death occurs, it is an even higher mandatory minimum.

Senator SESSIONS. Right. With regard to the—my time is up, Madam Chairman.

Well, it is an unfortunate series of events. Obviously this became a very intense prosecution, and the dice were rolled, and it came out all against these officers who otherwise had been doing fine work, it appears, and I hope that we can figure out some way to be helpful to them.

Senator FEINSTEIN. Thank you very much, Senator.

Senator Cornyn.

Senator COBURN. Quite a compliment. Thank you.

[Laughter.]

Senator FEINSTEIN. Excuse me. Senator Coburn.

Senator COBURN. Thank you. And, again, let me thank Senator Feinstein for having this hearing. It is conducted in the type of format we should. I have a couple of questions.

One, is there anybody on this panel that knows—was there any pre-existing experience with Compean and his knowledge of Davila? Did he have any pre-existing knowledge of this individual or any thought—did he know this person?

Mr. BONNER. No.

Senator COBURN. There is no knowledge of him at all.

Mr. BONNER. No.

Senator COBURN. OK. Deputy Chief Barker, as you sit back and look at this, we have what we have today, we have great rules, a great group of people that work for the Border Patrol. If you were to extract yourself back and say, "What do we need to change so this does not happen?" is there anything that needs to change? Or is this just an unfortunate set of circumstances that was brought

on by the Border Patrol agents not carrying out the procedures they should? Or should something really change?

You have to admit there is something that does not smell right with this case in proportion to the punishment for what the actions actually were. And so my question to you: Having had all this experience, what needs to change? Should we ever experience this again, what needs to be changed in terms of policy, format, procedure, so that we do not have this again?

Mr. BARKER. From the standpoint of policy, I cannot think of anything that needs to be changed, and I do not disagree that the penalty is disproportionate. There is no disagreement there. But the unfortunate thing is the system that we have, it worked. It stems from decisions that were made that day. And we have heard about whether this would have been a 5-day suspension or removal. It cannot be—it is not as simple as that. It is just not a simple thing of not reporting an event. It is the seriousness of it. This person was shot, and there was a requirement to do so. So from a procedural, from an administrative standpoint, I cannot see what needs to be changed. These agents are trained to know the circumstances when they should and should not use a weapon.

Senator COBURN. Well, let me ask you this: It was not just the two agents that knew guns were fired.

Mr. BARKER. Correct.

Senator COBURN. All right. So everybody knew that was there that guns were fired. You could hear them.

Mr. BARKER. Yes, sir. But the sequence of events brought people there are different times. And some did, some did not. There was a reference that the supervisors knew. The supervisors did not know that the weapon was discharged. And we heard the amount of time that it takes to report a discharge. It does not take 6 hours. It takes a memorandum to say that "I fired my weapon," simply. And if the agent makes an oral reply, it is incumbent upon the supervisor to make the formal—or to make the written report because the policy does not require—in fact, it prohibits the agent from making a written report on a shooting.

Senator COBURN. Can you see a plausible explanation—there is a difference of opinion on the facts. In your position, could you have seen a plausible explanation that was proffered by the defendants in this case that that, in fact, could have been fact and not other than fact, if you take away the fact that they did not do the reporting as required?

Mr. BARKER. If those agents, the minute this occurred, said, "We thought he was armed," we would not be here today. We would not be here today because, again, we take the word of agents. That was never said. The fact that they tried—they did not report it. The fact that they tried to keep it away from the leadership leads us to believe that there was something wrong, and there is nothing that has been said so far that leads us to believe that that is—or leads us to believe that this was just a simple mission or they did—it was an accidental shooting.

Senator COBURN. Thank you.

Senator FEINSTEIN. Thank you very much. This completes this panel. If I may, I thank you very much for being present, and we will now turn to the last panel.

Senator SESSIONS. Madam Chairman, could I ask one more question?

Senator FEINSTEIN. Yes, of course.

Senator SESSIONS. So that the bullet that hit the individual came from Ramos?

Mr. BOTSFORD. That is what was stipulated to at trial, Senator, yes.

Senator SESSIONS. So he heard shooting. Could he tell who was firing, which one was firing?

Mr. BOTSFORD. He testified he believed there was an exchange of gunfire while he was down in the ditch, but clearly he didn't know who was firing at whom. He knew that shots were being exchanged, or at least that is what he thought. He comes out of the ditch, sees Davila running around, Davila appears to be pointing a gun at him, takes one shot, as opposed to Compean's 14 shots.

Senator SESSIONS. And Compean did not hit, apparently did not hit this individual.

Senator FEINSTEIN. Senator, would you yield for a minute?

Senator SESSIONS. Yes.

Senator FEINSTEIN. Isn't Compean on the ground at this point?

Mr. BOTSFORD. Yes, Senator, it appears that Compean is on the ground when Ramos comes out of the ditch. He has obviously been in an altercation.

Senator FEINSTEIN. And so Ramos cannot see what happened to Compean, if I understand this correctly.

Mr. BOTSFORD. That is correct.

Senator SESSIONS. So his brother agent, as far as he is concerned, is in serious trouble, and a life-and-death situation is occurring, and he performed what he felt was the right thing to do, and now somebody has come back in hindsight and concluded it was not.

Mr. BOTSFORD. That is correct, Senator, and I will point out also that there were at least three other officers that heard shots that did not orally report them. And by the time Ramos got back to the north side of the ditch through which he had come through, there were nine officers there, and his testimony at trial was that he heard a discussion of the shooting and, therefore, there was no need for him to orally report that shooting.

The duty to report exists for 1 hour. He has got to report it within an hour orally to a supervisor. But he believed, quite candidly, that the supervisors on the scene were well aware of it.

Senator SESSIONS. And there was no dispute that a physical altercation of some kind occurred.

Mr. BOTSFORD. Between Compean and Davila, that is correct, Senator.

Senator SESSIONS. Thank you.

Senator FEINSTEIN. Thank you. And I am sorry, I have one other question. There was a cell phone found in the car. Clearly, Mr. Davila had to call someone to have himself picked up by the side of the road. Is there any evidence of what time that pick-up was, how long it took place after the shooting, and whether quite possibly what he had in his hand could have been the cell phone?

Mr. BOTSFORD. Senator, the time sequence is not well established, but it appears that he was picked up on the Mexican side

of the Rio Grande by one vehicle and then subsequently a second vehicle within approximately 5 minutes after he had crossed the river, which would have been approximately 6 to 7 minutes after the altercation there near the border on the American side.

Senator FEINSTEIN. But he had to have called someone to pick him up.

Mr. BOTSFORD. Exactly. And one of the defense's theories at trial, Senator, was that, in fact, the shiny thing that Compean thought was a gun could have been a second cell phone. But we will never know—unless you believe Davila.

Senator FEINSTEIN. Was the cell phone that was in the van removable from the van?

Mr. BOTSFORD. It was, Your Honor—I mean, I am sorry, Senator, yes. It was. There was also an indication there had been a second cell phone, one in the van to accompany the van to the stash house, and one with Davila himself.

Senator FEINSTEIN. I see. All right. Which was never recovered.

Mr. BOTSFORD. Correct.

Senator FEINSTEIN. Thank you very much. Thank you, everybody. We appreciate it.

Senator FEINSTEIN. Our next panel will be composed or comprised of U.S. Attorney Sutton and David Aguilar. I will begin by introducing the United States Attorney, Johnny Sutton. He is currently serving as United States Attorney for the Western District of Texas. He serves as the Chairman of the Attorney General's Advisory Committee of United States Attorneys, which plays a significant role in determining and implementing policies and programs within the United States Department of Justice.

Prior to becoming U.S. Attorney, Mr. Sutton was an Associate Deputy Attorney General for the Department of Justice in Washington, D.C., and served as the Criminal Justice Policy Director for then-Governor George W. Bush. Before his service in the Governor's office, Mr. Sutton spent 8 years as a criminal trial prosecutor with the Harris County D.A.'s Office in Texas.

David V. Aguilar is Chief of the United States Border Patrol. He is the Nation's highest-ranking Border Patrol agent. Chief Aguilar currently directs more than 12,700 Border Patrol agents and is expected to preside over the largest Federal law enforcement agency in the Nation, with a total of over 18,000 agents by the end of 2008.

Chief Aguilar brings to the job more than 28 years of distinguished service with the Border Patrol. While Chief Aguilar was Chief Border Patrol Agent of the Tucson, Arizona, Sector, the sector was recognized with the Commissioner's aware for antiterrorism operational achievements.

So, if we could, we will begin with Mr. Sutton. Please proceed. But before you do, I have some statements I would like to enter into the record: one on behalf of Senator Kyl and one on behalf of Senator Feingold. Those will be made part of the record.

Please proceed, Mr. Sutton.

STATEMENT OF JOHNNY SUTTON, UNITED STATES ATTORNEY, WESTERN DISTRICT OF TEXAS, SAN ANTONIO, TEXAS

Mr. SUTTON. Thank you, Chairman. Chairman Feinstein, Senator Cornyn, members of the Committee, thank you for this invitation to discuss the importance of enforcing the law, even against those who are sworn to uphold the laws and the Constitution of the United States.

The prosecution of Jose Compean and Ignacio Ramos has been the subject of widespread media attention and heated debate. The prosecution, however, was not about illegal immigration or illegal drug smuggling or even support for agents who patrol our border. It is about upholding the law, plain and simple, a duty which our Nation's Federal prosecutors take very, very seriously. The overwhelming majority of Federal agents and police officers represent the best of America, and they show it every day through their bravery, their dedication, and their self-sacrifice. But experience has shown us that occasionally some law enforcement officers step over the line and commit crimes. When lawmen break the law, we must hold them to account.

There has also been some debate—brought on in part by this case—about enforcing gun laws that have been passed by Congress. The fact is that it is a crime to discharge a firearm during a crime of violence, and we will continue to bring those charges where the law and the evidence warrant.

While these convictions are currently pending on appeal, I would still like to try to set the record straight by discussing the facts that are in the public record.

The facts of what occurred near Fabens, Texas, on February 17, 2005, can be found in the trial record, the transcript of which I have posted on the website of the U.S. Attorney's Office for the Western District of Texas. In short, the evidence proved that former Border Patrol agents Compean and Ramos fired 15 shots at an unarmed Mexican marijuana smuggler as he ran away from them toward the Rio Grande River. After striking him once and seriously injuring him, they holstered their weapons and turned and walked away, leaving him where he fell. Compean disposed of some of the empty shell casings, destroying evidence of the shooting, while another agent later assisted by picking up the shell casings that he had missed.

To further this cover-up, Compean and Ramos failed to report their shooting as required and then filed a false report. Their actions after the shooting show that they knew that the shooting was illegal and destroyed the credibility of their later claims that the drug smuggler appeared to have a weapon as he ran away. The jury that heard their testimony at trial rejected their belated justifications.

To excuse their crimes, they have since claimed that they were only doing their jobs. But the job of United States Border Patrol agents is to protect the American people and to enforce the laws of our country, not commit crimes such as assault, obstruction of justice, and violation of civil rights.

I do not take lightly the decision to prosecute law enforcement agents for using a gun. By design, the law gives great deference to agents, recognizing that they must often make split-second deci-

sions, life-and-death decisions under great stress. As a general rule, if an agent has any reasonable basis for fearing for his immediate safety or the safety of another, use of deadly force is justified. During approximately the last 6 years, there have been at least 14 reported shootings by Border Patrol agents in the El Paso Sector. In three of these shootings, the agents killed the suspect. In each of those shootings, the Border Patrol agent was cleared and the shooting was ruled justified. None of these agents were prosecuted or even disciplined because their actions were reasonable under the circumstances.

However, agents having no reasonable fear of imminent harm who intentionally shoot at an unarmed, fleeing suspect and then cover up the shooting should be prosecuted. Requiring law enforcement officers to obey the law is not unreasonable and is not a deterrent to the use of deadly force when lives are at risk.

I know that we demand a lot of our Border Patrol agents. They have difficult jobs. They work in harsh conditions, in isolated areas, and they encounter dangerous people, some of them who will not hesitate to harm them. I admire Border Patrol agents, and I have said on many occasions in recent months that I believe that they are American heroes. But the sad fact is that a small percentage of law enforcement agents, including some Border Patrol agents, cross the line. Agents Compean and Ramos crossed the line. They are not heroes. They deliberately shot an unarmed man in the back without justification, destroyed evidence to cover it up, and lied about it. These are serious crimes. When Border Patrol agents commit crimes, as the jury believed Compean and Ramos did, faithfulness to the rule of law requires us to bring them to justice.

I really thank you all for the opportunity to testify, and I look forward to answering your questions.

[The prepared statement of Mr. Sutton appears as a submission for the record.]

Senator FEINSTEIN. Thank you, Mr. Sutton.

Chief Aguilar.

STATEMENT OF DAVID V. AGUILAR, CHIEF, OFFICE OF BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Chief AGUILAR. Good morning, Chairwoman Feinstein, Senator Cornyn, Senator Sessions, and Senator Coburn has just walked out. I thank the Committee for holding this hearing, which provides us the opportunity to answer your questions, and more importantly, to clarify some of the issues relating to the Ramos-Compean case, which has caused a tremendous amount of emotional stress for our country, our organization, the Department, and ultimately, our country's criminal justice system.

It is important for me to begin this testimony by acknowledging the outstanding work the men and women of the United States Border Patrol are doing for this country on a daily basis. The men and women of our organization face tremendous challenges, dangers, and harsh environments every day. Last year our agents arrested over 1.1 million illegal aliens. Over 150,000 of these had criminal records. Over 90,000 were other than Mexicans attempting to enter this country illegally. And all of these arrests were be-

tween official ports of entry. In addition, our agents interdicted over 1.3 million pounds of narcotics coming into this country and kept it from reaching our streets, our schools, and our communities. There is work yet to be done to gain control of our Nation's rough and remote borders, but I am proud to say that the commitment of the men and women of the United States Border Patrol to continue expanding our efforts and making this country safer is extremely high and at a level of dedication that this country can be proud of. And I am personally proud of them and the difficult job that they do. The attitude, fortitude, diligence, and desire of the men and women of the United States Border Patrol, along with the resources and support that is being furnished by Congress, will provide for operational control of our Nation's borders.

Unfortunately, a developing trend, as we expand our control of the border, is a dramatic increase in border violence against our agents. We have experienced a dramatic and increasing trend of violence against our officers. I attribute this increase in violence to the fact that the Border Patrol's achievements in gaining greater control and expanded control of our borders has resulted in greater reluctance of entrenched criminal organizations to give up areas in which they have historically operated in the past. They have a reluctance to give up areas where they have established them and reestablished themselves in reaction to our increased enforcement efforts.

Border violence incidents are perpetrated against our agents on an all too frequent basis. In just the first 4 days of last week during the time period of July 8th to July 12th, there were a total of 11 assaults against our officers: two rockings, two shootings, one where our officer returned fire, one vehicular assault, and five assaults where our officers were physically injured.

When assaulted or threatened, our officers are trained to respond with the appropriate level of force required to stop the threat or the assault. Officer safety is of paramount concern, and this is a main focus of our training at the Border Patrol Academy and in our field training programs. In all cases, our agents must be able to justify that such actions were taken in defense of themselves, a partner, or an innocent third party. Following an incident, there are clear and delineated protocols that must be followed when our agents use force to stop or deter an assault, whether it is deadly force or less lethal force. These actions must be taken to preserve evidence, including the scene of the incident. These protocols must be followed for many reasons, to include protection of the officer.

From February 1, 2005, through June 30, 2007, there have been 1,982 incidents where Border Patrol Agents have been assaulted. These assaults include rockings, physical assaults, vehicular assaults, as well as shootings and assaults with other weapons.

In response to these assaults, Border Patrol agents have responded with the use of deadly force on 116 occasions, with 144 agents discharging their weapons during these 116 incidents. These incidents that I outline are exclusive of the Compean-Ramos or the Corbett case that is ongoing now. Thirteen assailants died as a result of agents having to defend themselves through the use of deadly force; 15 incidents ended with the assailants being wounded. Of the 144 agents involved in the 116 shooting incidents

since February 2005, investigations were conducted, internally as well as by independent agencies, and not a single agent has been criminally prosecuted for their actions during these incidents.

The job of our agents is not an easy one. It requires our agents to operate under very stressful and sometimes very dangerous conditions. That is the reason why our officers are trained and equipped to the degree that they are. The foundational training at the Border Patrol Academy and recurring in-service firearms training, firearms qualifications, and the "use of force continuum model" are instrumental in ensuring that when our officers take action, at any threat level, they revert to their training and do so based on this enforcement model. Under threat conditions, our officers are required to make split-second decisions to diminish or stop the threat. These decisions are based on their perception of the conditions they face. They are trained to then follow through with protocols, policies, and guidelines relative to each of the actions that they take.

Madam Chairwoman, I want to make myself absolutely clear on the following: I am in no way condoning, supporting, or siding with Aldrete Davila, the smuggler of narcotics into this country, the individual that made a conscious decision to break our laws. Aldrete Davila is a poster child for why United States Border Patrol agents and law enforcement officers throughout this country risk their lives every day—to protect our Nation and the American people from criminals like him. Our men and women protect our families, our society, and our way of life from individuals like Aldrete Davila. Perhaps that is one of the reasons why this case has caused such havoc. As Americans we expect to see individuals like Aldrete Davila behind bars.

Those of us in the law enforcement profession must strive to remain apolitical. Our job is to uphold and enforce the law. Sometimes these duties may not be popular, but our society and our justice system demand certain levels of neutrality and impartiality from its law enforcement officers.

The Border Patrol's mission is a difficult one, which is subject to intense public scrutiny. Much is asked of us as Federal law enforcement officers. I am immensely proud of the men and women of the Border Patrol. I have and always will support each and every agent who performs his or her duties in accordance with the high standards that we have always sought to uphold.

Chairwoman Feinstein, other members, this is an emotional and heart-wrenching case. This is a case where every Border Patrol agent that serves today and has ever served wishes had not turned out the way that it did. However, the facts of the case, the facts of the matter are that this incident did happen, an allegation was made, an investigation was initiated, the investigating agency's findings were presented to the Untied States Attorney's Office, the United States Attorney's Office presented the evidence to a grand jury, the grand jury indicted, the case was tried in a court of law, a jury found the defendants guilty, and they were sentenced by the judge. All of these independent components of our justice system performed their duty; they upheld their sworn obligations independent of each other. All of the players in this case had an obliga-

tion to carry out their duty, as they were sworn to do, trained to do, and responsible for doing.

I thank you for this opportunity, and I look forward to answering any questions that you may have of me. Thank you.

[The prepared statement of Chief Aguilar appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much.

If I understand the charging, Mr. Sutton, correctly, I would like to go through it. Count 1 was assault with intent to commit murder and aiding and abetting. Count 2 was assault with a dangerous weapon and aiding and abetting. Count 3, assault with serious bodily injury and aiding and abetting. Count 4, discharge of a firearm in relation to a crime of violence. Count 5, use of a firearm in relation to a crime of violence. Then there are five counts—Count 6 to Count 10—of tampering with an official proceeding, of which two were dismissed. And then Count 11, deprivation of rights under color of law; and Count 12, deprivation of rights under color of law. A total of four counts was dismissed. The defendants were found not guilty of the strongest of those—assault with intent to commit murder and aiding and abetting. And then either one or the other or both were given sentences on the others, as I understand it. Is that correct?

Mr. SUTTON. Yes, ma'am.

Senator FEINSTEIN. Now, the reason they received such long sentences is because they were charged with 924(c), which carries a 7-year minimum for brandishing a firearm in connection with a crime of violence and a 10-year minimum if the firearm is discharged.

Now, I think both Senator Cornyn and I have problems with this law because in my reading of it, it presupposes an underlying crime, whereas this is the underlying crime. And I think there is a difference.

Let me begin with this question: How many charges were pending when you charged 924(c)?

Mr. SUTTON. I believe three.

Senator FEINSTEIN. Three. And why did you decide to charge 924(c)?

Mr. SUTTON. Because—let me back up. Can I back up for a second and explain those? The original three charges—or it may have been four—

Senator FEINSTEIN. 1, 2, and 3.

Mr. SUTTON.—were a place holder to do an indictment. The time, the clock starts running on us once we arrest somebody, so we did an initial indictment. I believe it was three assault counts. The trial team got the case. They began to review it. They began to investigate it. And it is not uncommon at all for them to put on further indictments, which is what they did. They put on the 924(c), and the reason for that, it was an obvious—

Senator FEINSTEIN. Did they consult with you before they put on 924(c)? Answer yes or no.

Mr. SUTTON. The answer is no, they did not. We have a deliberative process that goes on inside our office that I can describe, but the answer is no.

Senator FEINSTEIN. So someone can charge in your office a 10-year mandatory minimum without consulting with the U.S. Attorney in charge?

Mr. SUTTON. Yes, ma'am.

Senator FEINSTEIN. Was there any consultation by anyone with Main Justice?

Mr. SUTTON. No, ma'am.

Senator FEINSTEIN. At any time during this case—

Mr. SUTTON. Yes, ma'am.

Senator FEINSTEIN.—on the charging, there was no—

Mr. SUTTON. Nothing with regard to the 924(c). The only consultation that is required, and in this case it is just a consultation requirement with regard to the two civil rights charges, but no consultation requirement with regard to anything else.

If I could maybe just take a brief second, if I can, to explain the interoffice procedure. This came out of the El Paso Division. My district covers 93,000 square miles. We have seven divisions. The chief of that El Paso division reviews that indictment, so the trial prosecutors decide what the facts and the evidence are, they present the indictment to their chief, and then she approves or disapproves that indictment. That was the initial—

Senator FEINSTEIN. It is just that it is rather strange. We have just been through U.S. Attorney hearings where Main Justice got involved in a lot of things, and yet here in the charging of something that is very unusual, Main Justice does not know anything about it.

Mr. SUTTON. Well, since I have been U.S. Attorney, we have prosecuted 33,000 defendants for felonies. We are one of the highest-producing districts—

Senator FEINSTEIN. How many times has 924(c) been charged?

Mr. SUTTON. A great number of times.

Senator FEINSTEIN. A great number of times?

Mr. SUTTON. Obviously a small percentage of that 33,000, because that 33,000 is basically 85 or 90 percent drugs and immigration because that is what we do. But we have charged it on a number of occasions. We charge the most serious, readily provable offense based on the facts and the evidence.

Senator FEINSTEIN. All right. Now, it has been written that Ramos and Compean were offered plea bargains approximately eight times. The last offer was for 1 year in prison and reimbursement to the Governor for $35,000 in medical bills for the treatment of the drug smuggler. True or false?

Mr. SUTTON. We do not discuss plea bargain negotiations. The reason we do that is to protect the defendant's rights and future defendants in the future who are going to come and say, Look, I need to have this confidential, these discussions. So I cannot talk about those things.

What I would like to point out, though—and I think it is important because—

Senator FEINSTEIN. Well, I have not finished my question.

Mr. SUTTON. I am sorry.

Senator FEINSTEIN. In addition, Mary Stillinger, Ramos' lawyer, told my staff that the final plea bargain offer was 18 months for

Agent Ramos and 24 months for Agent Compean, but that it was a package deal. Is this true?

Mr. SUTTON. I cannot—I do not know the answer to that, and we do not discuss plea bargain offers. Those—

Senator FEINSTEIN. Do you deny that plea bargains were offered?

Mr. SUTTON. Oh, not at all. We certainly plea bargained—or attempted to plea bargain in this case. We were very much—

Senator FEINSTEIN. And how many plea bargain offers were made?

Mr. SUTTON. I would have to consult with the trial team. I can say that the part I was involved in the plea bargaining, we were definitely very interested in plea bargaining. We are in 95 percent, maybe more, of our cases work out in plea bargaining. That is standard operating procedure, and plea bargains were certainly offered in this case.

I guess the point, if I could make it, is that no plea bargain offers were made before the 924(c) was put on. There has been an inference that we made a plea bargain offer and they did not take it and so we said, OK, we are going to whack you with this 924(c). That is not correct.

Senator FEINSTEIN. So 924(c) was added to the list of counts prior to any plea bargain being offered?

Mr. SUTTON. That is my understanding from the trial team.

Senator FEINSTEIN. Did the defendants understand that there was a mandatory minimum in 924(c)?

Mr. SUTTON. They had four very aggressive, competent lawyers. I am sure that they were told at the time when they rejected any plea bargains that if they went to trial and lost, that that 10-year mandatory minimum would come dropping on top of whatever other sentence they got. I wasn't in those discussions, obviously, but I know these lawyers are very thorough, and I cannot imagine that the defendants would not have known that if they went to trial and lost that that 10-year sentence was coming down on them.

Senator FEINSTEIN. I wanted to ask you one other question. We have also learned that Mr. Aldrete Davila re-entered the United States on at least ten other occasions between March and November of 2005 and that the documentation provided by the Federal Government allowed him to cross the border legally at any time without notifying anyone in the Government ahead of time and without any Government supervision while in-country.

My question is: Is that right? Was he allowed to enter the U.S. without supervision? Wasn't he required to notify anyone when he came across the border?

Mr. SUTTON. What happened in this case—and it is the standard procedure in all cases. As you can imagine, a huge percentage of our cases are made with cooperating witnesses. We are generally trying to go into cartels. We will arrest the mule, flip them, arrest the stash house, flip them, and then move up toward the cartel. So, often, we will deal with witnesses who are part of the crime organization or at least not legally allowable in this country.

When we need a witness, we tell our agent, our case agent, that we need a witness, and then that case agent goes to the CBP, you know, Customs people, to get the kind of border crossing that they need. That is something that is handled by that agency. They are

in charge of those witnesses, just like they would be in charge of a confidential informant. And that was done in this case.

Senator FEINSTEIN. Yes, but you were not going after cartels in this case. You were going after Border Patrol agents.

Mr. SUTTON. That is correct.

Senator FEINSTEIN. So the bad guy was suddenly your good guy, and I have a hard time that you know somebody is trafficking in large amounts of narcotics, large amounts, and yet he is free to come and go from the United States.

Mr. SUTTON. It is very regrettable. I mean, I would love to be sitting here—under normal procedure, Aldrete would be locked up like we lock up all these other mules. We led the Nation last year in drug prosecutions. We are No. 1 in going after people like Aldrete—dope dealers, bad guys. Unfortunately, the only reason that we are here today is because those two agents, Compean and Ramos, committed a number of serious crimes, and they are the ones that brought us to this point.

I was faced and my team was faced with a terrible dilemma, which is we had a known drug smuggler on the other side of the border in Mexico with no possible way to prove a case, and I beg to differ with Mr. Botsford. If we charged Aldrete with a crime, Mr. Botsford would be the first one to run into court and say, "You have absolutely no evidence against this guy. You have no case. There is not one shred of evidence connecting him."

Senator FEINSTEIN. But just a second. Agent Compean is on the ground. Ramos is in a place where he cannot see him on the ground. Shots have been fired. I would think Agent Ramos does not know whether Compean is shot or not. And he fires his weapon to a fleeing suspect after he has said "Stop" at least twice that I read. And there is no extenuating circumstance in that set of circumstances?

Mr. SUTTON. No, and that is one of the unfortunate dilemmas of this case, is that the misinformation or the big lie has been told over and over and over again, and that is that—

Senator FEINSTEIN. Are you saying Agent Compean was not on the ground?

Mr. SUTTON. Yes. He was not on the ground. And that is the difficulty in having a discussion like this, is that we had a 2½-week jury trial, all these people testified, including Agents Compean and Ramos. There was another Border Patrol agent who was standing right there at the—standing with Agent Ramos on the ditch. He testified at trial. He observed the entire confrontation. He observed Agent Compean go over the levee. He testified at trial under oath that there was—that Agent Compean never even touched Aldrete, their bodies never even touched, that Aldrete—that Compean tried to strike Aldrete in the head with a shotgun. Aldrete ducked. Compean fell head first into a ditch, and then Aldrete takes off like a rabbit over the levee. And he—

Senator FEINSTEIN. You are saying Compean falls into the ditch. The ditch was 11 feet deep.

Mr. SUTTON. Right. He fell straight head first down into that ditch. Aldrete, the drug smuggler—

Senator FEINSTEIN. So he was on the ground.

Mr. SUTTON. He was on the ground, but what Mr. Botsford was talking about is what Compean testified at trial. Compean's testimony was that he took a header into the ditch, was able to get up, run back up the ditch, catch Aldrete, wrestle with him. He fell to the ground. That is absolutely false.

Senator FEINSTEIN. Who fell to the ground?

Mr. SUTTON. Compean.

Senator FEINSTEIN. OK.

Mr. SUTTON. But what the agent at the scene saw was Compean fall, the smuggler take off like a rabbit over the levee, and said he was halfway to Mexico by the time Compean got over the levee, and then never went to the ground, lowered—you know, got in a position to shoot and shot a number of times at the drug smuggler as he is running away. Never fell down. Their bodies never even touched. And that is the difficulty of explaining this in a very short amount of time, is we had a full-blown, 2½-week jury trial where all these people testified, all the agents at the scene. Many of them were involved in the conspiracy to cover this up. And the evidence was overwhelming against these two—against Compean and Ramos.

And the biggest, most damning piece of evidence is if—you know, Mr. Bonner says, well, of course he was armed. That is just not true. The jury heard all the evidence. All the evidence pointed the other way, just like Chief Barker said. If that drug smuggler/illegal alien was armed, there is no jury in America, or grand jury, that is going to indict those two agents for what they did. They have a perfect right to kill him dead.

Senator FEINSTEIN. Did the jury know that this 924(c) carried a 10-year minimum sentence to be added on top of the others?

Mr. SUTTON. No, ma'am.

Senator FEINSTEIN. Thank you.

Senator Cornyn.

Senator CORNYN. Mr. Sutton, I do not want to retry the jury trial, but I do want to ask you about what you knew and your involvement in this case. You did not try this case, correct?

Mr. SUTTON. No, I did not.

Senator CORNYN. It was your staff or deputies who did that?

Mr. SUTTON. Yes, sir.

Senator CORNYN. And was it your staff that made the decision to offer the drug dealer immunity?

Mr. SUTTON. Yes, sir. There is a level—there is a variety of approvals on that.

Senator CORNYN. Did you have to approve that?

Mr. SUTTON. I did not have to approve that.

Senator CORNYN. And was that Debra Kanof or is Debra Kanof one of your deputies?

Mr. SUTTON. The trial team was Debra Kanof and Jose Luis Gonzalez.

Senator CORNYN. And while the letter—it is called "Letter of Limited Use Immunity," which is March 16, 2005—suggests that this was, as it says, limited use immunity. It is a fact, is it not, that on page 51 of Volume 1 of the statement of facts, that Debra Kanof tells the court, "And so we basically gave him blanket immu-

nity for any drug or immigration crime that he might have been committing on that day." Is that correct?

Mr. SUTTON. Yes, sir.

Senator CORNYN. So this drug dealer got blanket immunity, and I want to ask you a little bit about the terms, even of the limited use immunity, which—the letter that was signed, I think Mr. Botsford alluded to this earlier, by J. Brandy Gardes. Is that correct?

Mr. SUTTON. Yes, sir.

Senator CORNYN. Assistant U.S. Attorney. That letter of immunity required Mr. Aldrete Davila to testify truthfully and completely. It said that he must neither attempt to protect any person or entity nor falsely implicate any person or entity. And it said, "Notwithstanding this agreement, testimony given you under oath may be used against you in prosecution for perjury."

How common is it in your experience, Mr. Sutton—and I know you are an experienced prosecutor—to give blanket immunity to a person who has committed a crime without requiring them to plead guilty to at least some lesser offense?

Mr. SUTTON. It is not uncommon at all on the border. Many of the cases that we make, we are put in the dilemma of the evidence that we have, we are trying to get inside a cartel to go up the chain and knock down the biggest members of it. So oftentimes we are faced with having to make deals with other people. Usually we try to get a plea. That is certainly our preference, is to put the lower fish in prison and them flip them to go against the bigger fish. But it is not unusual, I believe, in our experience to give it.

I mean, obviously we do not give it every day. You hate—a prosecutor hates to give immunity because you are giving up something. In this case, I felt we gave up very little because we did not have a case against Aldrete. There was no way that we could have made a case against him on the facts that we had.

We gave him use immunity. What it actually ended up being was transactional—it is called "transactional immunity." When Debra describes that as "blanket immunity," it means that on that day for that load where he got shot, we cannot prosecute him for that crime. But we can prosecute him for any other crime that happened before or after that day.

Senator CORNYN. Why didn't you revoke his immunity when he testified—refused to cooperate and provide the names of other witnesses and other individuals during the course of the trial?

Mr. SUTTON. I believe it was the opinion of the trial team that he was cooperative, that he was helping and being honest as best he could.

Senator CORNYN. When requested to identify other individuals in his activities, he refused to provide that information, did he not?

Senator FEINSTEIN. The people who picked him up.

Senator CORNYN. The people who picked him up, Senator Feinstein reminds me.

Mr. SUTTON. I would have to look at—you know, I want to be exactly right on the details. What I believe happened is Aldrete, the smuggler, illegal alien smuggler, pointed out to law enforcement that these threats—or there were threats being made. So that came from him. The agent then put out a nationwide report to all Border

Patrol to be careful because of this. I believe from the opinion of the agent and the opinion of—

Senator CORNYN. That had to do with the issue of whether there was going to be some retribution against Border Patrol agents because of this shooting, right?

Mr. SUTTON. That was to protect—that was to put a warning to the line to make sure that the line knew to be careful because this threat had gone out that this—that the smuggler, our witness, was saying there is talk on the Mexican side of retaliation.

Senator CORNYN. But then Aldrete Davila, when asked who were those individuals who threatened to retaliate against Border Patrol agents, he refused to tell and violated his immunity, didn't he?

Mr. SUTTON. To be exactly honest on that, I believe that he did—refused to say or did not know. He probably—I would double-check that, and I will get back to you. I believe he did refuse. But in the opinion of the agent and the trial team, that was not in violation of the agreement. Remember, at that point we were faced with two agents who had shot somebody and covered it up, and a mule who was on the Mexican side where we had no evidence to make a case on him. And he is not coming back to America to help us, so we can either let these agents just slide on by and nothing happens to them, or we can make that unfortunate choice to give him immunity to bring him back to find out what the details are. And we made that choice.

Senator CORNYN. And Mr. Aldrete Davila also gave testimony at the time of trial that conflicted with that of Rene Sanchez.

Mr. SUTTON. That is correct.

Senator CORNYN. And do you believe Aldrete Davila over a law enforcement officer of the United States?

Mr. SUTTON. You know, I was not in the courtroom to observe those two witnesses testify. I do not know either one of those men. What I can say is we had a 2½-week jury trial where everyone testified, including agents that were involved in the conspiracy. And all the evidence came forth, the very damning evidence on Compean and Ramos. And in my opinion, there was a million things—I know we do not have time to go into them, but the fact that they covered up this shooting was just insurmountable.

Senator CORNYN. Well, I understand that, but my question has to do with whether this drug dealer was held to the terms of his immunity agreement to testify truthfully and completely and to not attempt to protect any other person. And it seems to me that the record is pretty clear that he violated that in those two respects, and perhaps others.

I know time is limited. Let me ask you one other question, if I may, about the visa that this drug dealer was given. Were you involved in the decision to give him an unlimited parole visa based on humanitarian concerns?

Mr. SUTTON. No, sir.

Senator CORNYN. That was made by somebody below you?

Mr. SUTTON. It was, but, you know, I am certainly—you know, I am defending—and I think our decisions in all this case—I mean, you can criticize some. I stand—

Senator CORNYN. I understand your—

Mr. SUTTON. I stand by my people. I have done it very publicly. I—

Senator CORNYN. I understand your role here. You did not make a lot of these decisions. They were not brought to you, but you are here defending your people, as you put it.

Mr. SUTTON. Well, and again, I do not want to give the wrong impression. This was a big case. I was very much involved in this case. It was very important to me. I knew it was a tough case, especially with regard to plea bargains. I was very much involved in that.

The procedure in this case and in every other case is when we need a witness, we tell the agent, "We need this witness"—for medical treatment, for debriefing. They go get them. They have a procedure that is set in place by CBP that makes those evaluations.

Senator CORNYN. I understand that. But the trial transcripts show that there were no practical conditions placed on Davila's visa that prevented him from entering the country basically any time during the period of that visa for whatever reason he wanted to come and go. Is that correct?

Mr. SUTTON. I believe that is correct. Now, up until the time, obviously, there was an allegation made that he might have been involved in some other criminal activity, the minute that happened, obviously his card got pulled.

Senator CORNYN. You say you could not prove that he was—you could not convict him of a crime of drug dealing, but you knew with all—I mean, in all—maybe you could not have proved it in a court of law—that this guy was a drug dealer, right?

Mr. SUTTON. You are talking about—obviously, he testified in court that he was a drug dealer. He had a—I mean, once we got him immunized and brought him back, pulled the bullet out of his leg and matched it to Ramos' gun, you know, then we got him to the scene, and once he admitted to us that that was him who got shot, obviously he is a doper and—

Senator CORNYN. But your staff knew at the time that they approved the issuance of a humanitarian visa, that allowed him to travel back and forth unfettered before the trial, that this guy was a drug dealer.

Mr. SUTTON. Yes, sir.

Senator CORNYN. And does it concern you that—does that decision concern you? Do you agree with that decision?

Mr. SUTTON. I think looking back on that with 20/20 hindsight that probably was not a very wise move, obviously. I guess to give you a little fuller explanation, we prosecute about 6,000 defendants a year. About half of them come out of El Paso. I have got 31 lawyers that have the largest caseloads in the world for Federal prosecution, and they are moving fast, and the resources we have are great. We have been given a lot of good resources. But we are moving fast, and we need witnesses, and we tell our agents, "Go get those witnesses." And we do not have an agent who can sit on every witness that we bring across that border and say, you know, you are coming across with an agent. And if we want to do that, I mean, we will need about 20,000 new agents in El Paso.

Senator CORNYN. Mr. Sutton, I know you guys are working hard, and I know you got a lot of cases and you are understaffed, and

I wish Congress would do more to help and to give you the resources and staff necessary to handle the incredible demands that are placed on law enforcement personnel. I feel the same way about Chief Aguilar. And we have not done our job here in Congress to provide the Border Patrol with an adequate number of boots on the ground and resources to secure our border. That is the reason why people are very upset across the country, in Texas and elsewhere, not because you guys, Chief, are failing to do your job. It is that Congress has not done its job. And we have got to step up.

But my last question, Mr. Sutton, for this round has to do with the fact that during the time that Mr. Aldrete Davila was traveling back and forth unfettered based on a humanitarian visa approved by your subordinates, there is, Madam Chairman, a public document that is a report of an investigation by the Drug Enforcement Administration that documents a Cipriano Ortiz statement that Mr. Aldrete Davila transported another marijuana load to his house on October 22, 2005. I would ask, Madam Chairman, that that report be made a part of the record.

Senator FEINSTEIN. So ordered.

Senator CORNYN. And so I guess I would just ask: Knowing what you know now, Mr. Sutton, was it a mistake for your subordinate to approve this humanitarian visa without conditions, unescorted, unfettered, and to facilitate, in essence, inadvertently perhaps, but to facilitate a drug dealer from transporting additional loads of drugs into the United States?

Mr. SUTTON. Well, just to clarify, what you are talking about is what has come to be known as the "October load." It is the allegation that was made at trial that Aldrete, the drug smuggler, ran another load of dope between when he got shot and when the trial happened. There has been a lot said today that is wrong, and that is that somehow that was covered up or somehow that the judge or the defense attorneys did not know about that.

All of that information was presented to the judge. She knew about that. The defense attorneys were very anxious to get that into evidence to cross-examine the smuggler on it. We argued about it. The judge ruled that it was inadmissible. Obviously, that decision will be a big part of David's appeal, and the Fifth Circuit will decide if that was an error or not. But I guess that is under investigation. It is hard to imagine that there is anybody in America that would want to prosecute that case more than me. But I am bound by the law and the facts.

Senator CORNYN. But knowing what you know now, do you agree it was a mistake to issue a humanitarian visa to a known drug dealer without escort, without conditions, that facilitate, perhaps unintentionally, but apparently did facilitate his shipment of another load of drugs into the United States?

Mr. SUTTON. The question—and, again, not to be argumentative—assumes that Aldrete ran another load of dope in October.

Senator CORNYN. So you doubt the DEA report that—

Mr. SUTTON. Well, we do not know—I mean, and, again, it is all under seal so it is very difficult to talk about it. It is an ongoing investigation, and the more I say about it, the more difficult I make it on my people to actually prosecute when we bring a case.

Senator CORNYN. Well, it is in the public record.

Senator FEINSTEIN. If you would yield, all he is asking—the question is not that. The question is: Do you believe it was a mistake to give this kind of humanitarian ongoing parole visa to a drug dealer?

Mr. SUTTON. I guess what I would say is if it turns out he—

Senator FEINSTEIN. The answer is yes or no, Mr. Sutton.

Mr. SUTTON. If it turns out he ran another load of dope, obviously it is a huge mistake. If he did not run another load of dope, it is not a mistake. You know, the bottom line is we do not know yet whether he ran another load of dope. My team is trying to figure that out, and as soon as we get competent, admissible evidence to charge him, we would. And I would love to charge him this minute—I would have loved to have charged him a year and a half ago when we were debating this. But the fact is we do not charge people until we have competent, admissible evidence to prove it in court.

Senator CORNYN. Well, my time has long run over, and I will end here. But you understand—I know you do, Mr. Sutton—the concern that people have that they feel like these two law enforcement agents could not get a break, got an extraordinarily long prison sentence for what they did and what the jury found them guilty of, and that this drug dealer is getting all the breaks. I think that creates a huge concern about whether justice has been done here, and that is obviously why we are here.

Mr. SUTTON. Madam Chairman, if I could just briefly answer that.

Senator FEINSTEIN. Yes, please.

Mr. SUTTON. The reason all of this mess happened is because Agents Compean and Ramos shot an unarmed guy running away and covered it up. If they had not done that, they would still be out on the line doing their job. And even if they told us and it was a bad shoot, you know, we do not know where we would be. They would probably still be OK. But when they shoot an unarmed guy and cover it up, there is no one to blame in this country for what happened but them. We had a full-blown jury trial. They testified at that jury trial. It was not just the word of a drug dealer against them. It was everybody in that case, including a number of Border Patrol agents, and all kinds of evidence that pointed very, very directly that that guy was unarmed and they were shooting to kill, and they knew that they hit him. Agent Compean did a handwritten statement saying, "We thought that he was hit because he started limping"—I am paraphrasing that. So they knew that they had just shot a guy and he had gotten across the line. And as far as they know, he is bleeding out in a bush on the other side. And instead of reporting it like they are duty-bound to do, they covered it up. They got their buddies to help them. They picked up the shell—you know, Compean picked up the shell casings he found and threw them in the river, asked Agent Vasquez to go back, pick up the shell casings he missed, threw them in the river. And when asked by their buddies who are in the conspiracy what happened, they did not say, "The guy pointed a gun at me and I shot him." They said, "He threw dirt in my eyes."

Now, that is very damning evidence, and that is what the jury heard, and that is why a West Texas jury convicted these guys, because West Texas juries do not convict cops easily. And that is why of all those shootings and all those killings, we cleared every one of those officers. And there have been three shootings where they shot people in the last 2 months just in El Paso. I think two have been cleared; maybe one is still in the pipeline. The point is we give these guys the benefit of the doubt. They have dangerous jobs. They have got guns. They are allowed to use them. We do not wait for them to get hit in the head with a rock or a pipe. If they use deadly force, no problem. But explain to us that you had a reasonable fear that you were about to get hurt or killed. And if you have that, you are going to be cleared. But if you shoot an unarmed guy running away in the back and cover it up—

Senator FEINSTEIN. You keep saying "unarmed guy." How about saying "unarmed drug dealer"?

Mr. SUTTON. "Doper," I call him. I mean, you know—

Senator FEINSTEIN. Well, you do not say that when you talk about it.

Mr. SUTTON. Well, I said on "O'Reilly"—and, again, I guess my problem, I am so—I apologize for my emotion. It is just we—my team has taken a real beating over this, and this is my one opportunity to try to get the facts to the American people. And I really apologize to you for my passion. But this is really my one opportunity, and I thank you so much for this opportunity to answer your questions.

Senator FEINSTEIN. Well, we thank you, too.

Senator Sessions.

Senator SESSIONS. Well, Mr. Sutton, I think you are entitled to have your side of the story stated, and things do get twisted out of reason sometimes. And there was a jury trial here that heard all of this. It is unfortunate, I think, that it could not have been resolved short of this full trial. It is unfortunate that some of the mandatory sentences that 924(c) mandated this heavy an offense.

I do think that your staff deserves some credit. Looking at firearms prosecutions in the Southern District of California, Ms. Carol Lam—we had a little matter about her removal—in 2006, she prosecuted ten firearms cases, whereas you in Texas prosecuted 894 criminals carrying guns. And also, on immigration offenses, you have prosecuted almost twice the number of the Southern District of California.

You know, you are not in the El Paso office. Where is your main office?

Mr. SUTTON. My main office is in San Antonio. We have seven—we actually have eight offices. One is not staffed. I cannot get anybody to live in Pecos. But we have seven offices, and our Pecos office is staffed out of Alpine, and they drive 105 miles to court to go to Pecos when they have got to go to court. But 93,000 square miles, 660 miles of border, and we have seven offices: San Antonio, Austin, Waco, Midland, El Paso, Del Rio, Alpine, and Pecos.

Senator SESSIONS. That is a good explanation of why you may have to delegate prosecutorial authority to assistants. But they do not have to come before the United States Senate and answer. They do not have to go on O'Reilly or listen to those challenges.

And sometimes they get a little big for their britches, I think. So I think it is a good lesson that the civilian authority—you—does have to maintain control over your cases. And when you are charging law enforcement officers, you have to deal with hundreds of them. And their morale is important to you. You know, it is important that you be involved.

I guess you did tell us, did you not, that you did attempt and worked personally to negotiate a plea bargain you thought was acceptable?

Mr. SUTTON. Yes, sir. I was trying to approve plea bargains, and obviously I cannot talk about those, and I do not want to betray any confidences. Obviously, the defendants can say whatever they want. But, yes, I was involved in approving plea bargains in this case.

Senator SESSIONS. I do not understand the idea that you say you did not have a case against Davila. I think you could convict him on those facts. I mean, the guy is fleeing. Flight is evidence of guilt. He is stopped. His vehicle has got dope in it, and he runs off. I think that is a slam-dunk.

Mr. SUTTON. Are you asking me a question? Well, the facts are—remember, again, we did not know anything about it until weeks later, so DEA treated the van as an abandoned load. They just take it off to a warehouse, and it is treated completely different. Had they told us that they had shot at the guy, it would be a whole different ball game. But both agents said they could not ID him. There were no fingerprints linking him to the load. The registration on the van came back to a dead end. There was no evidence, no physical evidence, no testimonial evidence, that said this guy was driving this van. And he was over in Mexico with the most important piece of evidence, that bullet just under the skin of his right thigh. But he was not coming back.

Senator SESSIONS. So at the time, when he called in or the word came in that he was prepared to give evidence, you did not know even his name at that point?

Mr. SUTTON. I think maybe the agents knew—may have known his name, but we definitely knew he was not coming forward.

Senator SESSIONS. Did they know his name before the word came from him?

Mr. SUTTON. No. The first contact came from the smuggler's family contacting a friend who had a son-in-law who was a Border Patrol agent in Arizona, and then that agent did what you are supposed to do. He reported it to his supervisor and an investigation began. So we were faced with a Mexican doper on the other side of the line refusing to cooperate, refusing to come back, and we could not—you know, normally we would file a case against him and try to extradite him or maybe get a lure approved. And, again, I do not want to tell you too much about how we do things because I do not want the bad guys to learn. But we had no case that we could file that we could go and bring him out of Mexico. And he was refusing to cooperate.

So we did not have a thing that we could put on him at that point, even though we were, you know, dadgum sure he was the doper who was in that van.

Senator SESSIONS. But until you got that contact, had you in some way identified him by name?

Mr. SUTTON. I believe they—I would have to double-check that, but I believe once that agent in Arizona found out the guy got shot—because he knew that family—I think we probably got his name.

Senator SESSIONS. Through that—

Mr. SUTTON. Through his family telling that other agent.

Senator SESSIONS. I could have convicted myself, if you had had him back before the jurisdiction of the court. Of course, getting him before the court if he is in another country is not easy to do.

Mr. SUTTON. We did not have one piece of evidence linking him to that van. That was our problem. There was nothing. The agents could not ID him. The agents had destroyed the crime scene. The van had been treated as an abandoned load. DEA had taken it off and treated it in a different way. We had nothing linking him to that load, and they could not ID him.

So the only thing—so that is why when we gave him immunity, we did not feel like we were giving up that much, although, you know, we hated to do it because he is a doper that should have been in prison. And had these guys done their job, he would have been in prison. But they did not.

And, frankly, I was thinking about that terrorism example that—I am not sure which witness gave that. But I was thinking about imagine if a terrorist did pretend they were a dope dealer and had a big load, but had a bomb in the car, and our agents shot at him—in fact, shot him and knew they had hit him, and then lied about it, covered it up, destroyed the crime scene. I mean, I do not think they would be American heroes. That is exactly the reason we do not have officers who shoot at people and cover it up. It makes it so we cannot investigate it.

If our agents had come to us and said, "A doper just pointed a gun at us and we shot at him 15 times," we would be moving mountains to go and get that guy. But because they covered it up and the very first word we heard of a gun was a month later when Compean finally gets arrested, and then we first hear about this shiny object, a gun—he told nobody else, even his co-conspirators, about a gun. And that is why the jury rejected that in trial because it was not credible.

Senator SESSIONS. Well, it is the kind of thing that—most of the civil rights police overreaching that I have seen, for reasons I have not quite understood, tend to be after high-speed chases. The guys are pumped up. They are really emotional. There is a struggle of some kind, and the guys maybe overreacted.

What about other persons who were involved on the scene? Has any discipline been taken on others?

Mr. SUTTON. I believe they have. The Chief would probably be—I do not want to violate any of the policies of the Border Patrol, but I know that there was some discipline taken. I am not sure how public that is, Chief. You can probably address that better. But there was obviously a lot of bad behavior beyond what Compean and Ramos did. But it was much less egregious. None of those guys shot anybody. There were a couple of agents who participated in the cover-up.

Senator SESSIONS. Has there been any action taken?

Chief AGUILAR. Yes, Senator. There were three other individual agents that were involved on the scene immediately following. One of the individuals resigned in lieu of termination, and the other two were terminated. In fact, the last one, I believe, was 2 days ago.

Senator SESSIONS. Thank you, Madam Chairman. This is a painful situation.

Senator FEINSTEIN. Senator Coburn.

Senator COBURN. Thank you.

Mr. Sutton, does your office have discretion on whether or not to file a 924 charge?

Mr. SUTTON. Yes, sir.

Senator COBURN. Why did you file that in this case?

Mr. SUTTON. Because we felt it was a very serious situation, a serious crime, that it was readily provable in this case. You know, I have kind of said publicly that once everybody knows the facts of this case, you know, when you get past the American heroes going to prison and a drug dealer being set free and you learn what the jury learned, you know that these guys committed serious crimes and they should be prosecuted. But I have conceded that the punishment in this case, the sentence is very serious, and that is a lot of time.

What I can say is reasonable people can argue about that. Some say it is just too much time, and I have some sympathy for that. But there are other people who say if we do not send down a clear marker to our law enforcement when they literally step out of their position as law enforcement officers and become what I would say is judge, jury, and executioner—remember, the whole narrative of he has a gun is false. That is what they testified to. The jury rejected that. All the evidence pointed the other way.

In fact, Mr. Bonner said that the mules always carry guns. In fact, our experience in El Paso is exactly the opposite. We went back a year before and just in the Fabens station, which is about 30 miles east of El Paso, from January 2004 to March of 2005, the Border Patrol made 155 seizures, 43,000 pounds of marijuana seized. In all of those seizures, there was not one gun recovered.

So we went back to October of 2001, from October of 2001 to, I think it was—let me make sure of my date—February of 2006, 496 seizures of dope, most of it marijuana; I think over 131,000 pounds of marijuana that Border Patrol seized—again, just in Fabens—496 seizures, one gun.

Now, that does not mean that in this case—that does not prove it in this case, but I guess what I am saying is that that narrative is false.

Senator COBURN. Here is the point I want to get to: I believe the sentence for these individuals is too heavy. I think the vast majority of the American people do. You had to know what the results were, if you want a conviction, that you are going to tack 10 years on, and yet you did that anyway.

So I believe there is a lack of balance in what has happened here. I do not dispute your testimony. I have listened to you. I have read the facts on it. You know, because I am not 100 percent on the side of these two Border Patrol agents, I get blasted a lot from Oklahoma. But I have actually tried to find out what the facts are.

But I still think, my personal opinion is that the discretion with the 924 charge, I think was in error. I think that you were going to get a conviction anyhow, and they would have had a conviction based on the facts as I have read and studied them.

I want to ask two other questions that I think the American people want to know. No. 1 is: Why is it wrong for a Border Patrol agent who has stopped a van that is full of drugs and the guy is running, why is it wrong for him to shoot him after they told him to stop? Why is that wrong? Answer that question for the American people. Here is somebody obviously in the midst of a felony, driving a van that is loaded with drugs, told to stop, had an encounter. Why is it wrong for them to shoot him if they won't stop?

Mr. SUTTON. Well, the first answer is that the Supreme Court of the United States says it is illegal to do that. You cannot—

Senator COBURN. Under the Fourth Amendment—

Mr. SUTTON. Under the Constitution, you cannot just—if somebody is not causing you fear, you cannot just shoot them because you are trying to stop them or you are angry at them or you want to teach them a lesson.

Now, again, we could probably maybe change the rules, although that is a Supreme Court decision. It may be hard to get around it. And you could say to cops, "Hey, just shoot them."

Senator COBURN. No, I am talking on the border. I am talking on our border where we have a big problem with drugs, if, in fact, the message was if you come across here with drugs and we interdict you and you do not stop, we are going to wing you, we are going to shoot you, and that message by itself would do a lot to stop a lot of this, number one.

Number 2 is—and I go back to Senator Sessions' question, you know, I do not think there ought to be anybody we do not try to prosecute that comes across here. And I am willing to help put the resources in it. I do not like plea bargains on this stuff because what happens is you can plea bargain it and somebody else may get flipped, but you are not. So you continue the behavior.

The other question I have for you, if, in fact, this notice was put out that there was going to be violence against the agents, no one—that this guy had been shot, was there not the connection made that maybe he is not just a one-time mule, maybe he is really connected, and the fact that if he got shot and now it is raised a whole level that maybe he is involved with them to a greater degree than just being a mule this one time?

Mr. SUTTON. Obviously, I am in the business of putting guys like Aldrete in prison. I mean, that is almost all we do, is immigration. In El Paso, 95 percent of what we do is putting guys like Aldrete in prison. I mean, we whack them and we whack them hard. And the great irony of this situation is that my district, we have a program in Del Rio called "Operation Streamline." since 2005, we prosecuted 20,000 illegal immigrants, the first time across. When you come across the line and we catch you, you go to jail and you get an X on your back, OK? And, of course, you know, our numbers are going down.

Senator COBURN. Yes.

Mr. SUTTON. I guess the reason I bring that up is to defend my team who we are really on the leading edge of aggressive enforce-

ment. You know, again, my colleagues everywhere else are working hard under the circumstances they are under, but we are incredibly aggressive, and in one area we have a zero tolerance policy, which actually does what you do. There are some difficulties why that cannot go nationwide, which we can talk about afterwards. But I guess my point is, look, I would love to be here with him in prison like all the rest. And Mr. Botsford would say, "Sutton does not cut many deals. Those guys are way too hard. They want a chunk of flesh out of every drug dealer and guy that has a gun. They are too tough in West Texas." And we are tough, but we are tough because there are criminals coming across our border, and we are body-slamming them the best we can with the resources we have.

I would make a quick point because Senator Cornyn kind of implied that I did not think we have enough resources. We have been given a lot of resources. We really have. Could we use more? You know, every Federal agents thinks they need more. But I have been given a lot and Border Patrol has been given a lot. We have a lot down there. So I do not want to leave this place with the impression that we have not been given the resources. We have been given a lot.

Could we do more? Of course. I mean, it is a challenge.

Senator COBURN. I want to go back to my original question, and this will be the end of it. And, Chief, I would love for you to comment.

The Supreme Court decides. We can pass laws. They would have to say—why shouldn't it be the policy of this country that if you are a felon coming into this country with drugs and you are seen and attached to those drugs, and you are running away, why we shouldn't send a signal that we are going to do everything we can to catch you, and if we cannot catch you, we are going to try to wing you? Why would we not want to send that message to drug smugglers across this country?

Mr. SUTTON. I think we do send that message, and that is why this case has been unfortunate, and some of the rhetoric and some of the things that people have said on national TV are so unfortunate, because, really, I mean, Border Patrol are American heroes. They arrest a million people a year. Somehow they are able to do that without shooting them in the back. And the problem is in these kinds of cases, at the time they are unloading their .40 calibers on this guy, they don't know he is a drug dealer. They don't know he is an illegal alien. Now, they got a dadgum good suspicion that he is. They smell these guys a mile away. But they could be wrong.

And when we let our agents just open fire, shooting to kill—they both said, "We were shooting to kill," and they both knew that he was hit. OK?

We give these guys the benefit of the doubt, but if that is the rule, then some innocent person is going to get gunned down execution style by a cop, and there is a going to be an outcry. I mean, I used to be a death penalty prosecutor in Houston. I tried 17 murder cases. Seven of them were capital murders. I put three people on death row. You jump through a lot of hoops to get somebody convicted and all the way down the line to take them to execution. There is a lot of due process involved. And if we want to change

the rules that the agents on the line can make those decisions about who lives or dies, we can. But I guess what I would say is it is asking for trouble.

Having said that, if our agents feel fear, if you throw a rock at us, if you hit us in the head with a rock, that is a serious danger. We are going to shoot back. OK? And if they can explain, "Look, this guy was throwing a rock that could kill me, and I shot back with my .40 caliber," there is no Texas jury that is going to have any trouble with that. But when you shoot a guy that is unarmed and you lie about it, that is a problem.

And I agree with you, people can second-guess our decisions about the 924(c). We prosecuted 33,000 defendants just since I have been U.S. Attorney. We make a lot of decisions, and 99.9 percent are right. I think my team did the right thing in this case, and that is why I have defended them so strongly.

Senator COBURN. Would you object to a lessening of that sentence if it was lessened?

Mr. SUTTON. Well, what I think you are asking me is what is my opinion on commutation, and obviously that is a separate procedure that is within the Department of Justice. There is a very elaborate procedure where all that information is brought together, the witnesses, the facts—

Senator COBURN. I did not ask you that. What I asked you was: Would you object to a lessening of the sentence?

Mr. SUTTON. I cannot say—I cannot answer that question because I am here to enforce the laws and to apply the laws as they are given to me. My team makes decisions. Sometimes we bring 924(c); sometimes we do not. We use good judgment. We thought this was a serious situation. We thought what these agents did was really, really bad, it was a very serious crime, and they needed to be held to account.

We plea bargained. They said no. They had four good lawyers that were very aggressive at trial. They knew that if they lost, they were going to get 10 years put on top of whatever else they get.

And, by the way, the judge made a dramatic departure from the sentencing range to get them down to 1 and 2 so they are at 12.

So what I am telling you is 924(c) is a great thing. It is good for law enforcement. It is good for putting the bad guys away.

Senator COBURN. You testified earlier that the jury did not know that 924(c) would add 10 years. Why did the jury not know that? Are they precluded from knowing that?

Mr. SUTTON. Yes, sir. All the jury decides is whether these guys did it or not, have we proved beyond a reasonable doubt are they guilty, and then the judge does the sentencing. So those are totally separate things.

Senator COBURN. In your opinion, do you think that would have influenced jurors had they known that?

Mr. SUTTON. It is so hard to know. I mean, that is a thing—you know, not to confess in front of Congress that maybe in my earlier days I listened at a jury room door. Let's say hypothetically I did. It is always amazing what juries are talking about back in the back. That did not really happen, but my point is you don't know.

Senator COBURN. You bet.

Mr. SUTTON. You don't know what they are doing. I can't get inside their mind. It is a lot of time, but what I would say is you can argue that round and you can argue it square. I think there are a lot of people in this country that think cops who did what these guys did deserve to be in prison for a long time.

Senator COBURN. Chief, did you want to add anything?

Chief AGUILAR. I am sorry, Senator?

Senator COBURN. Did you want to add anything in terms of my question about giving you greater authority on the border in terms of suspected drug dealers?

Chief AGUILAR. Senator, the border needs to be brought under control, but I do not believe Americans would want law enforcement officers summarily executing individuals.

Senator COBURN. Wait a minute. Let's don't twist words. That is not what I said at all. What I said was if you see them known with drugs coming across, to say stop and they don't stop, they run, that is what I said. That is not summarily executing anybody.

Chief AGUILAR. Well, Border Patrol agents are taught to stop the threat, up to and including killing an individual, and that is done when there is a means, opportunity, and intent for that individual to hurt either the agent, an innocent third party, or his or her partner. That is the way that we operate today.

It is a tough situation, Senator. The border needs to be brought under control, but I do not think we are there yet as a country to take those kinds of actions.

Senator COBURN. OK. Thank you.

Senator FEINSTEIN. The time is running out. I would like to thank both of you very much, and I would like just to share with you my observations from this hearing.

I am going to look at 18 U.S.C. 924(c). I think it needs to be clarified. As I read it, there has to be an underlying crime, and I do not see the underlying crime here. I think this really is a case of prosecutorial—oh, how to put it. Overreaction in the charging?

I am hard pressed to see why these two men, despite the fact that they did not file a report, despite the fact that they did not tell the truth—this was still a drug dealer who was shot fleeing, shot in the rear end fleeing, and he was not an innocent person. And by his subsequent activity, I believe he has shown he was not an innocent person, and yet he was given unprecedented—at least it seems to me unprecedented immunity, to come back and forth across the border. And the officers are serving 11 and 12 years in prison.

We are going to take a good look at this section of the code and see if there is any amendment that might be considered.

Mr. Sutton, you said because they covered it up, they got 11 and 12 years. That is a huge penalty. I agree with Mr. Hunter when he said it is more than most people serve for murder. And maybe this points out the real problem with mandatory sentencing. But what I cannot believe is that somebody in this instance would charge this, never consult with their superior, and their superior would never consult with Main Justice, when we know that there are these consultations back and forth with Main Justice on lesser cases all the time.

I am one who believes this sentence is disproportionate. Now, what we can do about that remains another subject, and Senator Cornyn and I will have to discuss this as well as with other members. But at least those are my views.

Senator, do you have a comment you would like to make?

Senator CORNYN. Thank you, Senator Feinstein. I just have a couple more questions.

Mr. Sutton, we talked a little bit earlier about Mr. Aldrete Davila's obligations under the immunity agreement, and I want to get to that in a second. You said there was not any evidence with which to try and convict Mr. Aldrete Davila for running a load of drugs, but I would like to, Madam Chairman, offer as part of the record a Homeland Security Memorandum of Activity dated March 14, 2005, if I may.

Senator FEINSTEIN. So ordered, and I would like to add to that a number of investigative reports, if I might. Thank you.

Senator CORNYN. This document, which I do not know if you have had a chance to see or not, Mr. Sutton—admittedly, it is a Homeland Security Office of Inspector General document. It is the notes, investigative interview of Rene Sanchez, a Border Patrol agent, conducted by Chris Sanchez, no relation, in which Rene Sanchez, who was apparently somehow distantly related, I guess, to Mr. Aldrete Davila, where Mr. Aldrete Davila admitted to him that he was afraid to come forward because he had been transporting a load of marijuana and he was afraid the U.S. and/or Mexican authorities would put him in jail.

Why wouldn't that kind of evidence, together with the circumstantial evidence of flight and others, provide you the evidentiary basis upon which to convict Aldrete Davila of a crime?

Mr. SUTTON. If I may, Madam Chairman, if you would indulge me for just 1 second just to clarify, and then I will answer the question.

With regard to approval on the 924(c), the supervising chief in the El Paso Division must approve that charge, and then all those indictments are just like we would every other indictment, and nobody gets indicted without approval from—

Senator FEINSTEIN. You are speaking about 924(c)?

Mr. SUTTON. I am talking about all indictments, including the 924(c) indictment.

Senator FEINSTEIN. Aren't you the person in charge?

Mr. SUTTON. Yes, ma'am. I—

Senator FEINSTEIN. And you didn't approve it?

Mr. SUTTON. I did not. I delegate much of the authority for that to my criminal chief and to my division chiefs. Remember, I have seven offices over 93,000 square miles. But I wanted to clarify that those chiefs, who I have a lot of confidence in, who are career DOJ employees, make those decisions, and then they are reviewed by my criminal chief. And in some of the very serious cases, they are reviewed by me. In fact, those cases are not even indicted—

Senator FEINSTEIN. So this is not a serious case.

Mr. SUTTON. It is a serious case, but as a practical matter, we looked at this as just another one of our, you know, shootings, and we prosecute a number of Border Patrol agents and law enforcement officers. You know, we—it is serious, obviously, but it is

something that we do routinely. Even though 99.9 percent of them are doing it right, there are a few that go wrong, and we prosecute them.

Rene Sanchez, I believe, is no relation—

Senator CORNYN. People might have forgotten the question. Let me just restate it since you were answering Senator Feinstein's previous question. This document, that is made part of the record, is a report of Chris Sanchez, the Office of Inspector General of the Department of Homeland Security. He talked to Rene Sanchez, who told him that Aldrete Davila admitted to him that he had been running a load of drugs, and that is the reason he had not come forward. And my question is: If you had been able to—why weren't you able to use that admission, that evidence of what Aldrete Davila told Rene Sanchez together with circumstantial evidence in order to convict Aldrete Davila of some crime?

Mr. SUTTON. It was the opinion of career prosecutors who had tried many, many of these cases—and, again, the trial team has 35 years of Federal prosecutorial experience between them and 85 jury trials between them. It was their opinion that that evidence—first of all, we were not sure if it was admissible. There was a question of its admissibility. But assuming that it was admissible, that was not enough, a telephone conversation over the border is not enough to say that he is connected, because there is nothing else to corroborate that. And that is the great irony of the situation, is I am attacked because I have not been able to indict on the alleged October load. The reason—and I do not want to go into too many details—is we—you are right, I do not like to—we cannot go on the testimony of just a dope dealer because they are not credible. You have got to corroborate what they say, because a defense attorney like David Botsford will come in and destroy them on the witness stand. So if that is all you have, that is not a provable case. That is not enough to make a case in a courtroom, and that was the opinion of my team.

Senator CORNYN. Well, what about the bullet that the doctor pulled out of Aldrete Davila, which came from his gun?

Mr. SUTTON. Again, we did not get the bullet until we convinced him to cooperate and come back, because under your scenario—let's say you try to indict him for that telephone admission. That is all you have got, and if the grand jury would even indict, and assume that they would, you would have to extradite him from Mexico. And I do not think you could do it, and I certainly do not think you could prove up a case in court based on that, because we did not have the bullet. And for all we know, he might have said it was time to remove this bullet, or we might never have seen him.

Senator CORNYN. My last couple of questions relate to the fact that in violation of his immunity agreement, Davila refused to cooperate and actually—and he was required to testify truthfully, but Davila testified under oath that Special Agent Rene Sanchez counseled him to demand immunity, sue the Government, and even helped refer him to an attorney. Agent Rene Sanchez denied that under oath. So my question is: Why haven't you prosecuted Aldrete Davila for perjury?

Mr. SUTTON. Well, it is like every jury trial I have ever been in, and I have been in a lot. I was not in this one, but witnesses' sto-

ries conflict, and that is the beauty of the jury system, is we have 12 people that we pick from the community that live there to look them in the eyes and decide what the truth is.

Senator CORNYN. I understand that.

Mr. SUTTON. I don't know what the truth is on that.

Senator CORNYN. Everybody understands it is the jury's job to decide who is telling the truth and who is not. But why didn't you present that to a jury and let the jury decide are they going to believe a law enforcement officer, Rene Sanchez, or a dope dealer?

Mr. SUTTON. It is my understanding that both of those guys testified, and that part of the testimony was contradictory.

Senator CORNYN. Right.

Mr. SUTTON. So, you know, the jury heard that and saw that, so they evaluated that when they were making their decision.

Senator CORNYN. But not on a perjury allegation because you did not charge Aldrete Davila with perjury.

Mr. SUTTON. Right. That would not be the case that we would charge with perjury because we would not have been able to prove it. I mean, it is not uncommon for a witness to say this happened and the other witness to say, no, it happened this way.

Senator CORNYN. So you cannot try and convict someone for perjury based on the statement—

Mr. SUTTON. No. We could—

Senator CORNYN [continuing]. Relating to the agent?

Mr. SUTTON. No. I think we could, but our evaluation, at least the trial team's evaluation, was that that was not a provable crime. I have not specifically asked them that question, but I guess my point is that it is not unusual for that—

Senator CORNYN. I do not understand what you mean—you say it is not a provable crime. If, in fact, you can convict someone of perjury based on the sworn testimony that is believed by the jury, then why couldn't you do that here based on the testimony of Rene Sanchez which contradicted directly what Aldrete Davila testified to at trial?

Mr. SUTTON. I guess we could try. The opinion—my opinion is we would not be able to do it. My opinion is—

Senator CORNYN. Because the jury would not believe it?

Mr. SUTTON. Well, because it is just—you know, who knows? Maybe they are remembering wrong all these other things. In order to make a perjury trial, you have to have a very—you have to have some really solid evidence, and people saying, look, this is what was said and I can document it, versus, oh, my memory is wrong or different.

Again, you know, we did not consider that. I could talk to the trial team and see what their opinion is and get back to you on it, if you would like for me to. But the jury heard all that and that was part of their decision.

Senator CORNYN. Thank you, Madam Chairman. Thank you very much.

Mr. SUTTON. Thank you.

Senator FEINSTEIN. Thank you.

I would ask you this question once again. Your office had discretion as to whether to charge 924(c), correct?

Mr. SUTTON. Yes, ma'am.

Senator FEINSTEIN. Thank you.

Thank you both very much. The hearing is adjourned.

[Whereupon, at 1 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and
Border Protection

AUG 0 9 2007

The Honorable Patrick J. Leahy
United States Senate
Washington, DC 20510

Dear Senator Leahy:

Thank you your letter of July 25, 2007, regarding the case of Ignacio Ramos and Jose Compean. In your correspondence, you provided us with an opportunity to discuss how this case has affected the mission and the personnel of Customs and Border Protection's (CBP) U.S. Border Patrol.

Attached you will find CBP's responses to the questions posed by your Committee members. We take the case very seriously, and look forward to moving ahead.

I appreciate your interest in the U.S. Border Patrol and the Ramos/Compean case. If we may offer further information, please contact me at (202) 344-3159. Thank you.

Sincerely,

David V. Aguilar
Chief
U.S. Border Patrol

DAVID V. AGUILAR, CHIEF, OFFICE OF BORDER PATROL
WITNESS QUESTIONS
JULY 17, 2007

Question #1: What impact, if any, do you think Ramos' and Compean's convictions have had on your ability to meet the Agency's recruiting goals? Have you seen a decline in qualified applicants due to potential recruits' fear of finding themselves in a similar situation over a discretion error made in the line of duty?

Answer: I am not aware of any impact that the Compean-Ramos case has had on our recruiting efforts.

The U.S. Border Patrol is currently involved in the most ambitious hiring campaign in the history of the agency. We are on track to hire 2,500 additional agents in FY 2007. The FY 2008 budget requests funding for an additional 3,000 agents, which will bring the total number of agents to more than 17,819 by the end of FY 2008. Currently, CBP has 14,168 Border Patrol agents (as of August 7, 2007). We are taking steps to reach out to all areas of the United States in an effort to locate qualified and interested potential recruits. We have participated in many recruiting events throughout the country, and have found that efforts such as our NASCAR sponsorship give us high visibility in those areas that have been previously under-recruited. Since the inception of this program and other recruiting efforts, the Border Patrol has seen a 33 percent increase in applicants. We are confident that we will meet the President's goal to hire 6,000 new agents by the end of 2008.

Question #2: How have Ramos' and Compean's convictions impacted the overall morale of your agents putting their life on the line every day? Have any of them expressed concern to the leadership of the Border Patrol?

Answer: Agent morale is of high concern to me, CBP, and DHS.

Given the high profile attention that the Compean-Ramos case has attracted, the Border Patrol and CBP have aggressively pushed out information to the field and agent population in order to provide accurate and a broader scope of information than what the media and special interest groups have disseminated relative to this case. I have personally addressed over 1,200 Agents and Border Patrol employees at 10 town halls relative to this case.

While this case is a heart wrenching case and all agents wished it had not turned out the way that it did, we have found that, for the most part, the agent population, once they understand the case and its genesis, understand the outcome. The one part that all agents agree on is that the sentences received by Compean and Ramos were too harsh.

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Question #3: Regardless of whether Ramos and Compean complied with the requirement that they report shooting incidents immediately, it appears that other agents were present on the scene afterwards, and aware of the shooting. Do any of those agents who did not shoot also carry a responsibility to report on the incident? What is your assessment of the Border Patrol's level of awareness about such incidents?

Answer: Agents who are directly involved in, or witness to, a shooting incident have a duty to report the incident. The Firearms Policy in Section 20.012 of the Administrative Manual says, "Any Service employee who participates in or observes a reportable shooting incident...shall orally report the incident to a supervisor." Should an agent become aware that a shooting has occurred and was not reported, the agent has the responsibility to report the incident. All agents are instructed on reporting requirements during the Border Patrol Academy's Firearms Training and the requirements are reviewed annually during firearms qualifications. As to the agents that were aware of the shooting incident in the Compean-Ramos case and did not report as they were required to, disciplinary action was taken.

Question #4: You state that a "vast majority of American law enforcement officers conduct their jobs and carry out their duties as they are trained, as they are expected to..." Under this assumption, should it be possible for 2 agents to commit and conceal crimes while in the course of duty? In this instance, are you aware of any investigation into the conduct of other agents who may have been on the scene but who did not say anything about the alleged wrongdoing?

Answer: Unfortunately, as we have seen with many federal, state, and local law enforcement agencies it is possible for officers to commit crimes. The percentages of officers that commit crimes or are involved in misconduct are extremely low. The overwhelming majority of the more than 14,100 Border Patrol Agents who have sworn an oath to protect our country live the Border Patrol's "Honor First" motto and protect America's borders every day, by placing their lives on the line to enforce, and abide by, the laws that govern us all. They consider themselves law enforcement officers with a responsibility to uphold our American laws. They hold themselves to rigid standards that are expected and demanded by the American public. The American public deserves no less.

Other agents, besides Compean and Ramos, which were involved in misconduct or criminal activities relative to the case, were fully investigated and disciplinary actions were taken: one agent resigned when faced with termination, two others were terminated.

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QUESTIONS FROM SENATOR FEINSTEIN

Question #5: U.S. Attorney Sutton acknowledged at the hearing that it had been a mistake to give Aldrete-Davila legal access to the United States without advance notice of his border crossings, allowing him to cross the border at least 10 times in the eight months after he smuggled over $1 million worth of drugs into the U.S. We are aware that on at least one of those occasions, Aldrete-Davila was wholly unsupervised, and there are allegations that he may have used that opportunity to smuggle in another similar-sized drug load. What policies exist within your agency for the entry and supervision of illegal aliens who serve as witnesses in criminal cases in U.S. courts? Has your agency considered or made any changes to its policies in light of the revelations of Aldrete-Davila's conduct?

Answer: Aldrete- Davila was paroled into the United States under the supervision of the DHS Office of Inspector General. It is the responsibility of the requesting and supervising agency and case agent's responsibility to oversee, monitor, and supervise the parolee. The United States Border Patrol was not involved in the parole process of Aldrete-Davila. In the case of any parolee managed by the Border Patrol, the case agent, in coordination with any other interested agency or law enforcement agent, would have the responsibility to set the parameters or conditions under which the parolee would be admitted into the United States while under parole status sponsored by the Border Patrol.

Question #6: What should a Border Patrol Agent do when faced with a suspected drug smuggler or terrorist who is fleeing toward the border, where he will then be beyond U.S. jurisdiction, if the suspect where he will be and who boldly refuses to stop even after a command to halt? Must the agent simply let him go?

Answer: When attempting to arrest a suspect who is fleeing toward the border, Border Patrol Agents must evaluate the totality of the situation literally "on the run", ensuring their safety, the safety of their partners, innocent bystanders, and the known or perceived "value" of making the arrest. The level of suspicion and information available to the agent related to the event plays a large part in the actions of the officer. Moreover, there are situations where the officer determines that it is appropriate, prudent, necessary, or absolutely essential to disengage in an attempt to make an arrest.

If the fleeing suspect crosses the international border and is back in Mexico or Canada, the agent must generally terminate his pursuit as his authority and jurisdiction end at the border. At the present time there are no bi-national agreements that would allow our officers to pursue onto another country's sovereign lands without having first secured permission of that country. Because of our partnership and shared responsibility of securing the border and making the border safe, Mexican and Canadian law enforcement agencies work very closely with us in those instances where our resources can support joint operations.

Question #7: Do you know if the Department of Homeland Security or its Office of Customs and Border Patrol is considering revisions to its policies regarding the steps to be taken when agents pursue a fleeing person suspected of criminal behavior? Is so, what changes are being considered?

Answer: To the best of my knowledge there are currently no plans to change the policy on pursuing a fleeing suspect.

QUESTIONS FROM SENATOR FEINSTEIN FOR ALL WITNESSES

Question #1: What lessons have been learned from the Ramos and Compean prosecutions, and what revisions, if any, do you believe are appropriate to the laws or regulations governing 18 U.S.C. 924 (c), the use of force against fleeing suspects at the border, or any other provisions of law?

Answer: I believe the current regulations and laws in place relative to use of force (to include deadly force) and administered by American law enforcement officers are appropriate. Law enforcement officers must operate within their agency's policies and procedures. All agents are taught the use of force continuum, which governs the level of force to use when affecting an arrest, responding to threats or force by an adversary.

Response to follow-up questions resulting from the Senate Hearing on July17, 2007

1.

a. Do you have a personal relationship with these two former agents? What are their reputations?

I did not have a personal relationship with these two former agents. I have no information on their reputation, but Mr. Ramos has had disciplinary actions against him for domestic violence and a vehicle accident. These occurred in 1996 and 1997 prior to my arrival in El Paso as Chief Patrol Agent. Mr. Compean had no issues that I am aware of prior to the incident on February 17, 2005.

b. Do you have a personal relationship with former Agent Suarez, and the other agents who were present on that day? What are their reputations?

I do not have the list of the agents that were on the scene during the different phases of this incident; however I can say confidently that I did not have a personal relationship with any of them. As the Chief Patrol Agent, it is not advisable to have personal relationships with subordinate employees, especially bargaining unit employees (non-supervisors).

2. I believe that Mr. Ramos had ten years of service in the Border Patrol at the time of this incident and Mr. Compean had approximately five. I understand that both Ramos and Compean were nominated for Border Patrol Agent of the Year on or about April 2005 in the Fabens Station. Nominations for Agent or Employee of the Year in the individual station or unit are part of the Sector's Spring Fest for employees and their families. It is my understanding that this was done as a form of protest after the incident in question. The nomination was not forwarded to Sector from the Fabens because of the case against the agents. Messrs. Ramos and Compean had 7 and 4 votes, respectively, in a station of approximately fifty agents at the time.

   As I said in my testimony on July 17, 2005, I do not disagree that the sentence is disproportionate, but our system of justice worked. These agents committed a serious crime and the outcome illustrates one of those unintended consequences that come with the application of the law. Everyone did the job that is entrusted to them and should not be viewed as villains in this tragic event.

3. Violations of Agency regulations are dealt with in the administrative process, which determines the disciplinary action that is taken against an agent in a specific incident. Deciding whether they are aggravating factors in the criminal proceeding is under the purview of the US Attorney and his/her team.

4. Agents are required to report a shooting incident in one hour. They must tell their supervisor or any other supervisor that a shooting/discharge did occur. The Agent

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involved in the shooting/discharge is not required to reduce it to writing, but he/she must give enough information to the supervisor so that he/she can write a memorandum or a Significant Incident Report (SIR).

The use of force policy is very specific and has been applied appropriately be our Agents throughout our history. I do not believe that the use of **deadly force** should be triggered by someone's decision to run without any other extenuating circumstances. I do not believe that this will serve the agents well, especially when the policy is clear in its present form.

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NATIONAL BORDER PATROL COUNCIL

of the

American Federation of Government Employees

Affiliated with AFL-CIO

August 17, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Chairman Leahy,

Thank you for the opportunity to provide testimony and answer questions at the "Hearing to Examine the Prosecution of Ignacio Ramos and José Compean" held on July 17, 2007. The attached answers are submitted in response to the written questions posed by the members of the Committee. If additional questions arise, please do not hesitate to contact me.

Sincerely,

T.J. Bonner
President
National Border Patrol Council
AFGE, AFL-CIO
P.O. Box 678
Campo, CA 91906

RESPONSES TO ADDITIONAL WRITTEN QUESTIONS – T.J. BONNER

HEARING TO EXAMINE THE PROSECUTION OF IGNACIO RAMOS AND JOSÉ COMPEAN

1. *What chilling effect, if any, have you seen on the rank and file of the Border Patrol since the Compean/Ramos case started? In your opinion, are the agents more reluctant to fulfill their duties and responsibilities in fear of making a judgment error and ending up in prison as a result?*

The effects of the prosecution and convictions of Border Patrol Agents Ignacio Ramos and José Compean have been far-reaching and profound, reaching all levels of the organization. A number of senior agents have confided that they are now reluctant to respond to situations that could place them in similar straits, as they do not trust our Government to stand behind them, even when their actions are fully justified. Some junior agents have asked their firearms instructors if the rules of engagement have now changed, since this case flies in the face of the firearms policy, which allows agents to utilize deadly force "[w]hen the officer reasonably believes that the person at whom the firearm is to be discharged possesses the means, the intent, and the opportunity of causing death or grievous bodily harm upon the officer or another person." The seeds of doubt that have been sown by this case could easily result in a moment of hesitation during armed encounters, costing agents and/or innocent bystanders their lives.

2. *In your testimony, you state that "(t)his case raises troubling questions about the judgment and the motive(s)" of USA Johnny Sutton. You also imply that this case is leading to a similar injustice as to that occurred in North Carolina, under former DA Nifong.*

   a. *DA Nifong prosecuted the Duke rape case for crass electoral purposes. What troubling motive(s) are you alleging USA Johnny Sutton has?*

Although there are a number of plausible theories, at this point it would be premature and speculative to affix a motive for the prosecutions of Border Patrol Agents Ramos and Compean. Regardless of motive, however, the fact remains that two innocent Border Patrol agents were unjustly prosecuted and convicted for defending themselves against an armed drug smuggler, and this is having an extremely deleterious effect on the morale of law enforcement officers across the Nation, as well as public confidence in our system of justice.

b. What evidence do you have to back up your claim?

The National Border Patrol Council has neither the resources nor the legal authority to conduct a comprehensive investigation into these matters. That is why it is so important for Congress to appoint an independent counsel with subpoena and prosecutorial powers to fully investigate this case, not only to discover what went wrong here, but to ensure that safeguards are put in place to prevent a recurrence of this nightmarish scenario.

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c. Don't you fear that statements like this might undermine the public's confidence in our justice system?

The public's faith in our system of justice has been shaken by the actions of a renegade prosecutor and a few other individuals who are responsible for this travesty, **not** the disclosure of their misdeeds.

3. In your testimony, you state that "there is no credible evidence" that Davila was unarmed. However, in his testimony, USA Sutton has stated that "(t)heir testimony was not credible for several reasons. First, if it were true, there was no reason for Compean and Ramos to alter evidence at the scene by disposing of the casings and not report the shooting. A prompt investigation would have cleared them. Second, neither of them acted as if or said things at the time that indicated they believed Aldrete was armed. Neither agent shouted routine warnings to others that the suspect was armed. After the shooting, Compean acknowledged to two other agents that he shot at the driver, but he never said anything about Aldrete possessing a gun, seeing something shiny in Aldrete's hand, or that he or Ramos were ever in danger. Immediately following the shooting, Ramos encountered an agent near the abandoned van, but made no mention of the shooting or having been in fear for his life. It was not until a month later, after he was arrested, that Compean for the first time mentioned that he thought he saw something shiny in Aldrete's hand as he ran toward the river. Third, their belated claims that Aldrete possessed a weapon as he ran simply were not plausible given the other evidence. It was undisputed that Aldrete's hands were empty as he crossed the drainage canal. Compean was the last agent between him and the river. If Aldrete possessed a gun, the time for him to draw it was when he was confronted by Agent Compean, not after he had broken free and was nearly to Mexico in a full sprint. Once Aldrete got past Compean he had no need to brandish a firearm."

a. Doesn't this evidence seem at least credible to you?

b. If not, why not?

In addition to being wrong, U.S. Attorney Sutton's claim that the testimony of Agents Ramos and Compean was not credible is a deliberate attempt to divert the focus away from whether or not their actions were justified under the circumstances. It is undisputed that law enforcement officers have a legal right to defend themselves against perceived threats, and the Supreme Court has held that their actions in those circumstances must be judged from the perspective of a reasonable officer at the scene. In this case, Osvaldo Aldrete-Davila failed to yield to two emergency vehicles that attempted to pull him over, fled at a high rate of speed for several miles, abandoned his van and refused to stop running when confronted by at least three uniformed and armed Federal agents who ordered him to do so, physically assaulted one of those agents, and then turned and pointed a shiny object at two of them. I have asked hundreds of law enforcement officers from dozens of different agencies how they would have reacted under these circumstances, and every one of them has unequivocally stated that they would have fired their weapon in self-defense.

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All three of the points raised by U.S. Attorney Sutton are easily rebutted:

"First, if it were true, there was no reason for Compean and Ramos to alter evidence at the scene by disposing of the casings and not report the shooting. A prompt investigation would have cleared them."

The suggestion that Agents Ramos and Compean were guilty of a crime by virtue of their failure to report the shooting and the fact that one of them disposed of the empty shell casings runs contrary to one of the fundamental principles of our system of justice – the presumption of innocence. There are perfectly innocuous explanations for their actions. Agents Ramos and Compean had every reason to believe that all of the other agents at the scene of the shooting were well aware of the fact that shots had been fired. Under such circumstances, the reporting requirement was redundant. At most, this was an oversight that should have been handled administratively. Likewise, it is not a crime to dispose of empty cartridges used in a justified shooting.

A prompt investigation would not have made any difference whatsoever in the outcome of this case. Since the suspect absconded into a foreign country, it would have been impossible to determine whether or not he was armed. At the end of the day, the U.S. Attorney still would have had to decide whether to believe a drug smuggler or two law enforcement officers. There is absolutely no reason to believe that he would have made the right choice if the agents had initially reported the shooting.

"Second, neither of them acted as if or said things at the time that indicated they believed Aldrete was armed. Neither agent shouted routine warnings to others that the suspect was armed. After the shooting, Compean acknowledged to two other agents that he shot at the driver, but he never said anything about Aldrete possessing a gun, seeing something shiny in Aldrete's hand, or that he or Ramos were ever in danger. Immediately following the shooting, Ramos encountered an agent near the abandoned van, but made no mention of the shooting or having been in fear for his life. It was not until a month later, after he was arrested, that Compean for the first time mentioned that he thought he saw something shiny in Aldrete's hand as he ran toward the river."

All of the agents who were present at the time of the shooting would have heard the gunfire, so there was no need to warn them. Nonetheless, at least one of the other agents shouted "shots," alerting everyone to the obvious. Moreover, since the eleven-foot high levee access road would have shielded all of the agents north of it from any bullets fired from south of the road, there was no reason to notify those agents about something that posed no danger to them. Inasmuch as Agent Compean did not say **anything** about the shooting until after he was arrested, the fact that he did not mention any details about it during the interim is not unusual at all.

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"Third, their belated claims that Aldrete possessed a weapon as he ran simply were not plausible given the other evidence. It was undisputed that Aldrete's hands were empty as he crossed the drainage canal. Compean was the last agent between him and the river. If Aldrete possessed a gun, the time for him to draw it was when he was confronted by Agent Compean, not after he had broken free and was nearly to Mexico in a full sprint. Once Aldrete got past Compean he had no need to brandish a firearm."

It would have been suicidal for Aldrete-Davila to brandish his weapon while he was in the drainage ditch, as there were at least three law enforcement officers pointing weapons at him at that time. Although it made little sense for him to aim a weapon at Agents Compean and Ramos in order to facilitate his getaway, it made perfect sense to do so out of anger and revenge, as they had just seized a million dollars worth of his marijuana.

Are you aware of any cases in which border patrol agents were administratively disciplined for shooting at fleeing suspects, rather than criminally prosecuted? If so, please describe those other cases.

I am not aware of any cases in which Border Patrol agents have been administratively disciplined for shooting at fleeing suspects. However, I am also unaware of any other cases in which Border Patrol agents have been criminally prosecuted for shooting at fleeing suspects. The Bureau of Customs and Border Protection maintains a database of all administrative charges levied against its employees, including the precise reasons for such proposals. Thus, Chief Patrol Agent David Aguilar would be in a far better position to answer this question definitively.

What lessons have been learned from the Ramos and Compean prosecutions, and what revisions, if any, do you believe are appropriate to the laws or regulations governing 18 U.S.C. § 924(c), the use of force against fleeing suspects at the border, or any other provisions of law?

Sadly, the main lesson of this case is that law enforcement officers now have to worry about serving lengthy prison sentences for defending themselves against armed felons. I believe that 18 U.S.C. § 924(c) should be clarified to exempt law enforcement officers unless they are clearly acting outside the scope of their authority. The obvious intent of that statute was to discourage criminals from using weapons during the commission of crimes, not to punish law enforcement officers who are acting in good faith while carrying the tools of their trade.

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BOTSFORD & ROARK
1307 WEST AVENUE
AUSTIN, TEXAS 78701
www.austincriminaltrialattorney.com

David L. Botsford*
Telephone: (512) 479-8030
Telecopier: (512) 479-8040
E-Mail: DBotsford@aol.com

*Board Certified in Criminal Law
Texas Board of Legal Specialization

Brian J. Roark
Telephone: (512) 476-1900
Telecopier: (512) 479-8040
E-Mail: Brian@brianroark.com

Frank Maloney, Of Counsel*
Woody Roark, Of Counsel
Kate Kelley, Of Counsel*

August 7, 2007

Senator Patrick Leahy
Chairman, Committee On The Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Written Questions From The Committee On The Judiciary

Dear Senator Leahy:

I am in receipt of your letter dated July 25, 2007, transmitting written questions to me from the Committee on the Judiciary. Please accept this letter as my response to those questions.

Written Questions To Botsford:

Question 1: Initially, I view the Mr. Sutton's attacks on the credibility of Agents Ramos and Compean as a diversionary tactic designed to avoid focusing on the real issue, which is the legal standard set forth by the Supreme Court in Graham v. Connor. This case governs the reasonableness of an officer's use of force: whether a reasonable officer on the scene would have made the same type of split second decision, without the benefit of 20/20 hindsight. Given the illegal entry by Davila, his high speed flight to avoid being stopped and questioned by the Agents, his failure to stop at the directions of Agent Compean (while holding a shotgun), his altercation with Agent Compean while Agents Ramos, Juarez and Vasquez were also yelling at him to stop, and the pointing of an object at Agents Ramos and Compean completely justified the discharge of weapons. A reasonable officer could have and I submit, would have taken similar action. While Davila claimed not to be pointing something back at the Agents, the trajectory of the bullet that struck him actually corroborated Agents Ramos and Compean, as testified to at trial by the doctor who removed that bullet.

Furthermore, I believe that the trial record reflects that Agents Ramos and

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Compean were both far more credible than Davila and that Davila is not a person who is capable of belief under oath. The following supports my belief.

Davila breached his immunity agreement by not answering DHS OIG Agent Chris Sanchez's questions regarding (1) the names of the individuals who had taken him to a clinic in Mexico for medical treatment; (2) the names of the individuals who were friends of Davila that were planning to retaliate by shooting other Border Patrol Agents; and (3) the name of the doctor and clinic where Davila was treated in Mexico. Agent Chris Sanchez testified to each of the above and foregoing facts, which (again according to Agent Chris Sanchez), entitled the Government to declare Davila's immunity agreement null and void.

Furthermore, the immunity agreement also could have been declared null and void by the Government due to the following lies told by Davila:

(a) Agent Chris Sanchez testified that Davila had lied to Border Patrol Agent Rene Sanchez (a life long friend of Davila's) by claiming to Agent Rene Sanchez that he (Davila) had been shot when he was trying to **enter** the United States.

(b) Agent Chris Sanchez testified that in his initial conversation with Davila, Davila admitted that he had been driving a load of marijuana, whereas at trial, Davila falsely claimed that he was not aware of the type of narcotics in the van and did not smell anything unusual in the van laden with close to 750 pounds of marijuana (a very implausible if not totally false statement, as anyone who has ever been around any significant quantity of marijuana would testify to the distinct musty odor of bales of marijuana).

(c) Agent Chris Sanchez testified that Davila attempted to create the impression in their initial conversation that he (Davila) was trying to surrender as soon as he got out of the van at the ditch. This of course was a false impression and contrary to his actions: he intended to flee and did flee from the three Border Patrol vehicles which were pursuing him from Fabens and did not stop in the ditch when Agent Compean repeatedly yelled for him to stop.

(d) Agent Chris Sanchez testified that Davila claimed that when he got back to the Mexican side of the border (after the altercation at the ditch), he flagged down a "passerby" who picked him up. Sanchez further testified this was a lie and that Davila subsequently admitted, on the third or fourth interview with Sanchez, that the

two people in the white vehicle who picked him up were the same two people who had dropped him off at the border immediately before he illegally crossed the border and located the van laden with marijuana (i.e., these people were actually members of the drug organization).

(e) Agent Chris Sanchez testified that it was not until well after Agents Ramos and Compean were arrested (and there was corresponding publicity surrounding the events) that Davila claimed that he did not have a gun or anything shiny in his hand.

(f) Davila claimed to have agreed to drive the van to earn money because his mother was ill and he had lost his commercial drivers license. However, due to the October 2006 "second load" of marijuana, it is now clear that this testimony was not true.

(g) Davila testified that he only had one cell phone: a cell phone that was given to him before he illegally entered the United States. He also testified that he did not plug the cell phone into the cell phone charger that was located in the van, and that he left the cell phone in the van. However, Agent Vasquez testified the cell phone found in the van was connected to a charger which was plugged into the cigarette lighter. Therefore, Davila lied about not taking a cell phone out of the van when he fled, or by falsely claiming he did not plug it into the phone charger in the van.

(h) Davila had 5 million reasons to lie at trial, because his lawyer filed a claim with the Border Patrol seeking $5 million from the United States Government. That claim, although filed by Davila's civil attorney on March 31, 2005 (a mere 15 days after Davila received his immunity on March 16, 2005), was not disclosed by Mr. Sutton's prosecutors to counsel for Ramos and Compean until February 15, 2006, a mere 2 days before jury selection was originally scheduled to begin. Since I became involved in this case, I have been unable to ascertain the ultimate disposition of Davila's claim. This may or may not be a topic of interest to the Committee.

Additionally, Davila testified that Agent Rene Sanchez told him to seek immunity, hire an attorney, and sue the United States and that Sanchez had actually assisted him (Davila) in locating an attorney. However, Agent Rene Sanchez denied telling Davila to do any of these things or in helping Davila locate counsel. Davila also claimed that he had met with Agent Rene Sanchez after the shooting on February 17, 2005, and prior to the trial, whereas Agent Rene Sanchez

denied meeting with Davila after the shooting on February 17, 2005.

In specific response to Mr. Sutton's statements, Agent Ramos respectfully objects to Mr. Sutton's propensity to call facts "undisputed," especially where those "facts" are not relevant. For example, Mr. Sutton claims that it is "undisputed that [Davila's] hands were empty as he crossed the drainage canal." While none of the witnesses present saw anything in Davila's hands while he was crossing the drainage ditch, the ditch has a steep embankment which would have required most people to have utilized their hands to assist themselves in climbing out of it. Thus, if Davila had a gun (or a cell phone) in either of his hands at the time he exited the van on the northern side of the ditch, it would be logical for him to have put that gun or cell phone into his pants pocket or waist band prior to his descent down the steep, north side of the ditch. Additionally, at the time Davila exited his van, he would have seen Agent Compean on the south side of the ditch, holding a shotgun. It evidences extreme naivete for Mr. Sutton to claim that "the time for him to draw (a weapon) was when he was confronted by Agent Compean." It makes more sense that Davila would have pulled the gun (or cell phone) at a time when he was fleeing in order to ensure that his flight would be successful and/or to notify his confederates with the drug organization that his mission had failed and that he needed assistance.

Also, Agent Ramos did not alter any evidence. Although Agent Compean did pick up some of his spent brass shells, this was undoubtedly a function of his training, as he was taught to pick up his spent brass shells at the firing range. In this regard, it should be noted that Agent Compean had been on the firing range on February 16, 2005, the day before this incident, thus reinforcing that protocol in his memory. Additionally, it is impossible for anyone to say for sure whether "a prompt investigation would have cleared them." Indeed, the significance of Compean's spent brass shells is lost upon me, since none of Agent Compean's shots hit Davila. Nevertheless, Mr. Sutton continues to emphasize the fact that the shell casings were picked up and thrown away, asserting that those casings were somehow key and important "evidence" that was denied to investigators.

The casings would have shown at best that they were fired from a certain type of weapon, and the approximate location where the weapon was fired. Yet neither of these things is in dispute. The agents admitted firing their weapons, although the exact number of shots fired by Compean is not precisely known. There is nothing in the record to indicate that the agents were NOT where they said they were when they fired. So, again, the question is, what is so important about the fact that Agent Compean picked up his spent shells?

Regarding Mr. Sutton's claim that neither agent shouted routine warnings to others that Davila was armed, it should be noted that Agent Oscar Juarez

testified that someone yelled "shots" (a warning), but he did not know who made the outcry. Obviously, Agent Ramos (having heard shots while in the ditch) knew that the two agents on the north edge of the ditch (near the van) would have been able to have heard the shots and were in a better position than he to see what was going on while Ramos was in the ditch. Agent Ramos also heard someone from behind him (on the north side of the ditch, where he knew other agents were located) yell "shots" while he was in the ditch. Why then would Agent Ramos feel the need to yell "shots"?

Moreover, it has been my experience that investigations of an officer who has discharged his or her weapon are often contentious and adversarial. The fact of the shooting was not hidden: Agent Juarez and Agent Vasquez both heard shots and when Agent Ramos arrived back on the north side of the ditch, one of the agents (among the group) was talking about the shots. Apparently no one reported it to a supervisor, including Agents Juarez and Vasquez, who had absolutely no potential exposure to anything since they had not fired their weapons. Why would Agent Ramos' failure to report the shots be viewed any differently from the other agents' failure to report the shots? Agent Compean told two agents that he had fired his weapon. Agent Ramos, upon returning to the north side of the ditch, was very "pumped up" and full of adrenalin. He had been engaged in a high speed chase from Fabens to the ditch, and then down and through the ditch to help Agent Compean, only to have to pull his weapon and fire it at Davila. When he came back to the van on the north side of the ditch, the other agents on the scene had already discovered the large quantity of marijuana and undoubtedly the seizure was the topic of focus. It should not come as a surprise that someone in an excited emotional condition might not have the presence of mind to verbally claim, without any questions or prompting: "I saw a gun, I was in fear of my life, that's why I fired my gun." Among fellow agents, it can safely be assumed that they would have known that neither Agent Ramos nor Agent Compean would needlessly fire their weapons. Again, it should be noted that this was not a situation where Agent Ramos was asked to give a detailed rendition of the events. And since Agent Ramos did not believe that Davila had been hit, there would have been little if any reason to say anything about the incident unless specifically asked. Indeed, I feel confident that if Agents Ramos and/or Compean had loudly proclaimed that "Davila had a gun," "we only fired because we were in fear of our lives," or any type of similar statement, the Government would have viewed those statements as totally inappropriate and hence false, as no agent would have logically claimed that he had been shot at or was in fear of his life without any questions about "what happened" or "why did you fire your weapon."

Among Mr. Sutton's "red herrings" is his continued emphasis on the fact that the agents did not mention until much later the fact that Davila had produced what may have been a weapon. That, too, is easily understood in the law

enforcement community. It would make absolutely no sense to try to hide the fact that a shooting had occurred, and then say "but if one did, the other guy may have had a weapon." It appears that the disclosure of the concern that Davila may have had a weapon was made contemporaneously with Compean's admission that he had discharged his weapon, all of which was on the evening of his arrest. Agent Ramos, when arrested, elected to obtain counsel and did not make a statement.

Accordingly, for all of the foregoing reasons, I believe a rational person would necessarily conclude that Davila was not credible and capable of belief under oath (particularly if aware of the October 2005, "second load").[1] On the other hand, there was abundant evidence that Agents Ramos and Compean were truthful and believable under oath. Only three people were in a position to see what occurred on the far side of the levee road and could address whether Davila had a weapon: Agents Ramos and Compean, and Davila himself. We know Davila lied to Agent Chris Sanchez -- Sanchez so testified -- and it appears uncontroverted that Davila also lied under oath at trial. Agents Ramos and Compean did not lie prior to trial and did not lie under oath during the trial.

Question 2: I am aware of no evidence to support the conclusion that Mr. Sutton has "some troubling motive(s) to go after" Agent Ramos. I am aware that one of Mr. Sutton's trial prosecutors in the case, Ms. Debra Kanof, had a prior dealing with Agent Ramos wherein he had been assaulted by an alien who he had detained. In that case, Ms. Kanof declined to prosecute the alien for the assault. I am also aware that Agent Ramos had previously been involved in domestic disputes (none of which resulted in a state court conviction) and that Mr. Sutton's trial prosecutors in the Ramos/Compean case unsuccessfully attempted to use those domestic disputes against him at trial. However, I cannot state whether Mr. Sutton was aware of those domestic disputes prior to the trial or whether they had any impact upon the decision to actually take the case to trial. Of course, the existence of a prosecutorial motive is immaterial because the point remains that a grave injustice occurred and it should be corrected.

Question 3: It has been my experience that absent unusual circumstances, federal prosecutors typically do not indict for less serious charges and then, without additional evidence, increase the severity of the charges. However, I have seen federal prosecutors obtain "superseding indictments" with additional charges, including more serious charges, particularly after a defendant has rejected a formal and/or informal prosecutorial offer to resolve the case on a negotiated basis.

Question 4: Initially, let me state that I believe the actions of both Agents Ramos

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[1] At least some of the jurors have publicly stated that had they known about the "second load," they would not have voted guilty.

and Compean were fully justified under the standard adopted by the Supreme Court in *Graham v. Connor* (governing the reasonableness of an officer's use of force), and that no criminal charges should have been brought against either of them. Indeed, administrative sanctions for the failure to report the discharge of the weapons were clearly available and sufficient.

Nevertheless, given the facts reflected in the question,[2] it is my opinion that Agent Ramos should not have been prosecuted with the same charges as Agent Compean and that similar sentences should not have been sought. By way of explanation, I tender the following for your consideration.

Agent Compean went to trial on a total of eight counts or charges, as follows: three counts of assault, one count of discharge of a weapon in relation to a crime of violence, three counts of tampering with an official proceeding, and one count of deprivation of rights under color of law. Agent Ramos went to trial on a total of seven counts or charges, the only difference being that he was charged with two counts of tampering with an official proceeding. Agent Compean's tampering counts were based upon two factors: (1) his failure to orally report the discharge of a weapon on February 17, 2005; and (2) his actions in picking up the spent brass shells from his weapon and/or asking Agent Arturo Vasquez to pick up any spent brass shells he might find on the levee road. Agent Ramos' tampering counts were both based on his failure to orally report the discharge of a weapon.

As noted above, while I do not believe that either Agent Ramos or Agent Compean should have been charged with any crime(s), I do believe that the following facts (in addition to those included within the question) should have been considered and justified the non-prosecution of Agent Ramos and/or a less severe sentence: (1) Agent Ramos' entitlement to rely on what he heard while he was in the ditch and then his observations after he exited the ditch and saw Agent Compean on the ground and Davila turning back towards him with a gun in his left hand; (2) Agent Ramos' decision not to use deadly force to attempt to stop the fleeing felon during the high speed chase, despite his clear entitlement to do so; (3) at least two other witnesses, Agent Arturo Vasquez and Agent Oscar Juarez, heard the discharge of weapons and allegedly did not report them; and (4) Agent Oscar Juarez testified that someone yelled "shots" (a warning), thus meaning that it is very likely that other agents and/or supervisor(s) who had arrived at the scene behind Agents Ramos, Juarez, and Vasquez also heard the shots or the warning.

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[2] I want to point out that due to the huge differential in elevation between the location where Compean discharged his weapon and where Agent Juarez was standing on the north side of the ditch, it appears physically impossible for Agent Juarez to have seen Compean from the waist up, firing and then reloading his weapon.

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Senator Patrick Leahy
August 7, 2007, Page 8

Senator Feinstein's Questions To Botsford:

Question #1: Neither Agent Ramos nor myself have filed a formal request seeking a pardon or commutation of his sentence. I was retained to represent Agent Ramos in connection with his direct appeal to the United States Court of Appeals for the Fifth Circuit and thus, my engagement does not technically include the process of applying for a pardon or commutation. 28 C.F.R. Sections 1.2 and 1.3 outline the eligibility requirements for filing a petition for pardon and/or commutation of sentence. Agent Ramos does not appear to meet those eligibility requirements because judicial relief is still available and the five year period (from the release of the petitioner from confinement) has not yet run. I would note, however, that a petition for commutation of sentence might be considered under 28 C.F.R. Section 1.3 due to "exceptional circumstances," although that term is not defined. However, it is my understanding (although I have not verified it by obtaining the appropriate forms from the Pardon Attorney at the Department of Justice, as required by 28 C.F.R. Section 1.1) that a petition seeking pardon or commutation would require an admission of guilt that Agent Ramos cannot truthfully make. Even if my understanding is incorrect in this regard, I believe that if a new trial is granted by the United States Court of Appeals, Mr. Sutton's prosecutors would attempt to any such petition against Agent Ramos at a retrial.

I would also note that when I was retained, I was already aware from the extensive publicity surrounding this case that many members of Congress had already requested President Bush to pardon and/or commute the sentences of Agents Ramos and Compean. I believed then, and currently believe, that President Bush has the power to pardon and/or commute their sentences even without a formal pardon/clemency petition. In fact, it is my understanding (based upon what I have heard) that President Bush commuted Lewis "Scooter" Libby's penitentiary term even though a formal clemency request had not been filed by Mr. Libby and/or his counsel. Additionally, prior to Mr. Libby's commutation, I did not realistically anticipate that President Bush would seriously entertain a request for pardon or commutation prior to the expiration of the direct appeal process. This appears to be supported by the second paragraph of the July 2, 2007, written "Statement By The President" outlining his reasoning for Mr. Libby's commutation. Given the letter Senator Cornyn and Senator Feinstein jointly authored on July 18, 2007, seeking the immediate exercise of President Bush's Executive clemency powers, and previous and subsequent letters to President Bush by other members of Congress also calling for Executive clemency, I fully believe that if President Bush was inclined to grant Executive clemency, he certainly could do so even absent the submission of a formal petition by Agent Ramos and/or his counsel.

Question #2: Mr. Ramos was placed in a Special Housing Unit (SHU) (i.e.,

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solitary confinement in a small, 6 by 12 foot cell with 23 hour "lock down") after he was viciously assaulted by other inmates on Saturday, February 3, 2007. This assault occurred at the Yazoo City Federal Correctional Complex in Mississippi. Although Mr. Ramos was placed in SHU (solitary confinement) for his own protection, he has been deprived of the normal privileges (visitation, phone, showers) typically afforded to an inmate in "general population." Stated otherwise, incarceration in SHU (solitary confinement) is typically considered "punitive" and constitutes a form of punishment for misbehavior. Thus, while Agent Ramos did absolutely nothing to have his privileges suspended, he has been deprived of many of the normal privileges due to the fact that he is the victim of the assault. Recently, Agent Ramos was transferred to the Federal Correctional Complex in Phoenix, Arizona. Although he is still incarcerated in SHU (solitary confinement), we are hopeful that in the not too distant future, his full privileges as an inmate may be reinstated. Incarceration in solitary confinement is extremely unfair; the loss of normal visitation and telephone privileges severely impacts upon his ability to communicate and see his family.

Question #3: The 924(c) charge is entirely circular: no separate underlying crime of violence was allegedly committed by either Agent Ramos or Agent Compean, unrelated to the discharge of the gun(s). Rather, the 924(c) charge was tied to four different counts in the third superseding indictment, to wit: counts 1 through 3, which alleged that Agents Ramos and Compean had "assaulted" Davila (under three different statutes) and counts 11 and 12, which were separate civil rights violations (one each against Ramos and Compean). The 924(c) gun count was used unfairly (in my opinion) to bootstrap one act into several different statutory violations and was included in the superseding indictment (the third charge against the Agents) despite what appears to be the clear Congressional intent to discourage criminals from arming themselves and not to sweep within it situations where the use or discharge of the weapon is itself the "underlying offense." While this issue does not appear to have been raised at the trial court level prior to trial, it has been raised in the appellate briefs to the United States Court of Appeals for the Fifth Circuit.

Senator Feinstein's Question To All Witnesses:

Question #1: The clearest lesson is that this prosecution has sent a message to law enforcement officials: if you use your gun in the line of duty, you too may be prosecuted and incarcerated for no less than 10 years. In order to remove the terrible message sent to law enforcement by virtue of this prosecution, Congress should seriously consider amending Section 924(c) to include a exemption from criminal prosecution for law enforcement officials acting in the line of duty and/or ensure that the use or discharge of a gun itself cannot be both the primary offense and the 924(c) offense. Furthermore, because the Supreme Court has not yet

addressed the use of force against fleeing suspects at the border, Congress might want to consider whether the heightened interest in protecting our borders justifies the creation of a defense for law enforcement officials acting in the line of duty against prosecution for assault and/or for civil rights violations.

Senator Leahy, I apologize for the length of this letter, but I have attempted to answer each of the questions as thoroughly as possible. I deeply appreciate the opportunity to attempt to be of assistance and if any of my responses raise any additional questions, please do not hesitate to contact me.

Respectfully yours,

David L. Botsford

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 24, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please find enclosed responses to written questions to United States Attorney Johnny Sutton, received following the July 17, 2007, hearing held by the Committee entitled "A Hearing To Examine The Prosecution Of Ignacio Ramos And Jose Compean." We hope that this information is of assistance to the Committee. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Arlen Specter
Ranking Minority Member

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RESPONSES FROM U.S. ATTORNEY JOHNNY SUTTON TO QUESTION FROM SENATOR FEINSTEIN FOR ALL WITNESSES

1. What lessons have been learned from the Ramos and Compean prosecutions, and what revisions, if any, do you believe are appropriate to the laws or regulations governing 18 U.S.C. § 924(c), the use of force against fleeing suspects at the border, or any other provisions of law?

ANSWER: The professional prosecutors of the Department of Justice strive in all cases to act in good faith in exercising their discretion. Charging law enforcement officials is always difficult and raises many legal and policy issues. The use of deadly force against a fleeing, unarmed suspect who poses no risk of serious harm—whether on the border or elsewhere—is a violation of law and Compean and Ramos were properly prosecuted for the serious crimes they committed. Cases will arise to which mandatory penalty provisions are applicable by their terms, but which may appear severe to some under the particular circumstances of the case. While there may be disagreement about this particular prosecutorial decision, the defendants received a fair trial and the lengthy sentences were mandated by statute and the federal sentencing guidelines. The Department's Office of Legislative Affairs will work with the Congress to communicate any legislative changes that the Department thinks appropriate.

RESPONSES TO QUESTIONS FROM SENATOR FEINSTEIN FOR U.S. ATTORNEY JOHNNY SUTTON

2. Did the government consider taking administrative actions against Agents Ramos and Compean instead of filing criminal charges against them? If not, why not?

ANSWER: The United States Attorney's Office was presented with evidence of serious crimes that warranted criminal charges, regardless of the availability of administrative remedies. Administrative actions could only be pursued against Compean and Ramos by the agency that employed them at the time.

3. A criminal complaint was filed against Agent Ramos and Compean, and they were arrested, before anyone talked to them. Why did your office decide to prosecute these agents and arrest them before you even heard their side of events?

ANSWER: As a general practice, the United States Attorney's Office authorizes criminal prosecution in cases involving violent crimes before requiring the investigating agent to interview the suspect. The professional prosecutors of the Office reviewed strong evidence that Compean and Ramos had committed a violent crime, that they were not justified in opening fire, and that they attempted to conceal their crime. It is the ordinary practice of the Office to arrest individuals suspected of a violent crime before interviewing them, and there were no circumstances in this case suggesting that interviewing these suspects would affect the decision to prosecute.

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4. What is your understanding of how, if at all, the Ashcroft memorandum restricts the discretion of U.S. Attorneys' offices?

ANSWER: The Ashcroft Memorandum substantially restricts the United States Attorneys' Offices in making charging decisions but does not eliminate all exercise of discretion. In cases in which a violation of section 924(c) is readily provable, the Memorandum requires prosecutors to charge the violation except in "exceptional cases." The circumstances in this case were not exceptional because Compean and Ramos shot a fleeing suspect, made no effort to apprehend him after hitting him, and then tried to conceal the shooting, including destroying evidence.

5. What is the status of Osvaldo Aldrete-Davila's civil suit, in which he apparently sought $5 million in damages? There are suggestions in the media that this case may have been settled for $3.7 million. Has this case been settled or resolved on behalf of the U.S. Government or its agents, and if so, what were the terms of that settlement – and in particular, what if anything was paid by the United States government?

ANSWER: At this time, Aldrete-Davila has not filed suit in district court against the United States in this matter. A lawyer representing Aldrete-Davila has filed an administrative claim with U.S. Customs and Border Protection; we were advised that as of July 26, 2007, that claim is pending.

6. Did your office consider asking Aldrete-Davila to waive all civil claims against the United States and its agents as a part of his immunity deal? If not, why not? If yes, please describe the nature of any such discussions.

ANSWER: The Texas Rules of Professional Responsibility prohibit a lawyer from threatening to present criminal charges solely to gain an advantage in a civil matter. The United States Attorney's Office did not consider threatening to present criminal charges in order to gain an advantage in a civil matter that might be brought by Aldrete-Davila.

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SUBMISSIONS FOR THE RECORD

STATEMENT OF

DAVID AGUILAR
CHIEF
OFFICE OF BORDER PATROL
U.S. CUSTOMS AND BORDER PROTECTION
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

REGARDING

THE PROSECUTION OF IGNACIO RAMOS AND JOSE COMPEAN

TUESDAY, JULY 17, 2007

ROOM 226, DIRKSEN SENATE OFFICE BUILDING

Good morning Chairman Leahy, Senator Specter, Chairwoman Feinstein, and other distinguished Senators. I thank the committee for holding this hearing, which provides us the opportunity to answer your questions, and more importantly – to clarify some of the issues relating to the Ramos-Compean case, which has caused a tremendous amount of emotional stress for our country, our organization, the Department, and ultimately - our country's criminal justice system.

It is important for me to begin this testimony by acknowledging the outstanding work the men and women of the United States Border Patrol are doing for this country on a daily basis - 24 four hours a day – every day. The men and women of our organization face tremendous challenges, dangers, and harsh environments daily. Last year our agents arrested over 1.1 million illegal aliens, over 90,000 of which were other than Mexican aliens attempting to enter this country illegally between official ports of entry. In addition, our agents interdicted over 1.3 million pounds of narcotics coming into this country and kept it from reaching our streets, our schools, and our communities. Most importantly the men and women of the U.S. Border Patrol contributed significantly to a better quality of life for our border communities and by extension - made our country safer. There is work yet to be done to gain control of our Nation's rough and remote borders, but I am proud to say that the commitment of the men and women of the Border Patrol to continue expanding our efforts and making this

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country safer is extremely high and at a level of dedication that this country can be proud of – and I am personally proud of them and the difficult job they do. The attitude, fortitude, diligence, and desire of the men and women of the Border Patrol, along with the resources and support that is being furnished by Congress will provide for operational control of our Nation's borders.

A developing trend, as we continue to expand our control of the border, is a dramatic increase in border violence against our Agents. Violence has always been a part of the environment in which the men and women of the Border Patrol operate and is recognized by all familiar with the undertaking, as an inherent part of the job to secure our nation's borders. As an example, we have lost 101 agents in the line of duty, 12 of those within the last 5 years. We never forget the sacrifice of these fallen heroes. But as we have continued to expand our control of the border we have experienced a dramatic and increasing trend of violence against our officers. I attribute this increase in violence to the fact that the Border Patrol's achievements in gaining greater and expanded control of our borders has resulted in greater reluctance of entrenched criminal organizations to give up areas in which they have historically operated, in some cases with impunity due to lack of enforcement presence, or reluctance to give up areas where they have re-established themselves in reaction to our increased urban enforcement efforts.

Border violence incidents are perpetrated against our agents on an all too frequent basis. In just the first four days of last week during the time period of

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7/8/07 to 7/12/07 there were a total of 11 assaults against our officers: 2 rockings, 2 shootings, 1 where our agents returned fire, 1 vehicular assault, and 5 assaults where our officers were physically injured.

When assaulted or threatened, our officers are trained to respond with the appropriate level of force required to stop the threat or assault. Officer safety is of paramount concern, and this is a main focus of our training – at the Border Patrol Academy, and in our field training programs. In all cases, our agents must be able to justify that such actions were taken in defense of themselves, a partner, or an innocent third party. Following an incident, there are clear and delineated protocols that must be followed when our agents use force to stop or deter an assault, whether it is deadly force or less lethal force. These actions must be taken to preserve evidence, including the scene of the incident. These protocols must be followed for many reasons, to include protection of the officer.

From February 1, 2005, through June 30, 2007, there have been 1,982 incidents where Border Patrol Agents have been assaulted. These assaults include rockings, physical assaults, vehicular assaults as well as shootings and assaults with other weapons.

In response to these assaults, Border Patrol Agents have responded with the use of deadly force on 116 occasions, with 144 agents discharging their weapons during these 116 incidents (exclusive of the Ramos-Compean or Corbett

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shooting incidents). Thirteen assailants died as a result of agents having to defend themselves through use of deadly force; fifteen incidents ended with the assailants being wounded. These figures do not include any of the instances where less lethal force was employed. Of the 144 agents involved in the 116 shooting incidents since February 2005, comprehensive investigations were conducted, internally as well as by independent agencies and not a single agent has been criminally prosecuted for their actions during these incidents.

We take assaults against our agents seriously and seek to have those incidents prosecuted. For example, in fiscal year 2006 60 of 88 assault cases against Border Patrol agents were accepted for prosecution. Through June 30 of this fiscal year (2007), 51 of 75 cases have been accepted for prosecution.

The job of our agents is not an easy one. It requires our agents to operate under very stressful and sometimes very dangerous conditions. That is the reason why our officers are trained and equipped to the degree that they are. The foundational training at the Border Patrol Academy and recurring in-service firearms training, firearms qualifications, and the "use of force continuum model" is instrumental in ensuring that when our officers take action, at any threat level, they revert to their training and do so based on this enforcement model. This enforcement model includes at its lowest level officer presence and, the use of verbal commands, and moves at its most extreme level to the use of deadly force. Under threat conditions, our officers are required to make split-second

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decisions to diminish or stop the threat. These decisions are based on their perception of the conditions they face. They are trained to then follow through with protocols, policies, and guidelines relative to each of the actions that they may take. These post incident and protocol decisions are founded on their training (and do not necessarily require split second decisions). In the case of the use of a firearm our officers are in every instance required to immediately report the incident to a supervisor. In addition to reporting the use of deadly force, our officers are required to report the use of any level of physical force that involves an assault, including the use of firearms or the use of less lethal force, e.g., oleoresin-capsicum spray, collapsible steel batons, pepperball launcher systems, etc.

I want to make myself absolutely clear on the following: I am in no way condoning, supporting, or siding with Aldrete-Davila, the smuggler of narcotics into this country, the individual that made a conscious decision to break our laws. Aldrete–Davila is a poster child for why United States Border Patrol agents and law enforcement officers throughout this country risk their lives everyday – to protect our Nation and the American people from criminals like him. Our men and women protect our families, our society, and our way of life from individuals like Aldrete-Davila. Perhaps that is one of the reasons why this case has caused such havoc. As Americans we expect to see individuals like Aldrete–Davila who consciously and deliberately dedicate their lives to negatively impacting our society behind bars. Because the vast majority of American law enforcement

Deleted: , the individual that had once been granted the privilege of legally residing in this country only to abuse this privilege and be deported.

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officers conduct their jobs and carry out their duties as they are trained, as they are expected to, and as they are sworn to, we do not often see officers of the law overstep their bounds resulting in our justice system taking actions that result in their convictions and incarcerations. When these things happen it tears at the very fiber of our society.

Those of us in the law enforcement profession must strive to remain apolitical. Some of the responsibilities, duties, and obligations that we have in law enforcement are: restraint in the face of adversity, professionalism in carrying out our duties, upholding our responsibilities as members of the American justice system under difficult, stressful, and sometimes uncertain conditions – even when it is not popular. Our job is to uphold and enforce the law. Sometimes these duties may not be popular, but our society and our justice system demand certain levels of neutrality and impartiality from its law enforcement officers. Those of us in law enforcement - and especially those in leadership positions - demand of ourselves a strict discipline so that our personal feelings, authorities, and positions do not in any way impinge on the justice system that we have sworn to uphold. We must and should be impartial in carrying out our duties and we must remain impartial as we operate within our Nation's system of justice. We must remain disciplined in our duties and perform them in a manner that does not allow for the possibility of weakening the faith of the American public in the justice system we are sworn to uphold. This is not an easy responsibility, but

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I believe it is a responsibility that is fundamental to a strong American justice system.

Those of us in public service have all come to expect the potential for criticism as part of the job. We in the Border Patrol are no different. The Border Patrol's mission is a difficult one, which is subject to intense public scrutiny. Much is asked of us as federal law enforcement officers. I am immensely proud of the men and women of the Border Patrol. I have and always will support each and every agent who performs his or her duties in accordance with the high standards that we have always sought to uphold.

Chairwoman Feinstein, Chairman Leahy, Senator Specter and other distinguished Senators; this is an emotional and heart-wrenching case. This is a case where every Border Patrol agent that serves today and has ever served wishes had not turned out the way that it did. However the facts of the matter are that this incident did happen, an allegation was made, an investigation was initiated, the investigating agency's findings were presented to the Untied States Attorney's Office, the United States Attorney's Office presented the evidence to a Grand Jury, the Grand Jury indicted, the case was tried in a court of law, a jury found the defendants guilty, and they were sentenced by the judge. All of these independent components of our justice system performed their duty; they upheld their sworn obligations independent of each other. All of the players in this case

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had an obligation to carry out their duty, as they were sworn to do, trained to do, and responsible for doing.

Thank you for this opportunity and I look forward to answering any questions that you may have of me.

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STATEMENT OF

LUIS BARKER
FORMER CHIEF PATROL AGENT
EL PASO BORDER PATROL SECTOR

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

REGARDING
THE PROSECUTION OF IGNACIO RAMOS AND JOSE COMPEAN

TUESDAY, JULY 17, 2007
ROOM 226, DIRKSEN SENATE OFFICE BUILDING

Good Morning. Chairman Leahy, Chairwoman Feinstein, and members of the Committee; thank you for inviting me to this important hearing. It is an honor to be here to discuss the events of this case and to have the opportunity to answer questions. My name is Luis Barker and I retired from the U.S. Border Patrol on July 31, 2006 after more than 28 years of service. At the time of my retirement I was the national Deputy Chief of the Border Patrol in Washington, D.C. and, prior to this, served in a number of key leadership positions in the Border Patrol, including the position of Chief Patrol Agent in the Laredo and El Paso Sectors. Before joining the U.S. Border Patrol in 1978, I was a Police Officer/Actg. Detective for 5 ½ years with the Jersey City Police Department on the Narcotic Squad. Prior to that I was a Military Policeman in the US Army stationed at Fort Bragg, North Carolina.

As a senior leader in the Border Patrol, I was extremely proud of the men and women of the Border Patrol who serve to protect this nation and who I had the honor to lead. Today, even in retirement, I am still proud of the great work that these brave men and women do in defense of the homeland. Day after day they do this difficult and dangerous job of securing our borders under extreme conditions, and to do it with a personal pride and dedication that is to be applauded. They literally put their lives on the line every day, yet do great things to make us proud. They are genuine heroes and certainly deserving of your support and that of the American people.

To prepare them for the dangers and rigors of the job, each Agent undergoes extensive training, to include firearms training and the use of force. This training instills professionalism, makes every agent understand that he or she

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will be held to a higher standard, and must obey the laws of the land and of the community in which they live. Every agent that entered on when I was Chief Patrol agent in El Paso had this reinforced to them by me before going to the Academy and again upon their return from the academy and before reporting to field duties. They are told about the trust that is placed on them to enforce the laws within the limits authorized—a trust that if violated, has enduring consequences. The motto of the Border Patrol is "Honor First", an ideal that is instilled in the agent from the day they walk through the door of any sector in the Border Patrol, and woven into the training and indoctrination at the Border Patrol Academy. It is something that has sustained the Border Patrol.

During my tenure as Chief Patrol Agent of the El Paso Sector, there have been a numerous incidents where officers have discharged their weapons, but most of them accidental. Of these weapons discharges, six were incidents where agents used deadly force to defend themselves from a threat against them resulting in two fatalities. The Firearms Policy mandates the reporting of every shooting incident, accidental or otherwise, for proper investigation and disposition. For this reason, the scene must be secured and proper notification must be made to bring the investigative resources to bear. Every agent understands the requirement to notify supervisors of any discharge of a Service firearm and the implications of not doing so.

On or about March 4, 2005 we received a Memorandum from an agent in the Tucson Sector informing us of a shooting incident connected to a narcotic seizure that occurred in the El Paso Sector on February 17, 2005, approximately two weeks earlier. At that point in time we had no recent

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report of a shooting, so the information in this memorandum was surprising to us. After checking of the records and making some inquiries, we had reason to believe that the allegations in the memorandum had some merit. We immediately made the proper notifications and made an initial report to the Office of Inspector General (OIG) because of the seriousness of the allegations. As we all know the events of February 17, 2005 resulted in the conviction and sentencing of former Agents Ignacio Ramos and Jose Compean.

Osvaldo Aldrete-Davila "the victim" –and I use it in quotes since he is not deserving of this title because of his trade, a trade that supplies nothing but misery to those who are trapped in the clutches of his product; he deserves no sympathy and I give him none. Only the circumstances make this characterization of Aldrete-Davila possible. I do, however, feel for Agents Compean and Ramos and their families for what they have endured and will endure as a result of the terrible choices and decisions they (the agents) made on February 17, 2005. Though there is an emotional connection in this case, those of us in leadership and those having the responsibility to apply the rule of law cannot abdicate our responsibilities. Agent misconduct, even criminal misconduct does occur despite our best efforts in selection and training, but we do everything to deter it and act decisively when it occurs. It saddens me because had the two agents behaved with the integrity and honor that we instill, following procedure, disclosing the shooting, not tampering with evidence and encouraging others to do so, the results might have been very different. In fact, in my experience, almost every agent-involved shooting is resolved in the favor of the agent without criminal charges. So, to suggest that the Border Patrol "went after" these agents for

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nothing more than administrative violations is baseless and I believe the facts of this case support this premise.

Agents Compean and Ramos used deadly force when it should not have been applied; they shot a person in direct violation of the firearms policy contrary to the training that they have received in this regard. From the statistical information I gave earlier, it is obvious that this was not the first time agents used deadly force in the El Paso Sector. The differences between this case and the others are glaring—Agents involved in the other cases reported them, cooperated in the investigation allowing it to run its course, generally supporting the agents' decision to use deadly force. These agents destroyed evidence, filed an incomplete report on the incident in an effort to keep this shooting and the circumstances surrounding it from the leadership. Additionally, their actions prevented the proper investigation of this case—investigations, which I said generally, support the actions of the agents.

On April 28, 2005 when Agent Compean came before me to make his oral reply to the proposal to indefinitely suspend him, I asked him why he did not report the shooting. He said, "I didn't". He continued to say that he knew that it was wrong for them not to report and continued to say that if they thought that he had been hit, he would have. He also said that he knew that they would get in trouble; a thought that is confusing since I have established that when an action is appropriate, the investigation invariably proves this absolving the agent of any liability.

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This has been a tragedy with emotional undercurrent; but there should be no mistake about it--it begins and ends with the actions of Agents Compean and Ramos; not the prosecutors, the judge, or the jury as has been suggested. The "distorted facts" have compounded this already tragic situation by tarnishing the reputation of other good people who did the right thing. The US Attorney, through his office in El Paso has been a strong supporter of the Agents in the El Paso Sector making it clear, by its prosecution of cases, that assaults on our agents will not be tolerated. They have also been on the front lines in those cases where agents have used deadly force under circumstances that warranted it or taken actions that resulted in injury or death, and worked the case vigorously in support of the agent. Conversely, they are also intolerant of official criminal misconduct or corruption as they should.

Finally, it is suggested that this case will make agents hesitate in situations where deadly force is warranted. The facts do not support this contention since in the last two months, agents have discharged their weapons against assailants in self defense on three occasions in El Paso, resulting in injury to one suspect. Agents have always defended themselves and I have no doubt that they will continue to do so when there is a threat.

Thank you for this opportunity and I look forward to answering any questions that you may have.

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ROBERT T. BASKETT
ATTORNEY AND COUNSELOR AT LAW
2612 BOLL STREET
DALLAS, TEXAS 75204-1002

TELEPHONE (214) 965-0900
FACSIMILE (214) 880-0443

August 9, 2007

Senator Patrick Leahy
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Former Border Patrol Agent Jose Compean

Dear Senator Leahy:

Ed Mason and I represent Jose Compean on appeal from the convictions obtained in the Western District of Texas. It write to ensure that you hear a voice on behalf of Agent Compean.

Although I have had significant input into the testimony of David Botsford, as well as his written response to the questions put to various persons by members of Congress, I have not been solicited or questioned regarding our concerns over what certainly appears to be an overreaching prosecution. I hope this letter assists in that regard.

I have a copy of Mr. Botsford's letter to you dated August 7, 2007, wherein he responds to the questions posed by your committee. In general, Agent Compean concurs with many of the things in that letter. However, some further explication may be in order.

I have represented law enforcement officers in administrative and disciplinary actions, internal investigations, and criminal prosecutions continuously since 1974. I am well aware of the microscopic scrutiny under which officers find themselves in such circumstances. Whether an officer has done anything significantly wrong or not, being the subject of such scrutiny is extremely distracting and unpleasant. Occasionally, depending upon the character of the lead investigator, such proceedings can become downright vituperative and vitriolic. In short, most officers will avoid such things like the plague. By the way, especially considering how adversarial the Office of Border Patrol Administration was here, there is absolutely no reason to believe that "a prompt investigation would have cleared them."

I mention this because Mr. Sutton continuously falls back on the contention that "they knew it was a 'bad shoot' or they would have reported it." That is simply not the case. Even though it was a procedural violation not to report, it is clear that the reason no report was made was because they did not think Aldrete had been hit, he had gotten completely away, and internal investigations are so unpleasant. Please remember that NO ONE out there reported anything, even though several persons besides Compean and Ramos knew that a weapons discharge had occurred. This fact likely

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mitigates against the argument that this was a cover-up of a "bad shoot," and reinforces the idea that all the witnesses felt this was a "no harm, no foul" situation.

Senator Feinstein asked the prison status of Agent Ramos. Agent Compean is being held in segregated housing (once called "solitary"). The Bureau of Prisons personnel at FCI Elkton in Ohio have been extremely concerned, attentive, and professional in their dealings with him and his family and have taken appreciated and positive steps to insure his safety and comfort. Nonetheless, it is a frustrating and trying situation.

Agent Compean has not applied for a pardon or commutation. It is his belief that a formal request for same is not required at this time, especially given the loud Congressional voice calling for the President to act, as he has done in the past without formal application.

Senator Feinstein asked about the manner in which §924(c) was applied here. In my view, such application was unjustified and inappropriate. From the legislative history, it seems abundantly clear that the law was designed to persuade persons who may intend to commit offenses to "leave their guns at home." There must, perforce, be an underlying offense in which a weapon is used. Here the prosecution unfairly and improperly made the discharge both the primary offense and the enhancing offense. Congress should take steps to clarify the statute to provide that its purpose is to prevent criminals from arming themselves and so that overzealous prosecutors cannot sweep within its reach situations where the discharge is the "underlying offense."

In the questions sent to Mr. Botsford, reference is made on several occasions to assertions of "fact" made by Mr. Sutton. I am obliged to respond to those assertions.

Often Mr. Sutton's "facts" require total belief in the testimony of Aldrete. For example, Agent Compean did not "swing his shotgun to strike Aldrete in the head." What happened, from the agent's testimony, is that as Aldrete advanced up the slope, not stopping even in the face of the shotgun, Agent Compean tried to use the shotgun in a manner similar to a cross-check in hockey to push Aldrete back into the ditch. He specifically denied trying to hit Aldrete in the head. Agent Compean lost his footing and fell. Aldrete ran past him. Compean recovered and gave chase, eventually grabbing onto Aldrete. Both fell to the ground. Aldrete successfully forced his leg free from Agent Compean's grasp, then threw dirt in his face. While Aldrete then had a clear and unfettered path to the border, he did not simply run for it. Instead, he slowed and turned back towards Agent Compean, with something in his hand. Any law enforcement officer would have interpreted that as a threatening gesture-why would a nearly home-free suspect abandon his flight and turn on a fallen officer unless he had some sinister intention?

Agent Compean did not fire as he was running after Aldrete. He had gotten to one knee when he saw the threat, drew his weapon, and fired. He was not firing at a fleeing suspect, but only because of the perceived threat. Had Aldrete not turned, he would not have fired as he was trained as no threat would have been perceived by him.

Under universally-accepted law, an officer is entitled to react to a perceived threat whether or not the threat is actually real. If the perception was reasonable, the defensive action is lawful, period. The Supreme Court has spoken on how this issue should be examined. In ***Graham v. Connor***, 490 U.S. 386 (1989), noting that "all claims that law enforcement officers have used excessive force," will be evaluated under the following standards, the Court said:

> "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation." 490 U.S. 396-397.
>
> "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." 490 U.S. 396.

According to the Court, the underlying intent or motivation of an officer is irrelevant. So, too, is any inquiry into whether Aldrete actually had a weapon. From Agent Compean's perspective on the scene, there was a weapon and a serious threat. Only if you believe Aldrete was there no weapon, and his credibility, as noted by Mr. Botsford in his letter, is greatly suspect.

Mention is made of the fact that Agent Compean changed magazines, I suppose because there is an inference of impropriety in that action. Nothing could be further from the truth. Officers are trained to exchange to full magazines if it can be done in safety so they do not risk running out of ammunition at a critical time. Agent Compean did not believe he had totally exhausted his first clip, but had the opportunity to change them out. He did not fire again, because Aldrete had reverted from a threatening suspect to a fleeing one at that point, and was almost into Mexico.

In fact, the government's witness, Agent Vasquez, testified that he heard a number of shots, a pause, and a single shot. This is consistent with Agent Compean's and Ramos' testimonies of their shots. None of the agents claimed to hear a number of shots, pause, more shots, pause, followed by a single shot. That fact shows that Agent Compean did not fire a second series of shots, although Mr. Sutton continues to claim that Agent Compean fired 14 shots. A clip for a .40 caliber firearm does not hold 14 bullets. Their clips hold 10 with a single shell in the chamber.

Mr. Sutton's theory that Aldrete would have drawn a weapon, if he had one, while he was crossing the drainage canal defies all logic and human experience. At that point in time Aldrete would have been staring up at the barrel of the shotgun and was entirely disadvantaged by relative positioning. To have drawn then would have been "suicide by cop." Quite the contrary, under the circumstances that existed, it makes more sense that Aldrete would produce a weapon, if he had one, at the point where he had the obvious advantage - Compean was down and displayed no weapon. Aldrete had already been caught from behind once by Agent Compean and he would not have wanted that to happen again, if he could help it. He would have had every reason to brandish a firearm at that point.

Though Mr. Botsford touched on the matter, I want to address some of those things Mr. Sutton felt were so important in the case. First is the significance of the shell casings. If those casings had been left exactly where they fell, no additional or significant evidence would have been available. The casings would show what weapon fired what shots and from where. Yet, none of these things were in factual dispute at the trial. As noted above, the "cover up" was of the weapons discharge, for reasons unrelated to the reasonableness of the shooting itself. The government's continued overemphasis of the fact that casings were picked up has no actual legal significance but may play a part in explaining the jury's verdicts - they were misled by the prosecution's "conspiracy theory" and may have overlooked the factual insignificance of the casings themselves.

Next is his naive assertion that a prompt investigation "would have cleared" the agents. There is no evidence of that. As I noted above, given the attitude of the agent's superiors in this case, one can imagine that the investigation would have turned into the nightmare they sought to avoid by not reporting the matter.

This raises questions as to why the supervisors, although made aware by the discussion at the van, were never disciplined for their failure to not only report the assault on Agent Compean but also the firearms discharge that is required of supervisory officers to be done in writing per USBP Firearms Policy. In fact, then Field Operations Supervisor Jonathan Richards has been subsequently promoted on at least one occasion, possibly two.

Finally, there was no point in discussing the shooting at all once the decision was made not to report it. There would have been no occasion to talk about justifications for a discharge they were going to pretend did not even occur. Mr. Sutton's argument has a superficial initial appeal, but does not survive even the most cursory examination. Unfortunately, the jury may have attached too much significance to it.

Agent Compean wishes he could undo the mistake of not reporting the incident, as I am sure Agent Ramos does. That administrative, procedural violation certainly was the impetus that got this

snowball rolling down the hill. However, the fact remains that only if one believes Aldrete and disbelieves the agents is there any real chargeable conduct here. No doubt the failure to report influenced how their credibility was judged, but in my view that was so overemphasized, relative to its actual probative value, that it may have contributed to a verdict even the jurors now wish they could take back.

Furthermore, believing Aldrete's story of his not possessing a firearm, let alone brandishing a weapon toward Agents Compean and Ramos, as the government has done, ignores the fact that both agents testified contradictory to Aldrete in their court testimony and Agent Compean's written and oral statement to arresting officers. The government has ignored that it is in the best interest of Aldrete to not admit to possessing a firearm, as well as to dispute the agent's claim that Aldrete brandished a firearm towards them, because Aldrete would have faced criminal charges in Mexico. Of course, it hardly needs to be said what such admission would do to his million dollar lawsuit.

On behalf of Jose Compean, let me express my appreciation for this opportunity to address your Committee. I shall be happy to respond to any inquiry you may have, so please do not hesitate to contact me.

Sincerely yours,

Robert T. Baskett

RTB/ea

STATEMENT OF THE

NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

HEARING TO EXAMINE THE PROSECUTION OF
IGNACIO RAMOS AND JOSÉ COMPEAN

PRESENTED BY

T.J. BONNER
NATIONAL PRESIDENT

JULY 17, 2007

On behalf of the 11,000 front-line Border Patrol employees that it represents, the National Border Patrol Council expresses its sincere appreciation for this opportunity to highlight some serious concerns about the prosecution of Border Patrol Agents Ignacio "Nacho" Ramos and José Alonso Compean. This case has captured the attention of the public like few others in recent memory. Hundreds of rallies have been held in support of these agents, hundreds of thousands of signatures have been gathered seeking executive clemency for them, and Congressional resolutions and bills have been introduced to address this miscarriage of justice. Law enforcement officers across the country are watching this case very closely, wondering if the same fate could befall them for simply doing their jobs.

There is nothing particularly unusual about the facts of the incident giving rise to this case. Every day, some of our Nation's law enforcement officers encounter dangerous situations that require them to make split-second decisions that have far-reaching implications. What distinguishes this incident from others are the events that transpired afterward. In a bizarre twist, these agents were targeted for prosecution by the U.S. Attorney's Office, and the drug smuggler who pointed a gun at them while fleeing toward the border was granted full transactional immunity for transporting 743 pounds of marijuana. Moreover, his involvement in smuggling another 753 pounds of marijuana was overlooked so that he could serve as the Government's key witness to secure the convictions of two innocent law enforcement officers. As additional facts come to light, more and more questions arise. One thing is now abundantly clear: Border Patrol Agents Ramos and Compean should never have been prosecuted in the first place.

The Government's rationale for prosecuting these agents is summed up in this statement from U.S. Attorney Johnny Sutton's April 25, 2007 press release: "In order to maintain the rule of law, federal prosecutors cannot look the other way when law enforcement officers shoot unarmed suspects who are running away, then destroy evidence, engage in a cover-up, and file official reports that are false." While all of these points are completely true, they have absolutely no relevance to the case of

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Agents Ramos and Compean, who shot at a fleeing felon who was pointing a gun at them, and did not destroy any evidence, engage in any cover-up, nor file any false reports. The only way to reach a contrary conclusion is to ignore the physical evidence, the laws of physics, and the testimony of two sworn law enforcement officers, and to place absolute faith in the perjured assertions of a known drug cartel lieutenant.

There is no credible evidence that Osvaldo Aldrete-Davila, the Mexican national who was wounded by Agent Ramos, was unarmed on February 17, 2005 while smuggling more than a million dollars worth of marijuana into the United States. It is well-known that most criminals who are transporting large quantities of drugs carry weapons, not necessarily to assault law enforcement officers, but certainly to protect their illicit cargo from being hijacked by other criminals. Agents Ramos and Compean testified under oath that the drug smuggler turned and pointed a weapon at them as he neared the Rio Grande river. Although several other Border Patrol agents were in the vicinity of the scene where the shooting occurred, none of them could have possibly seen those events, as their view was completely obstructed by a levee access road that is situated eleven feet higher than the ground on which they stood. Thus, the only other eyewitness to the shooting was Osvaldo Aldrete-Davila, who had been involved in trafficking narcotics for the previous twelve years and occupied a position of high trust in the notorious Juarez cartel. The credibility of such an unsavory character is extremely suspect, to say the least.

Since Osvaldo Aldrete-Davila absconded into Mexico, it is impossible to know with absolute certainty whether or not he was armed. Several important clues can be gleaned from the few pieces of physical evidence that were examined, however. The bullet that struck him did not exit his body, and the largest fragment lodged in his right thigh near the skin and was subsequently recovered. Additionally, the wound channel became infected and was still quite visible when he was attended to by a doctor on March 16, 2005, about a month after he was shot.

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The March 18, 2005 affidavit of the Department of Homeland Security's Office of Inspector General in support of the criminal complaint against Agents Ramos and Compean stated that "[o]n or about March 16, 2005, Colonel Winston J. Warme, MD, Orthopedics, William Beaumont Army Medical Center removed a 40 caliber Smith & Wesson jacketed hollow point projectile from the upper thigh of the victim. Colonel Warme, MD, advised that the bullet entered the lower left buttocks of the victim and passed through his pelvic triangle and lodged in his right thigh." At the trial, when Colonel Warme was asked if the "bullet was fired directly into the back of the person who was shot, or was it fired at an angle through his body," he responded that Aldrete-Davila's "body was on angle to the bullet," and that "the bullet went in on an angle." He also stated that "if [the person who was shot] were turning, as [the prosecutor] demonstrated, [the shooter] would have to be right behind the person." In other words, at the moment that the bullet struck him, Osvaldo Aldrete-Davila was running straight away from the Border Patrol agents, with his torso twisted back toward them.

In a sworn statement provided on March 19, 2005, long before he was aware of the aforementioned evidence and report, Border Patrol Agent José Compean stated that after wrestling on the ground with Osvaldo Aldrete-Davila in an attempt to arrest him, Aldrete-Davila "got up and started running back south towards Mexico. When he was running south he was pointing something shiny with his left hand. It looked like a gun. This is when I started shooting." At the trial, both Agents Compean and Ramos reiterated the fact that the drug smuggler turned and pointed a weapon with his left hand while he was running away. This is completely consistent with the medical evidence. The lower torso of an individual who is running away and pointing straight back with the left hand would twist about 90 degrees, placing it in perfect alignment for a bullet to enter the lower left buttock, transit through the pelvic triangle and enter the right thigh.

Law enforcement officers do not have to wait until they are shot at before using deadly force to stop an assailant. The Department of Justice has issued broad guidance for all law enforcement

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agencies concerning the use of deadly force by their officers: "Law enforcement officers are authorized to use deadly force only when it is reasonable and necessary to protect the officer or others from an imminent danger of death or serious physical injury to the officer or another person."[1] The U.S. Border Patrol's Firearms Policy complies with that guidance: "Firearms may be discharged under the following circumstances: (1) When the officer reasonably believes that the person at whom the firearm is to be discharged possesses the means, the intent, and the opportunity of causing death or grievous bodily harm upon the officer or another person; . . ."[2] The actions of Border Patrol Agents Compean and Ramos on the afternoon of February 17, 2005 were in complete accord with the foregoing principle and policy, and fully justified. It is not a crime by any stretch of the imagination for law enforcement officers to defend themselves against an armed aggressor.

In support of his contention that Osvaldo Aldrete-Davila was unarmed, U.S. Attorney Johnny Sutton points to the fact that all of the Border Patrol agents at the scene of the incident, including Agents Ramos and Compean, testified that they did not see the drug smuggler brandish a weapon as he slid into or climbed out of the drainage ditch. This does not prove that he was unarmed. It does, however, explain why none of the agents shot at him at that time. Osvaldo Aldrete-Davila did not produce a weapon until after he was alone with Agent Compean on the other side of the levee road, out of view of the agents who remained north of the drainage ditch, and when he believed that the odds of prevailing in a gunfight were more in his favor.

It is also important to dispel the ridiculous notion put forth by U.S. Attorney Johnny Sutton that the drug smuggler tried to surrender, and that if Agent Compean had simply placed handcuffs on him at that point, the incident would have ended peacefully. A careful analysis of the facts reveals that

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[1] U.S. Department of Justice, Principles for Promoting Police Integrity, January 2001, Section II.2., page 3.

[2] I&NS Firearms Policy, Section 7(B)(1), [page 17], February 19, 2003. (This policy is still in effect for all Border Patrol personnel.)

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nothing could be farther from the truth. Osvaldo Aldrete-Davila could have pulled his van over to the side of the road and given up at any point after the Border Patrol vehicles following him activated their emergency lights, but he chose to ignore them and speed away. He could have obeyed the agents' commands to stop after he exited his vehicle north of the drainage ditch, but he chose to keep running. He could have stopped at the bottom of the drainage ditch, but chose to charge up the other side at full speed toward Agent Compean. None of these actions are consistent with those of someone who is desirous of surrendering. Agent Compean had every reason to believe that Osvaldo Aldrete-Davila was attempting to assault him, and acted appropriately when he tried to push him back down into the drainage ditch.

The alleged destruction of evidence consisted of Agent Compean picking up some of the empty cartridges and tossing them into the drainage ditch a few yards from where they were fired. If he were truly intent on "destroying evidence," he would have taken the shell casings as far away as possible and disposed of them. Rather than a sinister effort to conceal something, it is far more likely that in a state of confusion induced by post-traumatic stress disorder, he reverted to his firearms training that requires agents to pick up their empty cartridges at the shooting range and place them in nearby containers after firing their weapons.

According to U.S. Attorney Johnny Sutton, the failure by Agents Ramos and Compean to report the discharge of their weapons was a "cover-up," as Border Patrol policy requires agents to orally report such actions within one hour of the incident. If the shooting were justified, he reasons, the agents would not have hesitated to make the required report. Again, the truth is far less dramatic. Both agents believed that everyone at the scene knew that shots had been fired. Given the fact that they had just seized a van filled with the cartel's marijuana, it is quite likely that all of the agents were acutely aware of the dangers posed by following protocol and securing the scene of the shooting, which would have left them exposed to being shot at by the drug smuggler and his associates from the south side of the

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border. The April 12, 2005 Memorandum of Activity prepared by the Office of Inspector General of the Department of Homeland Security states that its investigation disclosed that all nine of the other Border Patrol agents "were at the location of the shooting incident, assisted in destroying evidence of the shooting, and/or knew/heard about the shooting." Significantly, none of these other employees were ever charged with any crimes for their actions or omissions on that day, and only three of them were accused of administrative violations, and that was not until late January of this year. The primary charges in those administrative actions revolved around their alleged false statements to investigators and lack of candor during the investigation. Interestingly, the failure to report the discharge of a firearm is an administrative infraction that, by the agency's own rules, is punishable by a "written reprimand to 5-day suspension."[3] It is also noteworthy that the highest-ranking supervisor at the scene of the incident not only escaped any form of punishment, but has since received two promotions.

Finally, the allegation that Agents Ramos and Compean filed false official reports is based upon the mistaken belief that they should have mentioned the discharge of their weapons in the report concerning the seizure of marijuana. The Border Patrol's Firearms Policy specifically precludes that, however, requiring that all "supervisory personnel or INS investigating officers are aware that employees involved in a shooting incident shall not be required or allowed to submit a written statement of the circumstances surrounding the incident. All written statements regarding the incident shall be prepared by the local INS investigating officers and shall be based upon an interview of the INS employee."[4] The rationale for this prohibition is explained in one of the preceding subsections, requiring that all "supervisory or investigative officers involved in the local INS investigation of the shooting incident are aware that any information provided by any employee under threat of disciplinary action by the Service or through any other means of coercion cannot be used against such employee

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[3] U.S. Customs and Border Protection Table of Offenses and Penalties, Section G.1. (June 21, 2004).

[4] I&NS Firearms Policy, Section 12(B)(1)(g), [page 28], February 19, 2003. [Emphasis in original]

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in any type of action other than administrative action(s) taken by the Service consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1966)."[5]

It bears emphasizing that in order to prosecute these two Border Patrol agents, the U.S. Attorney's Office granted a high-ranking member of the notorious Juarez cartel full transactional immunity against prosecution for transporting large quantities of illicit narcotics in exchange for his perjured testimony. This is unprecedented, and sends a terrible message to other law enforcement officers, as well as to law-abiding citizens.

On October 23, 2005, shortly before the trial of Agents Ramos and Compean was scheduled to begin, the Border Patrol and Drug Enforcement Administration seized another 753 pounds of marijuana belonging to Osvaldo Aldrete-Davila in a van parked in the back of a residence near the same area of the border where the February 17, 2005 shooting occurred. The house's primary occupant identified Osvaldo Aldrete-Davila by name and physical description, and also picked him out of a photo lineup. Moreover, his brother in Mexico identified Osvaldo Aldrete-Davila over the phone as "the person who was shot by Border Patrol agents about six months ago." All of this information was immediately brought to the attention of the U.S. Attorney's Office for the Western District of Texas, which nonetheless pressed forward with the prosecution of Agents Ramos and Compean, and vigorously argued that such evidence should not be allowed to be presented to the jury in the trial against them. Amazingly, the Judge agreed to conceal that vital information. She also agreed with the U.S. Attorney's Office that the level of violence along the border between the United States and Mexico had no bearing on the state of mind of Agents Ramos and Compean on the day of the incident, and the jury was not allowed to hear evidence concerning that issue either. (On an average day, three assaults are launched against Border Patrol agents.) Similarly, testimony raising serious questions about the integrity of René Sanchez, the Border Patrol agent assigned to the Willcox, Arizona Border Patrol Station who initially

[5] I&NS Firearms Policy, Section 12(B)(1)(e), [page 28], February 19, 2003.

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reported the shooting to the Office of Inspector General, was not allowed in open court, and remains sealed. This individual, who was has been a close friend of Osvaldo Aldrete-Davila since childhood, remains employed as a Border Patrol agent, and has never been disciplined for "[k]nowingly and inappropriately associating with sources of information, illegal aliens, or persons connected with criminal activities ([o]n or off-duty. Includes any social, sexual, financial (including acceptance of gifts), or business relationship)." Under the Bureau's guidelines, the penalty for this misconduct is a "14-day suspension to removal [from employment]."[6] Moreover, no investigation has ever been undertaken to reconcile the glaring inconsistencies between his sworn trial testimony and that of his associate, drug smuggler Osvaldo Aldrete-Davila. Instead, this employee has been highly praised by U.S. Attorney Johnny Sutton for his role in securing the convictions of Border Patrol Agents Ramos and Compean.

Although U.S. Attorney Johnny Sutton has stated that he believes that the penalties levied against Agents Ramos and Compean are too harsh for the crime, this position is the height of hypocrisy. Federal prosecutors have extraordinary discretion concerning which charges to file in any given case. In the prosecution of Border Patrol Agents Ramos and Compean, for example, U.S. Attorney Sutton originally charged them with violations of 18 U.S.C. § 113(a)(1), "assault with intent to commit murder," which carries a maximum penalty of 20 years imprisonment; 18 U.S.C. § 113(a)(3), "assault with a dangerous weapon, with intent to do bodily harm," which carries a maximum penalty of 10 years imprisonment; and 18 U.S.C. § 113(a)(6), "assault resulting in serious bodily injury," which also carries a maximum penalty of 10 years imprisonment. None of these charges have any mandatory minimum sentence associated with them. As the trial approached and Agents Ramos and Compean refused to enter into a plea bargain, U.S. Attorney Sutton added several more charges: one count apiece of violating 18 U.S.C. § 924(c)(1)(A)(iii), "discharge of a firearm in relation to a crime of violence,"

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[6] U.S. Customs and Border Protection Table of Offenses and Penalties, Section I.6. (June 21, 2004).

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which carries a mandatory minimum sentence of 10 years imprisonment; one count apiece of violating 18 U.S.C. § 1512(c)(2), "tampering with an official proceeding," which carries a maximum sentence of 20 years imprisonment; and two additional counts of the same charge against José Alonso Compean, which each carry an additional maximum sentence of 20 years imprisonment.

This stands in sharp contrast to a case filed earlier this year by U.S. Attorney Sutton against an individual in Del Rio, Texas who fired a high-powered (.30-06) rifle at Federal, State, and local law enforcement officers on the evening of January 28, 2007. While being handcuffed, the suspect remarked that he only stopped firing because he ran out of ammunition. This person was only charged with violating 18 U.S.C. § 111, "assaulting, resisting, or impeding certain officers or employees." That statute provides for an enhanced penalty of no more than 20 years imprisonment if a deadly or dangerous weapon is used in the assault, but carries no mandatory minimum sentence.

It is highly unlikely that Congress intended that 18 U.S.C. § 924(c), which carries a mandatory minimum penalty for using or carrying a firearm during and in relation to any crime of violence, be applied to law enforcement officers who are using the tools of their trade – firearms – within the scope of their official duties. On the other hand, its application to rogue officers who utilize their service weapons in the furtherance of intentional crimes of violence or drug trafficking could very well be appropriate. In the case of Border Patrol Agents Ramos and Compean, however, the levying of this charge was clearly not justified. The facts of that case demonstrate that they had a good faith belief that Osvaldo Aldrete-Davila pointed a weapon at them. In such a circumstance, it was clearly inappropriate to charge them with a violation of that statute.

Those who believe that there should be no intervention until after the appeals process has run its course should fully acquaint themselves with the facts of the case involving Border Patrol Agent David Sipe, who was convicted in March of 2001 of using excessive force while effectuating the arrest of an alien smuggler near Penitas, Texas. In response to pre-trial motions from Agent Sipe's defense

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counsel seeking the production of exculpatory and mitigating evidence, the U.S. Attorney's Office for the Southern District of Texas provided some of the requested evidence, and admitted that the three illegal aliens who were testifying against Agent Sipe were allowed to remain and work in the United States pending the trial, but emphatically stated that "no other promises or advantages" had been given. This was not even remotely close to the truth. In fact, these witnesses were "given Social Security cards, paid witness and travel fees, allowed to travel to and from Mexico to visit family, permitted to travel to North Carolina to work, and allowed to use government phones to contact relatives in Mexico." Moreover, it was discovered that the U.S. Attorney's Office failed to disclose the fact that prior to the trial, the smuggler had been caught by the Border Patrol in the company of other illegal aliens and was released when he displayed a card given to him by prosecutors.[7] Armed with this newly-obtained evidence, Agent Sipe moved for, and was granted, a new trial. The U.S. Attorney's Office appealed that ruling to the Fifth Circuit Court of Appeals, which upheld the lower court's ruling. At the new trial, Agent Sipe was exonerated. Despite this blatant prosecutorial misconduct, it does not appear that any action was ever taken against anyone responsible for this travesty.

At the time of Agent Sipe's conviction, his employment from the Border Patrol was terminated under the provisions of a newly-enacted law that required such action for any law enforcement officer convicted of a felony. The law also provided, however, that if the conviction was subsequently overturned on appeal, the removal had to be set aside retroactively to the date on which it occurred, with full back pay. Agent Sipe petitioned for reinstatement on those grounds in February of this year, and the Bureau of Customs and Border Protection refused to restore his employment for spurious procedural reasons. He appealed to the Merit Systems Protection Board, and an Administrative Law Judge ordered the Agency to reinstate him with full back pay. The agency is now appealing that decision, and refuses to allow Agent Sipe to return to work.

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[7] U.S. v. David Sipe, No. 03-40657, 5th Circuit Court of Appeals, (11-19-2004), pages 8 and 9.

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Everyone who is involved in any aspect of our system of justice has an obligation to ensure that it is administered fairly and equitably. If that does not happen, public trust in the entire institution suffers. The recent case involving Durham County, North Carolina District Attorney Michael Nifong wrongfully prosecuting three Duke University lacrosse players illustrates this point very well, and also demonstrates how the system of checks and balances is supposed to weed out overzealous prosecutors who overstep their boundaries. In the case of U.S. Attorney Johnny Sutton, however, not so much as an inquiry has been initiated, despite the swirling controversy.

This case raises troubling questions about the judgement and motives of the U.S. Attorney for the Western District of Texas. It undermines the public's confidence in our system of justice, causing jurors and observers to wonder whether prosecutors are withholding key evidence and/or have a hidden agenda. Equally damaging, it destroys the trust of those who are charged with enforcing our laws, and could quite possibly cause some of them to hesitate at a crucial moment, jeopardizing their lives and/or the safety of the public. This untenable situation needs to be resolved immediately. Border Patrol Agents Ramos and Compean have now been incarcerated for six months for crimes that they did not commit. Shortly after arriving in prison, Agent Ramos was viciously attacked by five inmates, sustaining multiple contusions and lacerations, as well as two herniated discs. Both agents now languish in solitary confinement to protect them against further attacks.

While ideally the executive branch of government should resolve this matter, it is quite obvious that it is unwilling to do so. Since the intervention of the judicial branch could be perceived as a conflict of interest, it falls upon the legislative branch to take action. A full and impartial investigation needs to be conducted by an independent counsel with subpoena and prosecutorial jurisdiction over this and all related matters. Further inaction will only serve to exacerbate the crisis of confidence that now besets our Nation's system of justice.

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Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

April 4, 2007

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510-0504

Dear Senator Feinstein:

This responds to your letter to Secretary Chertoff and Commissioner Basham regarding former Border Patrol Agents Ramos and Compean. The Office of Inspector General (OIG) conducted the investigation into this matter, therefore your letter has been referred to our office for response. You expressed concern about the sentences imposed in this case, but the Department of Homeland Security (DHS) played no role in the sentencing. Your letter also posed eight separate queries, to which we are pleased to respond, using the same numbering system as your letter:

1. An unredacted version of the DHS Inspector General's report.

Answer: We will be pleased to provide an unredacted version of our Report of Investigation (ROI) upon the request from the Chair of a Committee or Subcommittee for official business. References to the ROI in the remainder of this letter refer to the redacted version that has been posted on our website.

2. I note that the Inspector General's report states that Mr. Aldrete-Davila initially lied when he was first asked by investigating agents in Mexico about his interactions with Agents Ramos and Compean – refusing to admit any involvement in drug trafficking. Is this true? If so, do you believe it was appropriate to offer immunity against prosecution to Mr. Aldrete-Davila for this crime that he initially lied to American agents about committing?

Answer: When Mr. Aldrete-Davila spoke directly to a Border Patrol Agent (BPA) after the shooting, the conversation was by telephone. Mr. Aldrete-Davila stated that Border Patrol agents had shot him as he was running back to Mexico. There was no mention during this conversation about his involvement with smuggling marijuana. Mr. Aldrete-Davila later explained that his reason for not mentioning this was because his relatives were in hearing distance when he was speaking on the phone and he did not want them to know of his involvement in smuggling drugs. Later, he admitted to smuggling drugs, both to the BPA who had telephoned him, and then to a DHS OIG Special Agent. See ROI at 4-5.

We respectfully defer to the Department of Justice (DOJ) on the propriety of offering immunity.

3. The Inspector General's report also states that, even after being given immunity and other benefits, Mr. Aldrete-Davila refused to provide any information about the Drug Trafficking Organization (DTO) that had hired him to transport the drugs. To your knowledge, did Mr. Aldrete-Davila ever provide any information about this DTO or any of his drug suppliers? If not, do you believe it is appropriate, and good policy, for our government to reward an informant who provides information only about his interactions with federal agents who tried to arrest him, but refuses to provide any information about drug traffickers who hired him?

Answer: Mr. Aldrete-Davila refused to provide information about the DTO out of fear of retaliation against himself and/or his family. See ROI at 8. From our experience, it is not uncommon for DTOs to brutally torture and kill informants, with that retaliation sometimes extending to family members, as a deterrent to other would be informants. Please note that Mr. Aldrete-Davila allegedly transported illegal drugs, ordinarily a position at the lowest rung of a DTO and one with little useful information about the organization.

Again, although we respectfully defer to DOJ on the propriety of granting immunity, we do not believe it is appropriate to characterize their decision to grant limited use immunity as "rewarding" Mr. Aldrete-Davila. In this case, Border Patrol Agents (BPAs) shot at an unarmed man, while he was fleeing, and one of the bullets struck him, causing serious injury. The BPAs then failed to report the shooting and destroyed evidence that would have been relevant to the investigation that ultimately was conducted into the unlawful shooting. At the time they shot and wounded Mr. Aldrete-Davila, the BPAs did not know that he had committed any criminal offense or even that he had entered the country illegally.

Under these circumstances, DOJ provided limited use immunity to Mr. Aldrete-Davila to enable us to pursue the investigation into the unlawful shooting by the BPAs. Were it not for the limited use immunity agreement provided to Mr. Aldrete-Davila, we could not have even identified the BPAs responsible for the illegal shooting, much less could DOJ have prosecuted them. Mr. Aldrete-Davila also was provided medical care to enable the government to extract the bullet from his body, a critical piece of evidence necessary for our investigation and the resulting prosecution and convictions.

4. The Inspector General's report also notes that, after Mr. Aldrete-Davila was shot, he participated in discussions in Mexico about putting together a "hunting party" to seek revenge by shooting American border agents. The Border Patrol apparently considered this threat significant enough to send an alert to law enforcement agencies on the border, warning them to be on the lookout for Mexican gangs seeking to kill federal agents. The Inspector General's report seeks to minimize Aldrete-Davila's involvement in this, saying he refused to participate in retaliatory action. Even if true, he clearly knew who discussed the idea of a "hunting party" against American agents. Did Mr. Aldrete-Davila provide the names of these people as a part of his cooperation as a government witness, or was this also something that he refused to discuss?

Answer: We did not attempt to minimize Mr. Aldrete-Davila's involvement and believe the question unfairly characterizes both our ROI and Mr. Aldrete-Davila's actions. Mr. Aldrete-Davila

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alerted us that his friends, not he, had discussed putting together a "hunting party," information that resulted in the Border Patrol disseminating a BOLO (Be-On-The-Look-Out) for Mexican gangs looking to kill Federal Agents along the border. Had Mr. Aldrete-Davila not provided this information, we would have been unaware of it and unable to warn other Federal Agents. By refusing to participate in a "hunting party" and alerting us to its possible existence, Mr. Aldrete-Davila may have prevented its formation/operation. Although he refused to identify those who had discussed forming a "hunting party," he did so for the same reasons discussed above: fear of retaliation from the DTO. See ROI at p. 5.

5. The Inspector General's report also concludes that at least three other Customs and Border Protection (CBP) Agents participated in the cover-up of Mr. Aldrete- Davila's shooting, but redacts their names. The report notes how each of these other agents was given immunity to testify against Agents Ramos and Compean, and notes that but for this immunity, they could have been charged with multiple felony offenses, including making false statements to federal officials and tampering with an investigation. Are these agents still working at CBP? If so, please explain why society benefited most by absolving these agents entirely and keeping them on the force so that they could testify in a criminal prosecution against Agents Ramos and Compean? In other words, why was their prosecution preferable to handling this entire matter administratively – in which case all of those involved in the cover-up might have been fired, and CBP purged of all agents who committed federal felonies?

Answer: After we provided our ROI to CBP, one of the three agents resigned and the other two were issued notices of proposed removal and placed on unpaid administrative leave. DOJ determined that it was necessary to provide these three BPAs limited use immunity in order to secure their testimony for the prosecutions of former Agents Ramos and Compean.

The ROI states that each of these three agents committed criminal violations, namely, tampering with an official proceeding or submitting false statements, or both. See ROI at p. 25. However, the ROI does not state that they could have been charged or prosecuted for these offenses. We only learned of the misconduct of these agents when, in response to offers of immunity, they confessed their involvement and the misconduct of former Agents Ramos and Compean. We defer to DOJ on the feasibility of prosecuting these agents under the circumstances presented.

6. Did your agencies participate in any of the prosecutorial charging or sentencing decisions made by the Department of Justice? If so, please explain the nature of your participation, any supportive or dissenting information provided, and your rationale for any recommendations made?

Answer: We presented our investigative findings to the United States Attorney's Office (USAO). The USAO then decided who should be prosecuted, and the statutory basis on which they would be prosecuted.

7. What was the total cost to your agencies – both in terms of hours expended by government employees and in financial outlays – in its efforts that sent officers or others to interview Mr. Aldrete-Davila in Mexico, convince him to testify, provide him with medical services, give him appointed counsel, complete immunity packages, conduct interviews, pay for all related travel

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expenses, obtain the necessary documents for his border crossings, prepare for trial, and house and feed him as a interviewee or witness?

Answer: The total cost "out-of-pocket" cost to our office was approximately $9100.00, which includes medical costs for removing the bullet (approximately $8500.00) and housing costs for OIG agents to guard Mr. Aldrete-Davila during trial (approximately $620.00). Mr. Aldrete-Davila did not have court appointed counsel – he had no attorney present when he met with our Special Agents at the American Consulate in Juarez. The Consulate, incidentally, is actually closer to our office than the FBI office. In addition, we rode with agents from the Diplomatic Security Service, U.S. Department of State, to and from the Consulate.

We do not know what you are referring to as "immunity packages." Mr. Aldrete-Davila received a single letter providing him limited use immunity. The letter was prepared by the United States Attorney's Office.

We do not separately track hours expended for each case. All OIG special agents handle multiple cases simultaneously.

8. How long was Mr. Aldrete-Davila housed in the United States as a government witness prior to the trial? How many other occasions did he also travel to the United States with the Government's assistance? For each visit, including but not limited to his visit for medical treatment at the William Beaumont Army Medical Center, please answer the following: Were there ever periods in which his movements were unsupervised? Was he allowed visitors within the United States during this period? Was he given cash or other payments, or were items or services purchased by the government on his behalf, or on behalf of any of his family members? Please provide all receipts and other indicia of payments made by the government to or on behalf of Mr. Aldrete-Davila or any member of his family. Please also describe any actual or potential immigration benefits promised or discussed with Mr. Aldrete-Davila in return for his testimony.

Answer: Mr. Aldrete-Davila was housed as a government witness for two and half days prior to trial, beginning in the later afternoon of February 18, 2006. During that time, he had no visitors and was under constant government supervision until excused by the U.S. District Judge on February 27, 2006, at which time we escorted him back to the Ysleta port of entry. He traveled to the United States on ten other occasions between March and November 2005 using either a public interest or humanitarian parole issued by the government to enable him to obtain medical treatment in connection with his gunshot wound. Under these paroles, Mr. Aldrete-Davila was able to cross the border without notifying us ahead of time, although each entry would be documented. We are aware that he crossed the border on one occasion without notifying us and therefore was unsupervised.

At no time did we offer or promise any type of immigration benefit to Mr. Aldrete-Davila in exchange for his testimony. On one occasion (October 12, 2005), Mr. Aldrete-Davila failed to show up for a doctor's appointment, claiming his car ran out of gas while waiting in line at the Port of Entry. He later arrived at our field office in El Paso and was provided with $10.00 from an agent's personal funds to purchase gasoline so he could return to Mexico.

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Should you have any further questions, please call me, or your staff may contact our congressional and media liaison, Tamara Faulkner, at (202) 254-4100.

Sincerely,

Richard L. Skinner

Richard L. Skinner
Inspector General

Enclosures

cc: DHS Office of Legislative and Intergovernmental Affairs

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U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 5, 2007

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

This responds to your letter to the Attorney General, dated February 8, 2007, regarding the prosecution of Jose Compean and Ignacio Ramos in the Western District of Texas. As you know, in a telephone call on February 15, 2007, the United States Attorney for the Western District of Texas, Johnny Sutton, provided to your staff much of the information requested in your letter from our publicly available records, including the trial transcript and exhibits. We also note that the trial transcript itself has been provided to your staff. Accordingly, the information below constitutes a summary of what we have previously provided in response to your letter.

At the outset, we want to note our appreciation for your interest in this matter and assure you that the Department values the hard work that U.S. Border Patrol agents undertake every day to enforce our immigration laws. We also trust that you share our view that no one is above the law and Border Patrol agents are not entitled to open fire on fleeing, unarmed suspects, regardless of the suspect's character or background.

On March 8, 2006, after a two-and-a-half-week jury trial during which both defendants testified, Messrs. Compean and Ramos were convicted on multiple assault, civil rights and obstruction of justice charges. Their original indictments were superseded three times as the investigation progressed, based upon additional evidence. That evidence, introduced at trial, established the willful and deliberately obstructive character of their conduct and the facts that (1) they shot at Mr. Aldrete-Davila with the intent to kill him; and (2) he did not assault them or otherwise pose a danger. The case was prosecuted by career Assistant United States Attorneys in the El Paso Division of the United States Attorney's Office for the Western District of Texas (USAO), who have a combined 35 years of experience as federal prosecutors.

It is a longstanding Department policy to prosecute the most serious, readily-provable offense or offenses that are supported by the evidence in the case. Other than the general provisions set forth in the United States Attorneys' Manual, there are no specific guidelines or approval requirements for charges against law enforcement officers relating to actions taken

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while on duty. Similarly, and consistent with our ethical and professional responsibilities, our prosecutorial decisions are not based on whether or not the putative defendants are "high profile." We take seriously our responsibility to enforce federal criminal laws, regardless of the employment or status of the offender.

The special verdict form submitted to the jury in connection with the two civil rights counts asked two questions in addition to a finding of guilty or not guilty. These questions tracked allegations in the counts of the indictment, which in turn were factors that determined the statutorily-prescribed punishment provided under 18 U.S.C. § 242. A straightforward civil rights violation carries punishment up to one year; a violation resulting in bodily injury or one which involved the use of a dangerous weapon carries punishment up to ten years; and a violation committed with intent to kill carries punishment up to life imprisonment. The evidence presented at trial supported each of those elements. To protect the defendants' Sixth Amendment right to a jury determination of relevant facts that could increase statutory punishment, the District Court caused the special questions to be submitted to the jury. The decision to allege the factors that led to higher punishment range was made within the USAO.

After convictions were secured, the court was required to impose sentences as established by law, taking into account the sentencing guideline range fixed for the various offenses. In this case, the ten-year sentence for using a firearm during the commission of a crime of violence, in violation of 18 U.S.C. § 924(c), was set by Congress, and under the statute, that sentence increases depending on the role of the firearm in the offense, with an increased penalty if the firearm is brandished and another if the firearm is discharged.

The United States Attorney's Office granted Mr. Aldrete-Davila immunity in exchange for his witness testimony, not an uncommon practice in criminal cases. However, as a practical matter, the grant of immunity had little impact on the ability of the USAO to prosecute Mr. Aldrete-Davila for the marijuana seized on February 17, 2005; it was clear from the facts adduced at trial that any investigation or prosecution relating to such allegations was effectively foreclosed by the actions of Messrs. Compean and Ramos that day. As established at trial, the USAO's immunity offer was communicated to Mr. Aldrete-Davila by a Special Agent of the Department of Homeland Security's (DHS) Office of the Inspector General (OIG), who met with him at the U.S. Consulate in Juarez, Mexico, which is a short drive across the river from the U.S. District Court for the Western District of Texas. We do not regard this meeting to be extraordinary under the circumstances of this case, although the U.S. Attorney is not immediately aware of any prior similar meetings in his district.

We are not in a position to comment about any other allegations of possible criminal activity by Mr. Aldrete-Davila because some materials are under seal. We have clearly stated that the immunity necessarily afforded to Mr. Aldrete-Davila in the investigation and trial of

Messrs. Ramos and Compean for the February 17 incident would not extend to any subsequent or future criminal activity that may be alleged. Furthermore, the United States Attorney's Office will pursue criminal charges where there is prosecutable criminal activity and competent evidence to prove it.

The cost of the travel by DHS-OIG agents to Mexico was negligible, as was the cost for the agents meeting Mr. Aldrete-Davila at a port-of-entry and driving to the crime scene in Fabens, Texas, or to medical treatment at Fort Bliss. Mr. Aldrete-Davila did not have appointed counsel. Witnesses in court received $40 a day as a witness fee, as well as per diem expenses if required. Additional expenditures were made as well, for example, some witnesses were also accommodated in nearby hotels during trial. Finally, as to attorney time, since AUSAs do not calculate or track the time spent on a particular case as private counsel does, the total cost for investigation and prosecution of this case cannot be accurately determined. Information regarding how many times DHS-OIG transported Mr. Aldrete-Davila to various locations—as well as specific information regarding his supervision—can be best addressed by DHS.

Mr. Ramos was processed into the federal prison system in much the same manner as the hundreds of other former law enforcement officers who are convicted of crimes and currently serving sentences in prison. As a general matter, the Federal Bureau of Prisons (BOP) determines the appropriate institution in which to house inmates based on information from many sources, including the courts, the probation service, the U.S. Marshals Service and the prisoner. There are some inmates who, based on their backgrounds and other characteristics, have difficulty functioning in the general population and the BOP can segregate such offenders from other inmates. When inmates arrive at the institution to which they have been designated, as a part of the intake screening process, staff discuss with inmates the living conditions in segregation and in general population. The decision to segregate is based on the totality of the circumstances and necessarily limits the prisoner's freedom of movement, recreation, visitation, and communication. As such, whenever it is possible to do so safely, inmates are housed in the general population.

Mr. Compean, through his counsel, asked to be separated from the general prison population, and he was. In response to BOP's inquiry, Mr. Ramos' counsel indicated in a letter that Mr. Ramos did not want to suffer any of the "punitive consequences" of separation and that he preferred to be housed in the general population. The Federal Bureau of Prisons' objective is to ensure that all of its more than 195,000 federal inmates, including many law enforcement officers, are housed safely and securely and provided appropriate programs and services, including appropriate medical care. We have enclosed the Judgment and Commitment Order for your information.

Lastly, any applications by Messrs. Compean and Ramos for pardons or other forms of clemency would be reviewed by the Department of Justice pursuant to established procedures and subject to the Rules Governing Petitions for Executive Clemency (28 CFR §§ 1.1 - 1.11).

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The Honorable Dianne Feinstein
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We hope that this information is helpful. Please do not hesitate to contact this office if you would like assistance in other matters.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Enclosure

53357.086

Defendant: JOSE ALONSO COMPEAN
Case Number: EP-05-CR-856-KC (2)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months on each of Counts Two (2), Three (3), Six (6), Seven (7), Eight (8), Ten (10) and Eleven (11) to be served concurrently and 120 months as to Count Five (5) to be served consecutively with Counts Two (2), Three (3), Six (6), Seven (7), Eight (8), Ten (10) and Eleven (11).

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated in a federal facility as close to El Paso, Texas as possible.

The defendant shall surrender for service of sentence on or before 2:00 PM on January 17, 2007 either at the institution designated by the Bureau of Prisons or to the Office of the United States Marshal.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: JOSE ALONSO COMPEAN
Case Number: EP-05-CR-856-KC (2)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years on each of Counts Two (2), Three (3), Five (5), Six (6), Seven (7), Eight (8), Ten (10) and Eleven (11) to be served concurrently.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court as set forth on pages 4 and 5 of this judgment.

AO 245 B (Rev. 06/05)(W.D.TX.) - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Western District of Texas
EL PASO DIVISION

UNITED STATES OF AMERICA

v.

Ignacio Ramos TN: IGNACIO RAMOS, JR.

Defendant.

Case Number EP-05-CR-856-KC (1)
USM Number 58079-180

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Ignacio Ramos TN: IGNACIO RAMOS, JR., was represented by Mary Stillinger and Stephen Gordon Peters.

The defendant was found guilty on Count(s) Two (2), Three (3), Four (4), Eight (8), Nine (9) and Twelve (12) of the Third Superceding Indictment by a jury verdict on March 8, 2006 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count (s)
18 USC 7, 113 & 2	Assault with a dangerous weapon, and aiding and abetting	February 17, 2005	Two (2)
18 USC 7, 113 & 2	Assault with serious bodily injury, and aiding and abetting	February 17, 2005	Three (3)
18 USC 924	Discharge of a firearm in relation to a crime of violence	February 17, 2005	Four (4)
18 USC 1512	Tampering with an official proceeding	February 17, 2005	Eight (8)
18 USC 1512	Tampering with an official proceeding	February 17, 2005	Nine (9)
18 USC 242	Deprivation of rights under color of law	February 17, 2005	Twelve (12)

As pronounced on October 19, 2006, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 23rd day of October, 2006.

Kathleen Cardone

KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

Defendant: Ignacio Ramos TN: IGNACIO RAMOS, JR.
Case Number: EP-05-CR-856-KC (1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 12 months and 1 day on each of Counts Two (2), Three (3), Eight (8), Nine (9) and Twelve (12) to be served concurrently and 120 months as to Count Four (4) to be served consecutively with Counts Two (2), Three (3), Eight (8), Nine (9) and Twelve (12).

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated in a federal facility as close to El Paso, Texas as possible.

The defendant shall surrender for service of sentence on or before 2:00 PM on January 17, 2007 either at the institution designated by the Bureau of Prisons or to the Office of the United States Marshal.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: Ignacio Ramos TN: IGNACIO RAMOS, JR.
Case Number: EP-05-CR-856-KC (1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years on each of Counts Two (2), Three (3), Four (4), Eight (8), Nine (9) and Twelve (12) to be served concurrently.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court as set forth on pages 3, 4 and 5 of this judgment; and shall comply with the following additional conditions:

X The defendant shall participate in an anger management program approved by the U.S. Probation Office.

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director *Washington, DC 20534*

April 18, 2007

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

This is in response to your February 8, 2007, letter regarding the designation, security, and safety of former Border Patrol Agent Ignacio Ramos.

It is an unfortunate fact that there are currently more than 900 former law enforcement officers in the Federal prison population. While these offenders sometimes pose particular difficulties in terms of ensuring their safety and security, the overwhelming majority assimilate into the general inmate population without incident. We are aware of the potential for law enforcement officers to be targeted by other inmates for violence and other disruptive behavior, and we take steps to minimize such risks and ensure their safety and security. At the outset of our processing former law enforcement officers, we select institutions that are some distance from the area where they worked to reduce the chances that they will be housed with inmates with whom they had contact during their law enforcement career.

As a general matter, BOP's Designation and Sentence Computation Center determines the appropriate institution in which to house inmates based on information from many sources, including the courts, the probation service, the U.S. Marshals Service and the prisoner. There are some inmates who, based on their backgrounds and other characteristics, have difficulty functioning in the general population and the BOP can segregate such offenders from other inmates. When inmates arrive at the institution to which they have been designated, as a part of the intake screening process, we discuss with inmates the living conditions in segregation and in general population. The decision to segregate an offender is based on the totality of the circumstances and necessarily limits the prisoner's freedom of movement, recreation, visitation, and communication opportunities. As such, whenever it is possible to do so safely, inmates are housed in the general population.

During intake screening, inmates are asked a number of questions to help determine whether segregation is appropriate, including whether the inmate knows of any reason why he or she should not be placed within the general inmate population. Inmates who express such a concern at intake and indicate that they do not want to be placed in the general population are

53357.072

placed in the Special Housing Unit and BOP investigates the concern.[1] If the concern is well-founded, the inmate will be redesignated to another institution. Similarly, if during an inmate's incarceration we identify any reason that precludes the inmate from being housed in the general population (such as knowledge of another prisoner who might pose a threat to the inmate), the inmate is placed in the Special Housing Unit and that inmate may be redesignated.

Ignacio Ramos was processed into the federal prison system in much the same manner as the hundreds of other former law enforcement officers who are convicted of crimes and currently serving sentences in prison. Mr. Ramos was designated to the low-security Federal Correctional Institution (FCI) at the Federal Correctional Complex (FCC) in Yazoo City, Mississippi, on November 27, 2006.[2] When determining to which institution an inmate shall be designated, BOP considers a combination of factors, such as the severity of the instant offense and the length of the sentence imposed, along with background circumstances, such as prior commitments and any history of violence or escapes. The classification process also involves an assessment of factors that may indicate the need to place an inmate in a higher or lower security level institution than is indicated by the objective score. BOP uses professional judgment within specific guidelines to incorporate management considerations and public safety factors into the decision about institutional placement.

Mr. Ramos' instant offense, assault with a dangerous weapon, is categorized by the BOP as a "greatest severity" offense. Inmates like Mr. Ramos who score as minimum security under the objective assessment and who committed a greatest severity offense are given a "public safety factor" which raises their security level to "low." An inmate's individual classification as low security dictates that he or she be confined in a low-security institution, such as FCI Yazoo City. We have enclosed Mr. Ramos' Judgment and Commitment Order for your information.

---

[1] Inmates who are segregated from the general population in a Special Housing Unit are housed one or two to a cell where they remain for 23 hours a day (1 hour is provided for recreation). Limitations exist with respect to the amount of property that can be retained in the cell and there is limited access to programs. Phone and visiting privileges are also somewhat constrained.

[2] There are two secure institutions and a minimum-security prison camp at the correctional complex in Yazoo City. The secure institutions are a medium-security Federal Correctional Institution (FCI) and a low-security FCI. The minimum-security facility is referred to as the satellite prison camp.

53357.073

The Honorable Dianne Feinstein
Page Three

Prior to Mr. Ramos' arrival at FCI Yazoo City, BOP inquired whether there was an interest on the part of the United States Attorney's Office in segregating the inmate. The United States Attorney's Office contacted counsel for Mr. Ramos who responded that Mr. Ramos did not want to suffer any of the "punitive consequences" of separation and that he preferred to be housed in the general population. Mr. Ramos confirmed his position during intake screening at the Federal Correctional Complex in Yazoo City. At that time, we discussed with Mr. Ramos issues related to his safety and the conditions in the general population and the Special Housing Unit.

Mr. Ramos was housed in the general inmate population for 5 days, from his arrival on January 29, 2007, until the date of the incident. During this time, his case received nationwide attention in both print and televised media. However, in response to BOP's regular inquiries as to his adjustment and well being, Mr. Ramos responded that things were going well. At no time did Mr. Ramos indicate that he felt fearful or threatened.

On February 3, 2007, after America's Most Wanted aired a segment about Mr. Ramos' prosecution, several inmates entered Mr. Ramos' cubicle and assaulted him. Mr. Ramos was evaluated immediately and it was determined that he had sustained some minor bruises and abrasions, but no serious injuries. Mr. Ramos was placed in the Special Housing Unit at the medium-security institution pending an investigation of the incident.

Our investigation of the incident led to the identification of six inmates as the alleged assailants. All six inmates were placed in the Special Housing Unit. None of these inmates have any contact with Mr. Ramos. We will pursue internal disciplinary proceedings. If the inmates are found to have committed the assault, they may be subject to a number of disciplinary actions, including loss of good conduct time credits (see Title 18 United States Code Section 3624(b)), housing in disciplinary segregation status, loss of privileges, and transfer to a higher-security institution. There is no indication that any of Mr. Ramos' alleged assailants ever had contact with him prior to incarceration.

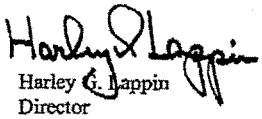
53357.074

The Honorable Dianne Feinstein
Page Four

BOP's objective is to ensure that all of its nearly 197,000 federal inmates, including many law enforcement officers, are housed safely and securely and provided appropriate programs and services, including appropriate medical care.

We trust this is responsive to your request. Please contact this office if we can be of any further assistance on this or any other matter.

Sincerely,



Harley G. Lappin
Director

Enclosures

53357.075

AO 245 B (Rev. 06/05)(W.D.TX.) - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Western District of Texas
EL PASO DIVISION

UNITED STATES OF AMERICA

v.

Case Number EP-05-CR-856-KC (1)
USM Number 58079-180

Ignacio Ramos TN: IGNACIO RAMOS, JR.

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Ignacio Ramos TN: IGNACIO RAMOS, JR., was represented by Mary Stillinger and Stephen Gordon Peters.

The defendant was found guilty on Count(s) Two (2), Three (3), Four (4), Eight (8), Nine (9) and Twelve (12) of the Third Superceding Indictment by a jury verdict on March 8, 2006 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count (s)
18 USC 7, 113 & 2	Assault with a dangerous weapon, and aiding and abetting	February 17, 2005	Two (2)
18 USC 7, 113 & 2	Assault with serious bodily injury, and aiding and abetting	February 17, 2005	Three (3)
18 USC 924	Discharge of a firearm in relation to a crime of violence	February 17, 2005	Four (4)
18 USC 1512	Tampering with an official proceeding	February 17, 2005	Eight (8)
18 USC 1512	Tampering with an official proceeding	February 17, 2005	Nine (9)
18 USC 242	Deprivation of rights under color of law	February 17, 2005	Twelve (12)

As pronounced on October 19, 2006, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 23rd day of October, 2006.

Kathleen Cardone

KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

Defendant: Ignacio Ramos TN: IGNACIO RAMOS, JR.
Case Number: EP-05-CR-856-KC (1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 12 months and 1 day on each of Counts Two (2), Three (3), Eight (8), Nine (9) and Twelve (12) to be served concurrently and 120 months as to Count Four (4) to be served consecutively with Counts Two (2), Three (3), Eight (8), Nine (9) and Twelve (12).

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated in a federal facility as close to El Paso, Texas as possible.

The defendant shall surrender for service of sentence on or before 2:00 PM on January 17, 2007 either at the institution designated by the Bureau of Prisons or to the Office of the United States Marshal.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: Ignacio Ramos TN: IGNACIO RAMOS, JR.
Case Number: EP-05-CR-856-KC (1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years on each of Counts Two (2), Three (3), Four (4), Eight (8), Nine (9) and Twelve (12) to be served concurrently.

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court as set forth on pages 3, 4 and 5 of this judgment; and shall comply with the following additional conditions:

X The defendant shall participate in an anger management program approved by the U.S. Probation Office.

Defendant: Ignacio Ramos TN: IGNACIO RAMOS, JR.
Case Number: EP-05-CR-856-KC (1)

CONDITIONS OF SUPERVISION

Mandatory Conditions:

1) The defendant shall not commit another federal, state, or local crime.

2) The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

3) In supervised release cases only, the defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

4) If convicted of a felony, the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

5) The defendant shall cooperate in the collection of DNA as directed by the probation officer if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 1413a).

6) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), the defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.

7) If convicted of a domestic violence crime as defined in 18 U.S. C. § 3561(b), the defendant shall participate in an approved program for domestic violence.

8) If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

Standard Conditions:

1) The defendant shall not leave the judicial district without permission of the court or probation officer.

2) The defendant shall report to the Probation Officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquires by the Probation Officer and follow the instructions of the Probation Officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the Probation Officer for schooling, training or other acceptable reasons.

6) The defendant shall notify the Probation Officer at least ten days prior to any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the Probation Officer.

10) The defendant shall permit a Probation Officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the Probation Officer.

11) The defendant shall notify the Probation Officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: Ignacio Ramos TN; IGNACIO RAMOS, JR.
Case Number: EP-05-CR-856-KC (1)

14) If convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4), or has a prior conviction of a State or local offense that would have been an offense as described in 18 U.S.C. § 4042 (c)(4) if a circumstance giving rise to Federal jurisdiction had existed, the defendant shall participate in a sex offender treatment program approved by the probation officer. The defendant shall abide by all program rules, requirements and conditions of the sex offender treatment program, including submission to polygraph testing, to determine if the defendant is in compliance with the conditions of release. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based on the defendant's ability to pay.

15) The defendant shall submit to an evaluation for substance abuse or dependency treatment as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a program approved by the probation officer for treatment of narcotic addiction or drug or alcohol dependency which may include testing and examination to determine if the defendant has reverted to the use of drugs or alcohol. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

16) The defendant shall submit to an evaluation for mental health counseling as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a mental health program approved by the probation officer. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.

17) If the defendant is excluded, deported, or removed upon release from imprisonment, the term of supervised release shall be a non-reporting term of supervised release. The defendant shall not illegally re-enter the United States. If the defendant lawfully re-enters the United States during the term of supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

18) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.

19) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.

20) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the payment schedule.

Defendant: Ignacio Ramos TN: IGNACIO RAMOS, JR.
Case Number: EP-05-CR-856-KC (1)

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 511 E. San Antonio Street, Room 219 El Paso, Texas 79901.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	Assessment	Fine	Restitution
TOTAL:	$600.00	$2,000.00	$0

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of $600.00. Payment of this sum shall begin immediately.

Fine

The defendant shall pay a fine of $2,000.00. Payment of this sum shall begin immediately. The defendant shall notify the U.S. Attorney for this district within 30 days of any change of mailing or residence address that occurs while any portion of the sum remains unpaid. Any fine balance that remains unpaid at the commencement of a term of supervised release shall be paid on a schedule to be approved by the Court. The fine is below guideline range because of the defendant's inability to pay a fine within the guideline range.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND
ADMINISTRATION - CHAIRMAN
SELECT COMMITTEE ON INTELLIGENCE

United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

February 8, 2007

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable W. Ralph Basham
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC

Gentlemen:

As you know, Agents Jose Alonso Compean and Ignacio Ramos were convicted on March 8, 2006, and sentenced on October 19, 2006, to 12 and 11 year and 1 month, in prison, respectively, for shooting at Osvaldo Aldrete-Davila. Mr. Aldrete-Davila was a drug smuggler who had driven a van containing 743 pounds of marijuana across the Mexican border into Texas. He was shot while fleeing from these Agents in an attempt to cross the border into Mexico and avoid apprehension.

I strongly believe that the sentences in this case are too extreme given the criminal background of Mr. Aldrete-Davila and his possession of large quantities of drugs, and given the fact that Mr. Aldrete-Davila had physically resisted at least one attempt by Agents Ramos and Compean to bring him into custody.

In addition, to my knowledge, neither of the Agents had prior convictions or any other aggravating circumstances to warrant particularly harsh treatment under the law. Yet, these men were given sentences that some individuals who are convicted of murder wouldn't receive.

53357.083

Even more disturbing, I have recently learned that Agent Ramos was beaten by other inmates in prison this past Saturday while serving his term of imprisonment. I am writing separate letters to U.S. Attorney General Gonzales and Federal Bureau of Prisons Director Harley G. Lappin, in an attempt to find out how this could have happened.

I now write to you to get additional information about this case, and learn more about your agencies' involvement in pursuing these prosecutions. I am aware that the Department of Homeland Security (DHS) released, just yesterday, a highly-redacted version of its Inspector General's 77-page report that was completed on October 19, 2006. This report, however, often raises more questions than it answers.

I have asked the Chairman of the Senate Judiciary Committee to continue the Committee's investigation into this matter, and I understand that Chairman Leahy is also open to having a hearing on this issue. Accordingly, I ask that you provide me with the following information, including requested documents, as expeditiously as possible:

1. An unredacted version of the DHS Inspector General's report.

2. I note that the Inspector General's report states that Mr. Aldrete-Davila initially lied when he was first asked by investigating agents in Mexico about his interactions with Agents Ramos and Compean – refusing to admit any involvement in drug trafficking. Is this true? If so, do you believe it was appropriate to offer immunity against prosecution to Mr. Adrete-Davila for this crime that he initially lied to American agents about committing?

3. The Inspector General's report also states that, even after being given immunity and other benefits, Mr. Aldrete-Davila refused to provide any information about the Drug Trafficking Organization (DTO) that had hired him to transport the drugs. To your knowledge, did Mr. Aldrete-Davila ever provide any information about this DTO or any of his drug suppliers? If not, do you believe it is appropriate, and good policy, for our government to reward an informant who provides information only about his interactions with federal agents who tried to arrest him, but refuses to provide any information about drug traffickers who hired him?

53357.084

4. The Inspector General's report also notes that, after Mr. Aldrete-Davila was shot, he participated in discussions in Mexico about putting together a "hunting party" to seek revenge by shooting American border agents. The Border Patrol apparently considered this threat significant enough to send an alert to law enforcement agencies on the border, warning them to be on the lookout for Mexican gangs seeking to kill federal agents. The Inspector General's report seeks to minimize Aldrete-Davila's involvement in this, saying he refused to participate in retaliatory action. Even if true, he clearly knew who discussed the idea of a "hunting party" against American agents. Did Mr. Aldrete-Davila provide the names of these people as a part of his cooperation as a government witness, or was this also something that he refused to discuss?

5. The Inspector General's report also concludes that at least three other Customs and Border Protection (CBP) Agents participated in the cover-up of Mr. Aldrete-Davila's shooting, but redacts their names. The report notes how each of these other agents was given immunity to testify against Agents Ramos and Compean, and notes that but for this immunity, they could have been charged with multiple felony offenses, including making false statements to federal officials and tampering with an investigation. Are these agents still working at CBP? If so, please explain why society benefited most by absolving these agents entirely and keeping them on the force so that they could testify in a criminal prosecution against Agents Ramos and Compean? In other words, why was their prosecution preferable to handling this entire matter administratively – in which case all of those involved in the cover-up might have been fired, and CBP purged of all agents who committed federal felonies?

6. Did your agencies participate in any of the prosecutorial charging or sentencing decisions made by the Department of Justice? If so, please explain the nature of your participation, any supportive or dissenting information provided, and your rationale for any recommendations made?

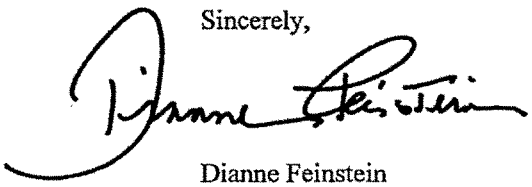
53357.085

7. What was the total cost to your agencies – both in terms of hours expended by government employees and in financial outlays – in its efforts that sent officers or others to interview Mr. Aldrete-Davila in Mexico, convince him to testify, provide him with medical services, give him appointed counsel, complete immunity packages, conduct interviews, pay for all related travel expenses, obtain the necessary documents for his border crossings, prepare for trial, and house and feed him as a interviewee or witness?

8. How long was Mr. Aldrete-Davila housed in the United States as a government witness prior to the trial? How many other occasions did he also travel to the United States with the Government's assistance? For each visit, including but not limited to his visit for medical treatment at the William Beaumont Army Medical Center, please answer the following: Were there ever periods in which his movements were unsupervised? Was he allowed visitors within the United States during this period? Was he given cash or other payments, or were items or services purchased by the government on his behalf, or on behalf of any of his family members? Please provide all receipts and other indicia of payments made by the government to or on behalf of Mr. Aldrete-Davila or any member of his family. Please also describe any actual or potential immigration benefits promised or discussed with Mr. Aldrete-Davila in return for his testimony.

I appreciate your prompt attention to this request, and I look forward to receiving this information from you soon.

Sincerely,



Dianne Feinstein

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DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND
ADMINISTRATION - CHAIRMAN
SELECT COMMITTEE ON INTELLIGENCE

United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

February 8, 2007

The Honorable Alberto Gonzales
Attorney General of the United States
United States Justice Department
Washington, DC 20510

Dear Attorney General Gonzales:

As you know, Agents Jose Alonso Compean and Ignacio Ramos were convicted on March 8, 2006, and sentenced on October 19, 2006, to 12 and 11 years and 1 month in prison, respectively, for shooting at Osvaldo Aldrete-Davila. Mr. Aldrete-Davila was a drug smuggler who had driven a van containing 743 pounds of marijuana across the Mexican border into Texas. He was shot while fleeing from these Agents in an attempt to cross the border into Mexico and avoid apprehension.

I strongly believe that the sentences in this case are too extreme given the criminal background of Mr. Aldrete-Davila and his possession of large quantities of drugs, and given the fact that Mr. Aldrete-Davila had physically resisted at least one attempt by Agents Ramos and Compean to bring him into custody.

In addition, to my knowledge, neither of the Agents had prior convictions or any other aggravating circumstances to warrant particularly harsh treatment under the law. Yet, these men were given sentences that some individuals who are convicted of murder wouldn't receive.

Even more disturbing, I have recently learned that Agent Ramos was beaten by other inmates in prison this past Saturday while serving his term of imprisonment. Along with examining the sentencing of the Agents, I ask you to examine the facts and advise me why these Agents were not being adequately protected while in the federal prison system. It is not hard to predict that two Federal Agents would be targeted in a prison population and that special precautions should have been employed to ensure their safety.

In particular, I ask that you respond specifically to the following questions:

1. The sentences of Agents Ramos and Compean stemmed in part from enhanced sentences that were required as a result of the criminal charges chosen by the prosecution. Why were these charges selected? In particular, why did the prosecution originally indict these defendants with only three criminal charges, but then expand (supersede) the indictment on three separate occasions, adding new charges each time? Were alternative charges that did not carry such severe sentences considered? If not, why not? If they were, why were these not pursued?

2. Who within the Department of Justice (DOJ), if anyone, approved each set of charges filed by the U.S. Attorney's Office for the Western District of Texas against Agents Ramos and Compean?

3. The Sentencing Guideline range governing the case against Agents Ramos and Compean was enhanced because a "special verdict" was sent to the jury, asking for a specific jury finding that certain aggravating factors existed. Did anyone within the Department of Justice approve the local U.S. Attorney's Office's decision to file this special verdict, or this decision to seek an enhanced sentence? If so, who? If not, why not?

4. Does DOJ have any review or approval requirements before criminal charges – or at least charges that carry mandatory minimum or other enhanced sentences – can be filed against agents who are being prosecuted based on actions taken while on duty? If not, why not – especially for a high-profile case like this one? If so, who was involved in that review or approval process?

5. Does DOJ have any review or approval requirements before a U.S. Attorney's Office can offer immunity to criminals who are being asked to testify against agents who tried to arrest them? If not, why not? If so, who was involved in that review or approval process?

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6. Does DOJ have any review or approval requirements designed to compare the significance of the crime for which testimony is sought against the significance of the crime being immunized? If not, why not – and how does DOJ know that this immunity is worth offering? If so, who was involved in that review or approval process?

7. Are you aware of any other historical instances in which DOJ has traveled to another country to offer full immunity to a witness known to have committed a serious drug trafficking offense as an illegal alien in the United States, in return for that person's testimony on the use of excessive force by arresting agents from whom that witness had fled? If so, please provide those examples.

8. Please list all crimes Mr. Aldrete-Davila is known to have participated in, or that have been admitted by Mr. Aldrete-Davila, and identify each such crime on which DOJ granted him immunity.

9. The Department of Homeland Security issued a redacted version of its Inspector General's report on this case on Wednesday, February 7, 2007. The report says that, when Mr. Aldrete-Davila was first asked about this incident by federal agents, he lied about his participation in the drug trafficking. He later refused to provide any information about the Drug Trafficking Organization that had hired him. He also admitted speaking to others within Mexico about the possibility of a "hunting party" that would seek revenge for his shooting by attempting to kill American border patrol agents; while Mr. Aldrete-Davila refused to participate, there is no indication that he provided any information to American authorities about the Mexicans who discussed this idea. Do you believe it is appropriate, and good policy, for our government to reward an informant who provides information only about his interactions with federal agents who tried to arrest him, but refuses to provide any information about people who hired him to traffic drugs, or who are openly discussing the murder of American law enforcement officers?

10. Recent news reports suggest that Mr. Aldrete-Davila may have been involved in drug trafficking after his testimony in this case. Is that true? If so, how does this affect DOJ's view of the Ramos and Compean prosecution?

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11. What was the cost to the federal government – both in terms of hours expended by government employees and in financial outlays – including the costs of sending officers or others to interview Mr. Aldrete-Davila in Mexico, convince him to testify, provide him with appointed counsel, complete an immunity package, take him to the crime site, provide him with medical care, conduct interviews, secure his travel, obtain the necessary documents for him to cross the border, prepare for trial, and house and feed him as a witness?

12. How long was Mr. Aldrete-Davila housed in the United States as a government witness prior to the trial? How many other times did he also travel to the United States on other occasions? For each visit, including but not limited to his inpatient care at the William Beaumont Army Medical Center, please answer the following: Were there ever periods in which his movements were unsupervised? Was he allowed visitors within the United States during this period? Was he given cash or other payments, or were items or services purchased by the government on his behalf, or on behalf of his family members? Please provide all receipts and other indicia of payments made to or on behalf of Mr. Aldrete-Davila or his family.

13. Please describe all of the circumstances behind the recent assault against Agent Ramos while in federal custody, including any efforts undertaken to ensure Agent Ramos' safety. In particular, please describe and provide all documents relating to the basis for his security classification, the rationale for his designation, the adequacy of staffing levels at that institution, any warnings and opportunities given to Agent Ramos to accept protective custody, whether after his initial refusal he was given an opportunity to reconsider protective custody once incarcerated and aware of added risks, any security measures taken in recognition of his status as a former federal agent even in the absence of his placement in protective custody, and any investigations performed of the incident itself.

Border Patrol Agents have a difficult and often dangerous job in guarding our nation's borders. I believe that aggressive prosecution of Border Patrol Agents has a chilling effect on their ability to carry out their duties and on the morale of all agents. I also believe that if wrong doing does occur, ensuring fair and safe treatment is essential. I am extremely concerned about how this case continues to unfold.

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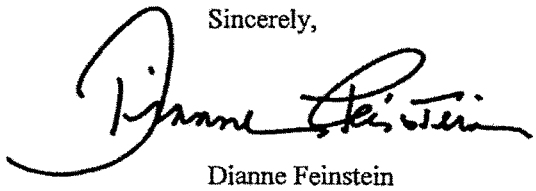
Particularly in light of the incident against Agent Ramos, and the reality that no security precautions within our prison system can be perfect, I encourage DOJ's Office of the Pardon Attorney to move forward in promptly completing its review of this case, so that the President will be in a position, if necessary, to timely evaluate pardon or clemency petitions that are filed.

I have asked the Chairman of the Senate Judiciary Committee to continue the Committee's investigation into this matter, and I understand that Chairman Leahy is also open to having a hearing on this issue. I therefore ask that you provide me with this requested information as expeditiously as possible.

Sincerely,



Dianne Feinstein

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DIANNE FEINSTEIN
CALIFORNIA

COMMITTEE ON APPROPRIATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND
ADMINISTRATION - CHAIRMAN
SELECT COMMITTEE ON INTELLIGENCE

United States Senate
WASHINGTON, DC 20510-0504
http://feinstein.senate.gov

February 8, 2007

Harley G. Lappin
Director
Federal Bureau of Prisons
United States Department of Justice
Washington, DC 20510

Dear Mr. Lappin:

As you know, Agents Jose Alonso Compean and Ignacio Ramos were convicted in U.S. District Court for the Western District of Texas on March 8, 2006. They were then sentenced on October 19, 2006, to 12 and 11 years and 1 month in prison, respectively, for shooting at Osvaldo Aldrete-Davila. Mr. Aldrete-Davila was a drug smuggler who had driven a van containing 743 pounds of marijuana across the Mexican border into Texas. He was shot while fleeing from these Agents in an attempt to cross the border into Mexico and avoid apprehension. Agents Ramos and Compean were denied bail pending appeal, and as directed, they both then self-reported to begin serving their sentences. Agent Ramos was placed into your care at the Yazoo City Federal Correctional Complex (FCC) in Mississippi.

I have learned that, last Saturday, Agent Ramos was beaten as he prepared to go to bed. According to press accounts, four other inmates of Mexican origin attacked him, kicked him in the head, the side and the shoulders with steel-toed boots. Agent Ramos was taken to the infirmary, and treated for his injuries. News reports state that Yazoo City's prison guards did not stop the assault – and Agent Ramos' family was not even notified of the beatings – learning of it only after they called to wish him Happy Birthday on Monday. Agent Ramos has been placed in a Special Housing Unit, segregated from other inmates, until an administrative review is completed.

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According to a statement issued by Traci Billingsley of your office, "The assault occurred immediately following the airing of a television show that described Mr. Ramos' case." She further stated that "It is regrettable that Mr. Ramos was assaulted and the Bureau of Prisons will take appropriate actions to determine an appropriate housing status to ensure his ongoing safety."

The prison assault against Agent Ramos is not simply "regrettable" – it is intolerable. BOP is well aware of the inherent risks that federal agents always face when they are themselves sent to prison, and must interact with inmates who may have committed crimes they used to prosecute. And if Yazoo City prison officials allowed its inmate population to see a TV news story that highlighted Mr. Ramos' case, I do not understand why they were not extra vigilant to ensure Agent Ramos' safety.

I find these circumstances disturbing, and therefore ask that you provide me with the following information:

1. Please describe all of the circumstances behind the recent assault against Agent Ramos while in federal custody, including any efforts undertaken to ensure Agent Ramos' safety.

2. Please describe and provide all documents relating to the basis for his security classification, his placement at Yazoo City FCC, whether he is in Yazoo's Low or Medium security facility, and BOP's rationale and risk-based findings that led to his designation there.

3. Please describe any warnings and opportunities given to Agent Ramos to accept protective custody, explain whether after his initial refusal he was given any opportunity to reconsider protective custody once incarcerated and aware of added risks, and any security measures taken in recognition of his status as a former federal agent even in the absence of his placement in protective custody.

4. Please provide copies of any documents relating to the investigation of this incident, including all witness statements, summaries of witness interviews, and any conclusions or reports.

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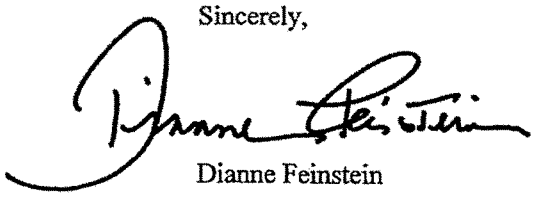
I have asked the Chairman of the Senate Judiciary Committee to investigate this matter, and I therefore ask that you provide me with this requested information as expeditiously as possible.

Sincerely,



Dianne Feinstein

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Testimony of the Honorable Duncan Hunter
U.S. House of Representatives

Senate Committee on the Judiciary
Subcommittee on Terrorism, Technology and Homeland Security
July 17, 2007

Chairwoman Feinstein and Ranking Member Kyl, thank you for convening this important hearing today on the conviction and imprisonment of Border Patrol agents Jose Compean and Ignacio Ramos. I deeply appreciate the opportunity to appear before you to provide my perspective on this matter, which I believe, represents a severe miscarriage of justice.

The conviction of agents Ramos and Compean represents a compelling case for a presidential pardon for one reason: prison sentences of 11 and 12 years, respectively, for wounding a fleeing drug smuggler on the U.S. – Mexico border, are not justified by any version or interpretation of the facts. Even if you accept the drug dealer's version of what occurred as he attempted to run more than 740 pounds of illegal narcotics across the Southern land border, there is absolutely no justification for such unfair and excessive prison sentences.

The drug dealer contends that he was escaping to Mexico and presented no threat to agents Compean and Ramos, and, therefore, their actions constitute an unjustified assault. Conversely, the agents claimed they had a reasonable apprehension and the drug smuggler was armed, thereby justifying their response, which involved the discharge of their firearms.

The U.S. government sadly decided to side with the drug dealer and prosecute agents Compean and Ramos for simply fulfilling their duties as Border Patrolmen. The drug smuggler walked away from the incident with only a wound in his rear-end, only to attempt another drug run soon after.

In representing a border community for more than 26 years, I have worked with the fine men and women of the U.S. Border Patrol to ensure they receive the support and resources they need to address the constant intrusion of drug and human smugglers across our borders. It troubles me to think that questionable testimony by a drug smuggler, who was granted immunity and free medical care for his cooperation, was put before the two Border Patrol agents who willing accepted this inherently dangerous responsibility.

The men and women of the Border Patrol are certainly not above the laws they are empowered to enforce. But they must also know that when they must apply the necessary and appropriate level of force, their government will not work aggressively to ensure they are punished while lawlessness is rewarded.

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I strongly believe pardoning agents Compean and Ramos is the only option available to correct this terrible injustice and, just as importantly, restoring the confidence of the Border Patrol and the American people – that their nation is serious about enforcing its immigration and smuggling laws.

Thank you again for this opportunity and for holding this important hearing to review the case of Agents Ramos and Compean. I look forward to working with you to rectify this situation and implement policies to ensure that this situation is never repeated.

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DUNCAN HUNTER
52D DISTRICT, CALIFORNIA

CHAIRMAN
COMMITTEE ON ARMED SERVICES

2265 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0552
(202) 225-5672
FAX: (202) 225-0235

1870 CORDELL COURT, #206
EL CAJON, CA 92020
(619) 448-5201
FAX: (619) 449-2251

U.S. House of Representatives
Washington, DC 20515–0552

January 17, 2007

Mr. Harley Lappin
Director
Federal Bureau of Prisons
U.S. Department of Justice
320 First St, NW Room 642
Washington, DC 20534

Dear Mr. Lappin:

As you are aware, earlier today, Border Patrol agents Ignacio Ramos and Jose Compean surrendered themselves to facilities under your jurisdiction. I am writing to urgently request that you immediately segregate these two agents to ensure their safety.

As law enforcement personnel, the well-being of these agents must be given priority and the necessary steps taken to ensure that they are not harmed while in your custody. These agents and their families have already received threats against their safety. Therefore, it must be assumed that once they are required to mingle in general population with the very drug smugglers and felons they helped apprehend that their security will be compromised.

As a result, I am requesting that you take steps to separate these men from general population and provide them with the necessary safety precautions. I appreciate your time and attention to this important matter and will look forward to hearing from you as to the accommodations that were made.

Sincerely,

Duncan Hunter
Member of Congress

DH/lmb

U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

January 24, 2007

The Honorable Duncan Hunter
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Hunter:

Your letter to Director Harley G. Lappin, Federal Bureau of Prisons (Bureau), has been forwarded to me for response. You request Jose Compean and Ignacio Ramos be immediately segregated from the general population in order to ensure their safety and that they be provided all necessary safety precautions during their incarceration.

The Bureau understands its obligation to provide inmates with a safe and secure environment during their incarceration and monitors certain cases with a higher level of review through the Central Inmate Monitoring System (CIMS). We have carefully reviewed the sensitive nature of Mr. Compean's and Mr. Ramos' cases and have classified them as CIMS cases. This classification provides protection to all individuals concerned, ensure they are monitored closely by staff, and are carefully evaluated during the designation process, as well as throughout their incarceration.

Furthermore, when an inmate is received from another institution or upon initial designation, the Bureau utilizes specific intake screening procedures to ensure each individual's health, safety, and security needs are met. Upon an inmate's arrival to a facility, trained staff members access CIMS information and conduct a comprehensive private social interview. During this process, staff inquire if there are any safety concerns and inmates are encouraged to verbalize any other concerns. Staff place particular emphasis on the CIMS status of each case and make appropriate housing arrangements based on individual security needs.

I trust this response has addressed your concerns.

Sincerely,

John M. Vanyur
Assistant Director

53357.098

DUNCAN HUNTER
52D DISTRICT, CALIFORNIA
RANKING MEMBER
COMMITTEE ON ARMED SERVICES

2265 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0552
(202) 225-5672
FAX: (202) 225-0235

1870 CORDELL COURT, #206
EL CAJON, CA 92020
(619) 448-5201
FAX: (619) 448-2251

U.S. House of Representatives
Washington, DC 20515-0552

February 6, 2007

President George W. Bush
The White House
Washington, DC 20500

Dear President Bush:

As you are aware, Border Patrol agents Jose Compean and Ignacio Ramos surrendered themselves to federal custody on January 17, 2007, to begin serving 11 and 12 year sentences respectively, for wounding a drug smuggler on the U.S.-Mexico border.

The day agents Compean and Ramos were taken into federal custody, I contacted the Bureau of Prisons and sent the attached letter, requesting the agents be segregated from the general prison population to ensure their safety. Given that a large portion of criminals incarcerated in federal prisons are apprehended by Border Patrol agents, incarcerating them with the very persons they apprehend involves substantial risk and compromises their personal safety.

I was assured by Bureau of Prisons staff that, subsequent to my letter, agents Compean and Ramos had been segregated from the general prison population and close attention was being paid to their personal safety. Yesterday, I was informed that agent Ramos was assaulted by inmates within the general population.

Placing these two Border Patrol agents in general population, especially when assuring Congress it would not happen, constitutes an enormous dereliction of duty by the Administrator of the Prisons Bureau. It is my recommendation that the assault against agent Ramos be investigated and should it be ascertained that the Bureau did place agent Ramos in general population, thereby exposing him to danger, Prisons Bureau Director Harley Lappin should be discharged from his position.

The families of agents Compean and Ramos deserve an immediate response. Further, please ensure that segregation from general population occurs immediately.

Sincerely,

Duncan Hunter
Member of Congress

Enclosure

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STATEMENT
OF
REPRESENTATIVE DANA ROHRABACHER (CA-46)
MEMBER OF THE U.S. CONGRESS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
CONCERNING
"A HEARING TO EXAMINE THE PROSECUTION OF IGNACIO RAMOS AND JOSE COMPEAN"

7-17-07

First and foremost, I'd like to express my respect and appreciation for Sen. Feinstein's leadership in holding this hearing.

As we meet today, two veteran border patrol agents languish in their 180th day of solitary confinement. These men for five and ten years, respectively, put their lives at risk doing what is arguably one of America's toughest law enforcement jobs. Both are military veterans, both have unblemished work

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records. Officer Ramos, in fact, was nominated to be Border Patrol Agent of the year.

Then on Feb, 17, 2005 Officers Ramos and Compean interdicted a drug smuggler who had just penetrated our border with 743 pounds of narcotics. A high speed chase ensued followed by a physical altercation. Agent Compean ended up on the ground. The drug dealer ran toward the border, turning as he did and, according to the officers, appeared to have a shiny object in his hand. There is no reason to believe that object was not a gun.

Shots were fired and in the aftermath, the prescribed Border Patrol procedure was not followed. Ramos and Compean and their supervisors, not believing the drug dealer to be hit, decide to forego the hours of laborious paperwork that is required after shooting incidents. That procedural violation, which deserved

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a reprimand, was turned into a felony by the US Attorney's office.

Prosecutors in this country are given great discretion. Who will be granted immunity and who will be prosecuted is their call. In this case the U.S. Attorney's office decided to give immunity to a professional drug smuggler, accept his word that, even though he was in possession of a million dollars in drugs, that he was unarmed and then throw the book at the border patrol agents, turning into a felony what should have been addressed, at most, by a 5-day suspension for the violation of internal procedures.

It is totally disingenuous for anyone involved with prosecuting Ramos and Compean to suggest that they had no choice. The choice was prosecuting the drug smuggler for his heinous crimes or prosecuting the

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border patrol agents, which required turning reality on its head, turning our protectors into the bad guys, exaggerating the importance of not spending hours muddling through a shooting report when they thought no one had been hit.

The prosecutors end up vilifying the border patrol agents. Mr. Sutton, for example, has repeatedly referred to them as "corrupt" in broadcast interviews. He stood by as Congress was lied to with the claim that these two fine Americans of Mexican decent, supposedly claimed they wanted to go out and "shoot a Mexican" that day. This later was proven to be a bold faced lie. Who is being prosecuted for lying to Congress? This lie was in print on numerous occasions, why did Mr. Sutton let such a vicious lie stand? Why didn't he correct the record?

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Then the most often repeated lie, Mr. Sutton has continuously described the incident as Ramos and Compean shooting an unarmed man in the back and lying about it. Was he an unarmed man? Whose word do you take? He was not just a man. He was a member of a drug cartel. He was not shot in the back, he was shot in the buttock and the entry wound of the bullet was consistent with the agents' testimony, as well as that of the army surgeon who removed the bullet, that he was turned, possibly with something in his hand.

And finally, let us not forget the worst lie of all, the one to the jury, when the US Attorney's office permitted the prosecutor to describe the drug smuggler as a one time criminal trying to earn enough to pay for medicine for his sick mother. Mr. Sutton may use pejorative words to describe the drug smuggler now, but it was his prosecutors who

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insisted to the judge that the jury not be permitted to hear information about a second narcotics shipment in which the drug smuggler in question was clearly identified. Someone is getting railroaded here.

This committee may want to ask Mr. Sutton, about the dates on the free border crossing pass he gave to the drug smuggler and determine if the date on the pass coincides with the date of the second drug shipment. We can't get an answer out of him.

Mr. Sutton's office has stonewalled our investigation in the House on this issue. Even telling us to get a privacy waiver signed by the drug smuggler before they will release this information!

This committee may want to ask Mr. Sutton if all the facts remained the same, but instead Mr. Davila turned out to be a terrorist, with dirty bomb materials

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left behind in the van that day instead of marijuana, would agents Ramos and Compean be sitting in federal prison right now for violating a terrorist's civil rights or would they be heralded as the true heroes they really are?

In summary, the Ramos and Compean case is the worst miscarriage of justice I have witnessed in the 30 years I've been in Washington. The decision to give immunity to the drug dealer and throw the book at the border patrol agents was a prosecutorial travesty. The whole episode stinks to high heaven. Two of America's brave border patrol defenders have had there lives and the lives of their families destroyed by elitists, arrogant and overreaching prosecutors who believe protecting the civil rights of illegal alien criminals is worth destroying the lives of our law enforcement officers for procedural violations.

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With that I appreciate at long last the opportunity to try to correct a horrific wrong that has been done to these and other brave law enforcement officers.

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Department of Justice

STATEMENT

OF

JOHNNY SUTTON
UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF TEXAS
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

"A HEARING TO EXAMINE THE PROSECUTION OF IGNACIO RAMOS AND JOSE COMPEAN"

PRESENTED ON

JULY 17, 2007

Testimony
of

Johnny Sutton
United States Attorney for the Western District of Texas
U.S. Department of Justice

Committee on the Judiciary
United States Senate

"A Hearing to Examine the Prosecution of Ignacio Ramos and Jose Compean"

July 17, 2007

Chairman Leahy, Senator Specter, and members of the Committee, thank you for the invitation to discuss the importance of enforcing the rule of law, even against those who are sworn to uphold the laws and the Constitution of the United States.

The prosecution of Jose Compean and Ignacio Ramos has been the subject of widespread media attention and heated debate. This prosecution, however, was not about illegal immigration, illegal drug smuggling, or supporting agents who patrol the border. It was about upholding the law, plain and simple, a duty which our Nation's federal prosecutors take very seriously. The overwhelming majority of federal agents and police officers represent the best of America, and they show it every day through their bravery, dedication, and self-sacrifice. But experience has shown us that occasionally some law enforcement officers will step over the line and commit crimes. And when lawmen break the law we must hold them to account.

There has also been some debate—brought on in part by this case—about enforcing gun laws that were passed by the Congress. The fact is that it is a crime to discharge a firearm during a crime of violence, and we

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will continue to bring those charges where the law and the evidence warrant.

After a two-and-a-half week trial, at which they were represented by four experienced and capable attorneys, Jose Compean and Ignacio Ramos were found guilty by a jury of 11 counts of assault, violation of civil rights, use of a firearm during a crime of violence, and obstruction of justice. Since their convictions, it has been clear that some individuals do not understand the facts of the case, while others are merely concerned with using it to make a point about some other issue, such as illegal immigration. While these convictions are currently on appeal—meaning the case is still a pending matter—I would like to set the record straight by discussing the ample facts already in the public record, but I will be limited to discussing only information in the public record.

The facts of what occurred near Fabens, Texas, on February 17, 2005, can be found in the trial record, the transcript of which I have posted on the website of the U.S. Attorney's Office for the Western District of Texas. As in all trials, some of the facts were uncontested, others were hotly disputed. Not surprisingly, the defendants maintained, as they continue to maintain, that their actions were justified. I believe—as the jury concluded after hearing the testimony of agents at the scene, the drug smuggler who was shot, and the defendants themselves—that the agents shot at and struck an unarmed, fleeing drug smuggler; that they deliberately failed to report the shooting as they were required to do; that they destroyed evidence to cover up their actions; and that they did these things willfully and in violation of the laws they were sworn to uphold.

The facts are these: On that February afternoon, Border Patrol Agent Jose Compean observed a light blue van leaving the area near the U.S.–Mexico border where movement had been detected. He called out the activity on his radio and Border Patrol Agent Oscar Juarez began following the van. Aware that he was being

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followed, the driver of the van, Osvaldo Aldrete Davila, changed course in Fabens and drove back toward the river and Mexico. At about that time, Border Patrol Agent Ignacio Ramos joined the pursuit and took the lead position behind Aldrete's van. The agents suspected the van contained a load of illegal drugs, and the flight and pursuit reached high speeds until the van got to a drainage canal and levee, which run parallel to the river. Aldrete abandoned the van, ran into the ditch, and began climbing up its south side, where Agent Compean confronted him brandishing a shotgun. Aldrete kept moving up toward Compean, holding up his empty hands. Witness testimony established that Aldrete did not have a gun or weapon in his hands. By then, Ramos and Agent Juarez were on foot on the north side of the canal. As Ramos moved into the canal to cross in pursuit, someone yelled, "Hit him," and Compean swung his shotgun to strike Aldrete in the head. Aldrete and Agent Juarez testified that Compean lost his footing and fell. Aldrete darted around Compean, ran out of the canal, up and over the levee and across the flat, open vega toward the river. Compean recovered, ran after Aldrete, drew his pistol, and fired numerous times at the fleeing Aldrete. He stopped once to change the magazine. Meanwhile, Ramos reached the south side of the canal, ran across the levee, drew his pistol, and fired once. At no time did either agent call routine warnings to other agents on the scene that Aldrete was armed or dangerous. Ramos's shot struck Aldrete in the buttocks. The bullet, which the defendants stipulated was a match to Ramos's gun, was later removed from Aldrete's leg. Aldrete fell to the ground near the river and waited for agents to arrest him. Although Compean admitted that he believed Ramos's shot had hit Aldrete, they did not pursue Aldrete. Instead, they holstered their weapons and walked back toward the levee and canal. When the agents never came, Aldrete made his way across the river. While walking back toward the canal with Ramos, Compean picked up some of their empty shell casings, and—according to his own testimony—threw them into the canal, thus destroying evidence of the shooting. At trial, Compean could not explain why he did this.

Another agent, Arturo Vasquez, testified that Compean later showed him nine empty casings, and

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calculated that he had left five more at the scene. Vasquez said he collected five more casings at the scene, threw them into the drainage ditch, and notified Compean by cell phone. Compean denied showing Vasquez the empty casings, but admitted he asked Vasquez to pick up the casings remaining at the scene. When supervisors arrived at the scene after the shooting, neither Compean nor Ramos reported they had fired their weapons, as they knew they were required to do. Shortly after the shooting, agents discovered that the van contained over 700 pounds of marijuana. In writing up the report of the pursuit and seizure, Compean omitted any reference to the shooting by himself and Ramos.

The significant fact disputed by defendants was whether Aldrete appeared to be armed after he eluded Compean and ran across the vega toward the river. Ramos testified that Aldrete turned back toward them as he ran and that he believed Aldrete had a gun in his left hand. Compean testified that after Aldrete got away from him and ran toward the river, Aldrete turned back toward them and pointed something black and shiny. Their testimony was not credible for several reasons. First, if it were true, there was no reason for Compean and Ramos to alter evidence at the scene by disposing of the casings and not report the shooting. A prompt investigation would have cleared them. Second, neither of them acted as if or said things at the time that indicated they believed Aldrete was armed. Neither agent shouted routine warnings to others that the suspect was armed. After the shooting, Compean acknowledged to two other agents that he shot at the driver, but he never said anything about Aldrete possessing a gun, seeing something shiny in Aldrete's hand, or that he or Ramos were ever in danger. Immediately following the shooting, Ramos encountered an agent near the abandoned van, but made no mention of the shooting or having been in fear for his life. It was not until a month later, after he was arrested, that Compean for the first time mentioned that he thought he saw something shiny in Aldrete's hand as he ran toward the river. Third, their belated claims that Aldrete possessed a weapon as he ran simply were not plausible given the other evidence. It was undisputed that Aldrete's hands were empty as he

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crossed the drainage canal. Compean was the last agent between him and the river. If Aldrete possessed a gun, the time for him to draw it was when he was confronted by Agent Compean, not after he had broken free and was nearly to Mexico in a full sprint. Once Aldrete got past Compean he had no need to brandish a firearm.

On those facts, my office had an obligation to prosecute Agents Compean and Ramos. I know that we demand much of Border Patrol agents. They have difficult jobs, they work in harsh conditions in isolated areas, and they encounter dangerous people, some of whom will not hesitate to cause them harm. I admire Border Patrol agents and as I have said many times in recent months, I believe they are American heroes. But the sad fact is, a small percentage of law enforcement agents—including some Border Patrol agents—cross the line. When Border Patrol agents go wrong, as I believe Compean and Ramos did, faithfulness to the rule of law requires us to bring them to justice.

The facts of this case stand on their own, and they make it clear that this prosecution was not about immigration policy or aggressive drug enforcement. My office has aggressively prosecuted criminal immigration violations throughout my term. Data from the Department of Justice indicates that the Western District of Texas is one of the busiest districts in the Nation, and has been for some time. Of the approximately 6,000 defendants my office prosecuted for felony offenses last fiscal year, about 35 percent were charged with drug offenses and almost 53 percent were charged with immigration violations. With Operation Streamline in our Del Rio Division—as well as the Border Patrol's Yuma Sector—we have one of the only "zero tolerance" programs for illegal entrants along the Southwest Border. We have prosecuted more than 20,000 defendants since November 2005 for misdemeanor entry without inspection in Del Rio. In support of federal law enforcement officers, since I took office in November 2001, I have prosecuted approximately 98 defendants for assaulting federal officers. Many of those include assaults on Border Patrol agents.

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Much has been made of the fact that my office gave use immunity to Osvaldo Aldrete Davila, an illegal alien and drug smuggler. The fact is, because of the unlawful conduct of Compean and Ramos surrounding the seizure of Aldrete's load, and because they did not arrest him after they shot him, we did not have and could not obtain enough reliable, admissible evidence to prosecute him for his drug load. Without his assistance or cooperation, we also did not have enough evidence to prosecute Compean and Ramos for their crimes. We made the difficult decision to give him use immunity so that we could obtain the bullet from his leg and secure his testimony about the shooting. Since we would not be able to successfully prosecute him for the drug crime, I believe we were giving up very little; something we did not have and could not get: crucial evidence to prosecute him. Although we cannot now prosecute him for the events of February 17, 2005, I can assure you that if we develop sufficient evidence to prosecute him for offenses on other dates I intend to do so.

There has been much talk lately about a second load of marijuana, or the "October load." Aldrete's alleged involvement in a second load is the subject of an ongoing investigation. For reasons that should be obvious, I cannot discuss an ongoing investigation. I can say this: we presented to the trial judge and the defense the information we then possessed about the so-called October load. The judge evaluated the information and ruled it was not relevant to the issues in the trial of Compean and Ramos. Whether our advocacy and the judge's determination were sound will be decided by the Court of Appeals.

Some critics have claimed that all drug smugglers like Aldrete carry guns, and that my prosecution of Agents Compean and Ramos had a chilling effect on other Border Patrol agents, causing them to fear using their firearms. I believe both assertions are mistaken. From January 2004 through March 2005, there were 155 drug seizures at the Fabens Border Patrol Station, totaling over 43,000 pounds of marijuana. In none of those

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seizures was a gun found. Over the longer period between October 1, 2001, and February 15, 2006, the Fabens Border Patrol Station reported the seizure of only one firearm from a total of 496 drug seizures, totaling more than 131,000 pounds of marijuana. This is not to say Border Patrol agents' jobs are not difficult and dangerous, or that drug smugglers are never armed, but it is inaccurate and misleading to assert that all drug smugglers are armed. The fact is that drug mules in El Paso almost never carry guns.

I would like to respond directly to the unfounded and irresponsible allegations that I, as United States Attorney, or the prosecutors on my staff, are vindictive toward or that we persecute Border Patrol agents. During approximately the last six years, there were at least 14 reported shootings by Border Patrol agents in the El Paso Sector. In three of these shootings, the agents killed the suspects. In each of those shootings, the Border Patrol agent was cleared and the shooting ruled justified. None of these agents were prosecuted or even disciplined, because their actions were reasonable under the circumstances. If recent events in El Paso are any indication, Border Patrol agents have not stopped using their weapons. I am aware of at least two reported shootings by Border Patrol agents in El Paso within the last month. One of those shootings has already been cleared and one remains under review. The fact is, Border Patrol agents are thoroughly trained in the use of deadly force. By design, the law accords great deference to agents, recognizing that they must often make split-second, life-or-death decisions under great stress. As a general rule, if an agent has any reasonable basis for fearing for his immediate safety or the safety of another, use of deadly force is justified. However, agents having no fear of imminent harm who intentionally shoot at an unarmed, fleeing suspect, and then cover up the shooting, should be prosecuted. Requiring law enforcement officers to obey the law is not unreasonable and is not a deterrent to the use of deadly force when lives are at risk.

Some have argued that the mandatory prison sentences imposed on Compean and Ramos are unduly

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harsh. Reasonable people can disagree about punishment. Sentencing issues and the appropriate allocation of discretion in sentencing decisions have been the subject of much litigation, legislation and Sentencing Guidelines amendments for the last 20-plus years. Charging decisions at the Department of Justice are made in accordance with the long-standing policy that we pursue the most serious, readily-provable offense or offenses that are supported by the facts of the case. In my district, the process begins when an agent or officer presents the facts to a line Assistant United States Attorney (AUSA), who evaluates whether there is sufficient, admissible evidence to make a prosecutable case. If there is sufficient evidence to prove beyond a reasonable doubt that the defendant committed a federal crime, then the line AUSA will consider whether it is appropriate to actually file a case. The line AUSA will decide if a federal interest needs to be vindicated and allocating resources on the prosecution is warranted and appropriate. Often the chief of the division will review the case and approve the indictment. This process is completely independent of the procedure for administrative punishment of Border Patrol agents; the Border Patrol makes its own decisions about whether to pursue administrative sanctions against its agents.

Compean and Ramos were charged with unlawfully using their firearms during a crime of violence, a violation of 18 U.S.C. section 924(c). While we have chosen not to prosecute this statute in some cases, for specific reasons, we have also charged it in a number of other cases involving crimes committed by law enforcement officers. For example, we charged a Crystal City, Texas, police officer with violating 924(c), because he jammed the barrel of his gun into the mouth of a handcuffed arrestee and caused significant injury to the mouth. We charged four San Antonio police officers with multiple violations of section 924(c) because they had their service weapons available to guard loads of what they believed to be cocaine. We charged a Balcones Heights, Texas, police officer with violating 924(c), based on his possession of his weapon when he raped a woman after removing her from her vehicle after a traffic stop. And these are just cases from my

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district.

A few more examples: In the Southern District of Mississippi, a deputy sheriff was charged with violating 924(c) after shooting an unarmed victim in the back when the individual stopped and raised his hands to surrender after a high-speed chase. In the Western District of New York, three Buffalo police detectives were charged and convicted of 924(c) violations after executing search warrants based on false or misattributed information, stealing property, and then inflicting bodily injury on the occupants. These charges were based on the fact that they unlawfully used and carried firearms in the commission of a crime. In the District of Puerto Rico, a police sergeant was charged after shooting at and wounding two motorcyclists who were speeding. In the Western District of Tennessee, four Memphis police officers were charged after using their guns to rob drug dealers of their drugs and money for personal gain. Juries appear to have weighed these charges carefully, convicting the defendants of the offense in some cases and acquitting in others. There seems little doubt, however, that Compean and Ramos used their firearms.

The Congress has been clear that it wants to reduce gun violence and that there should be strict punishment for defendants who commit crimes using firearms, and section 924(c) gives prosecutors a strong tool to accomplish that goal. In fact, the ten-year sentence for using a firearm during the commission of a crime of violence was set by the Congress, and under the statute, that sentence increases depending on the role of the firearm in the offense, with an increased penalty if the firearm is brandished and another if the firearm is discharged. The Congress did not create an exception in 924(c) for law enforcement officers who use a gun in the commission of a crime.

The prosecution of Compean and Ramos was about our commitment to the rule of law and about two

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former law enforcement officers who committed serious crimes. An honest reading of the facts of this case shows that Compean and Ramos deliberately shot at an unarmed man in the back without justification, destroyed evidence to cover it up, and lied about it. A jury heard the facts and voted to convict. Faithfulness to the rule of law required me to bring this case.

Additional information is included in the document "Setting the Record Straight" which has been posted on my office's website since April and is attached as an appendix to this testimony. Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

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U.S. Department of Justice
U.S. Attorney's Office
Western District of Texas

Johnny Sutton, U.S. Attorney

FOR IMMEDIATE RELEASE

April 25, 2007

Shana Jones, Special Assistant
610 N.W. Loop 410
San Antonio, Texas 78216
(210) 384-7452

UNITED STATES ATTORNEY JOHNNY SUTTON SETS THE RECORD STRAIGHT REGARDING THE PROSECUTION OF RAMOS AND COMPEAN

Former Border Patrol Agents Ignacio Ramos and Jose Compean were found guilty by a unanimous jury in a United States District Court after a trial that lasted more than two and a half weeks. The two agents were represented by four experienced and aggressive trial attorneys, all of whom vigorously challenged the Government's evidence through argument and direct and cross examination.

Both agents told their stories from the witness stand and had full opportunities to explain their version of events and to offer their own evidence. The jury heard all admissible evidence, including the defendants' claims of self defense, but the jury did not find their stories credible.

The case is now on appeal to the U.S. Court of Appeals for the Fifth Circuit, which recently agreed with the District Court that Ramos and Compean should not be released on bond pending appeal.

Unfortunately, some of the media attention and heated debate over the prosecution of this case has been based on, and has led to, many factual inaccuracies and unfounded criticism. The purpose of this fact sheet is to identify some of those inaccuracies and provide corrections with factual information from the public record, to the extent possible given that this case is currently on appeal.[1]

Allegation: THE AGENTS WERE JUST DOING THEIR JOBS AND SHOULD NOT HAVE BEEN PROSECUTED

Response: Securing our nation's borders can be a tough and dangerous job. Often, Border Patrol agents find themselves in difficult and dangerous situations. The Border Patrol provides them with guns and the law allows them to defend themselves. The law allows for the use of deadly force when an agent reasonably fears imminent bodily injury or death. But, an agent is not permitted to shoot an unarmed suspect who is running away, regardless of whether the victim is illegally in this country or turns out to be a drug smuggler. In order to maintain the rule of law, federal prosecutors cannot look the other way when law enforcement officers shoot unarmed suspects who are running away, then destroy evidence, engage in a cover-up, and file official reports that are false.

[1] The page numbers referenced herein are to the transcript available on the website at http://www.usdoj.gov/usao/txw/press_releases/index.html

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There was no credible evidence that the agents were in a life-threatening situation or that Osvaldo Aldrete Davila, the Mexican alien, had a weapon that would justify the use of deadly force. In fact, Border Patrol Agent Oscar Juarez, who was at the scene, testified at trial that he did not draw his pistol because he did not believe that Aldrete posed a threat to his or Agent Compean's safety. *Vol. VIII, p. 173; Vol. IX, p. 22.* He also testified that Aldrete's hands were empty when Compean attempted to strike Aldrete with the butt of Compean's shotgun. *Vol. VIII, p. 176.* By the time Agent Juarez saw Compean shooting, Aldrete was almost in Mexico. *Vol. IX, p. 21-22.*

The crimes committed by these agents are felonies, not mere administrative oversights. This was not a simple case of discharge of a firearm that was not reported. The truth of this case is that Agents Ramos and Compean intentionally, and with the intent to kill, shot 15 times at an unarmed man who was running away from them and who posed no threat.

Allegation: THE GOVERNMENT LET THE DRUG SMUGGLER GO FREE BY GIVING HIM BLANKET IMMUNITY

Response: We are in the business of putting guys like Aldrete behind bars. In fact, this office leads the nation in the number of drug smuggling cases we prosecute. My office would have much preferred to see Aldrete convicted and sent to prison for his crimes. Aldrete was not prosecuted for the drugs he had on February 17, 2005, because of the conduct of Agents Ramos and Compean. Instead of arresting Aldrete as he attempted to surrender, Agent Compean tried to strike Aldrete with the butt of his shotgun. *Vol. VIII, p. 174-175; Vol. IX, p. 13; Vol. VII, p.107.* When Agent Compean missed, lost his balance and fell into a ditch, Aldrete ran around him and toward Mexico. *Vol. VIII, pp. 176-178.* Compean got up, ran after Aldrete, and fired at him fourteen times as Aldrete ran away. *Vol. XIII, pp. 161-164; Vasquez Transcript, pp.37-38; Vol. XIV, p. 153.* When Compean stopped shooting, Ramos fired once, *Vol. XII, p. 209*, and struck Aldrete in the buttocks. *Vol. VII, pp. 117-122.* Aldrete fell to the ground and waited for the agents to arrest him. *Vol. VII, pp. 122, 133.* According to Aldrete, when he saw the agents had turned and walked away, making no effort to apprehend him, he crossed the river into Mexico. *Vol. VII, pp. 123-125, 133.*

Because the agents failed to apprehend him, and because they later lied about the shooting, there was no way to prove Aldrete's involvement except through Aldrete's own admissions and cooperation. Even Ramos admitted that by not reporting the shooting, he prevented the recovery of evidence that would have made it possible to prove the marijuana case against Aldrete. *Vol. XIII, p. 88.*

With respect to the immunity offered to Aldrete, it is not unusual for prosecutors to give immunity to witnesses, victims and even defendants suspected of criminal activity, in order to secure testimony, evidence, or other participation in a case. Given Ramos' and Compean's criminal conduct in this case, there was insufficient, legally admissible, competent evidence to prosecute Aldrete in this case, *Vol. XIII, p. 88*; *Vol. XIV, pp. 70-71*, and we could not force him to return to the United States through extradition. His testimony and evidence were needed to investigate and prosecute violent criminal activity by federal agents. Accordingly, in exchange for his agreement to come to the United States and testify truthfully about the events that occurred on February 17, 2005, Aldrete was promised that he would not be prosecuted for offenses he disclosed that he committed on that date. This immunity, as a practical matter, gave up very little, since the case against him was not prosecutable.

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Allegation: ALDRETE HAD A GUN AND THE AGENTS ONLY FIRED IN SELF DEFENSE

Response: The jury in this case evaluated the testimony from Border Patrol agents, including the defendants, whose testimony established that Aldrete did not have a gun in his hands when Compean had an opportunity to arrest him. Agent Juarez testified that Aldrete's hands were visible and empty as Aldrete approached Compean. *Vol. VIII, pp. 175-176; Vol. IX, p. 155.* Ramos testified that he did not see anything in Aldrete's hands as Aldrete moved through the ditch. *Vol. XIII, p. 43.* Compean testified that Aldrete's hands were empty as he went through the ditch and later, that Aldrete had no weapon in his hands. *Vol. XIII, pp. 154-155; Vol. XIV, pp. 66-68, 71-72.* In his statement to investigators, Compean admitted that Aldrete had attempted to surrender with both hands open and in the air. In their sworn testimony, Agents Juarez and Compean both confirmed that Aldrete had his hands in the air, *Vol. VIII, p. 175; Vol. IX, pp. 155-156; Vol. XIII, pp. 154-155; Vol. XIV, pp. 66-68, 71-72,* in an apparent effort to surrender.

Testimony also revealed that Agents Ramos and Compean never took cover nor did they ever warn the other agents to take cover. *Vol. VIII, p. 176; Vol. X, pp. 168-169.* This action contradicts their claims that they believed they were in danger. Had Agents Ramos and Compean truly believed Aldrete was a threat, they would not have abandoned him after the shooting, *Vol. VII, pp. 122-125,* and they would have warned their fellow agents who arrived at the scene to stay out of the open while an armed suspect was on the loose.

Agent Compean testified that after the shooting, he picked up his spent casings and threw them into the drainage ditch. *Vol. XIII, pp. 165-166; Vol. XIV, p. 157.* He even admitted that he may have picked up Ramos' casing. *Vol. XIV, p. 158.* He could not explain at trial why he did this. *Vol. XIII, pp. 165-166; Vol. XIV, pp.156-158.* Agent Arturo Vasquez testified that Compean actually removed the casings from the scene, showing them to Vasquez as Compean was returning to the Fabens Border Patrol Station. *Vasquez Transcript, pp. 36-38.* According to Vasquez, Compean showed him nine spent casings and calculated he was missing five more, based on the number of live rounds remaining in his magazine. *Vasquez Transcript, pp. 37-38.* If the agents had believed that the shooting was justified, they would have left the crime scene undisturbed and let the investigation absolve them. Their conduct established that the agents knew that Aldrete did not have a weapon and they knew he posed no threat to them as he fled.

Immediately following the shooting, when Ramos encountered Agent Jose Luis Mendoza near the van, Ramos did not say he was in fear for his life or that he shot at anyone. *Vol. X, p. 35.* While Compean confessed to his fellow agents, David Jacquez and Vasquez, that he shot at the driver, he did not tell them that the driver had a gun, that he saw something shiny in the driver's left hand, or that he or Ramos were ever in danger. *Vol. X, pp. 69-70, 80; Vasquez Transcript, p. 35.* Had Aldrete actually had a gun or a shiny object in his left hand, or had Aldrete truly posed a danger to either Ramos or Compean at any time, they would have broadcast to any and everyone that the driver had a gun.

Allegation: THE AGENTS WERE NOT SURE OF WHAT THEY SAW BECAUSE IT WAS IN THE MIDDLE OF THE NIGHT

Response: The events of Feb. 17, 2005, occurred at approximately 1:00 P.M. MT. *Vol. VIII, pp. 103-104; Vol. X, p. 191.*

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Allegation: AGENT COMPEAN WAS BLOODIED FROM A STRUGGLE WITH ALDRETE

Response: Compean testified at trial that he had a cut to his hand and a cut to his chin. *Vol XIII, p. 168.* He told Agent Mendoza that he cut his chin when he slipped and fell trying to apprehend Aldrete. *Vol. X, pp. 32-33.* Agent Jacquez noticed the cut between Compean's thumb and finger, but did not consider the injury to be traumatic. *Vol. X, p. 90.* Compean cleaned up the cuts in the bathroom at the station. *Vol. XI, p. 77.* Compean twice told his supervisor that he had not been hit or assaulted by Aldrete. *Vol. X, pp. 217; Vol. XI, p. 77.* He also refused to fill out an injury report. Had Compean been assaulted he would have reported this to his supervisor. *Vol. X, p. 217.*

Allegation: AGENT RAMOS CLAIMS THAT THE BULLET EXTRACTED FROM ALDRETE MIGHT NOT HAVE COME FROM HIS SERVICE WEAPON

Response: Agent Ramos stipulated and agreed before trial that the bullet extracted from Aldrete came from his service weapon. *Vol. VII, pp. 118-121.* This stipulation was based on independent forensic analysis that Ramos did not dispute at trial.

Allegation: THESE AGENTS DID NOT REPORT THE SHOOTING TO SUPERVISORS BECAUSE THE SUPERVISORS WERE ON THE SCENE OF THE SHOOTING

Response: The evidence introduced at trial and credited by the jury demonstrated that no supervisors were on the scene during the shooting. Two supervisors arrived after the shooting. *Vol. X, pp. 22-25.* Field Operations Supervisor Jonathan Richards arrived after the shooting, after all but two other agents were already on the scene. *Vol. X, p. 209.* Supervisor Robert Arnold arrived shortly after Richards. *Vol. X, p. 216; Vol. XI, p. 72.* Richards was not aware there had been a shooting, *Vol. X, p. 225*, and no one reported the shooting to him. Supervisor Richards testified that he first learned of the shooting when he was interviewed about the incident by the agent of the Inspector General in mid-March, about a month after the shooting. *Vol. X, p. 239.* Supervisor Arnold first learned of the shooting in mid-March, when he was told two agents were soon to be arrested for it. *Vol. XI, p. 78.*

Ramos admitted that he knew Border Patrol policy required him to report a shooting within an hour. *Vol. XIII, pp. 18-19.* He had been a firearms instructor *Vol. XIII, pp.19-20* and a member of the evidence recovery team responsible for investigating shootings. *Vol. XIII, p. 84.* Compean also knew he was required to report the shooting and he did not. *Vol. XIV, pp.169-170.* Compean admitted to Luis Barker, then the Chief of the El Paso Border Patrol Sector, that he knew he had to report the shooting and that he knew it was wrong for him and Ramos not to report the shooting. *Vol. XI, p.167.* Compean admitted to Barker that he knew that if he had reported the shooting, they would have gotten in trouble. *Vol. XI, p.167.*

Allegation: THESE AGENTS DID NOT REPORT THE SHOOTING BECAUSE BORDER PATROL POLICY PROHIBITS THEM FROM DOING SO

Response: Border Patrol policy requires that a Border Patrol agent who fires his or her weapon anytime (on or off duty), must notify their supervisor within an hour. Further, Border Patrol policy requires that all who participated in or observed the shooting shall report it to their supervisor. Testimony of several agents and supervisors as well as the transcript of the radio transmissions, indicate that no supervisor was on scene at the

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time of the shooting. Yet, neither Ramos nor Compean reported the shooting of Aldrete as required by Border Patrol policy. Ramos' assertion that supervisors already knew about the shooting, or that someone else had reported it, is inaccurate, unsupported by the evidence, and did not excuse their obligation to report within an hour.

Additionally, Compean proceeded to write the I-44 report (the Report of Apprehension or Seizure) concerning the incident, with input from Ramos. The report made no reference to several key events that afternoon, including Compean's encounter with Aldrete on foot in the ditch, his having pointed the shotgun at Aldrete, the ensuing foot chase as Aldrete fled, and the firing of shots at Aldrete. The claim that Border Patrol policy does not require the reporting of a shooting in the I-44 is specious. To protect agents involved in shootings from self-incrimination, the Border Patrol practice allows for an agent other than the one involved in the shooting to write the I-44. The I-44 still must include all significant information about the events being reported. That includes the fact that shots were fired. By undertaking to write the I-44, Compean was required to write a truthful report, not a report that contained material omissions amounting to falsehoods. Indeed, in the context of Border Patrol practices and policy, by undertaking to write the I-44, Compean was intentionally creating the impression that there was no shooting. And by omitting the relevant facts, with the aid of Ramos, they submitted and caused to be submitted a false report.

Allegation: THE BALLISTICS REPORT FAILED TO PROVE THE BULLET CAME FROM RAMOS' GUN AND THE MEDICAL REPORT OF THE BULLET ENTRY WAS CONSISTENT WITH RAMOS' CONTENTION THAT THE SMUGGLER WAS TURNING AROUND WITH WHAT LOOKED LIKE A WEAPON

Response: Agent Ramos stipulated and agreed before trial that the bullet extracted from Aldrete came from his service weapon. *Vol. VII, pp. 118-121.* This stipulation was based on independent forensic analysis that Ramos did not dispute at trial. The stipulation was entered into evidence at trial with Ramos' agreement. Regarding Aldrete's movements at the time the bullet struck him, the medical testimony was inconclusive. *Vol. IX, pp. 197-98.* The doctor testified he could not know exactly how Aldrete was turned. *Vol. IX, p.195.*

Allegation: RAMOS AND COMPEAN DID NOT BELIEVE THEY WOUNDED THE SMUGGLER BECAUSE HE KEPT RUNNING AND ESCAPED ACROSS THE BORDER INTO A WAITING VEHICLE

Response: This assertion is directly contradicted by Compean's handwritten statement provided to the investigator in which Compean stated "I think Nacho [Ramos] might have hit him." *Vol. XIV, p. 155.*

Allegation: RAMOS AND COMPEAN'S ONLY "LIE" WAS THAT THEY GAVE AN INCOMPLETE REPORT OF THEIR CONFRONTATION WITH THE SMUGGLER ON FEBRUARY 17, 2005

Response: These agents were prosecuted and convicted of the serious felony offenses of illegally using deadly force when their lives were not in danger, depriving another of rights under color of law and obstructing justice. There was no credible evidence that the agents were in a life-threatening situation or that Aldrete had a weapon that would justify the use of deadly force. In fact, Border Patrol Agent Juarez, who was at the scene, testified at trial that he did not draw his pistol because he did not believe that Aldrete posed a threat to his or

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Agent Compean's safety. *Vol. VIII, p. 173; Vol. IX, p. 22.* He also testified that Aldrete's hands were empty when Compean attempted to strike Aldrete with the butt of Compean's shotgun. *Vol. VIII, pp. 175-176.* By the time Agent Juarez saw Compean shooting, Aldrete was almost in Mexico. *Vol. IX, p. 22.*

Allegation: THE GOVERNMENT SHOULD HAVE PROSECUTED THE DRUG SMUGGLER AND GIVEN IMMUNITY TO THE BORDER PATROL AGENTS

Response: My office would have much preferred to see Aldrete convicted and sent to prison for his crimes. We are in the business of putting guys like Aldrete behind bars. In fact, this office leads the nation in the number of drug smuggling cases we prosecute. Because the agents could not identify him, found no fingerprints tying him to the van and did not apprehend him after shooting him, the case against Aldrete could not be proved. Furthermore, the shooting of a fleeing suspect who posed no threat to agents Ramos and Compean is a serious crime that federal prosecutors could not ignore.

Allegation: THE GOVERNMENT USED THE WRONG LAW THAT CARRIES A MANDATORY ADDITIONAL 10 YEAR SENTENCE.

Response: The prosecution used the law that Congress enacted. Congress made it a crime to discharge a firearm during a crime of violence, punishable by a mandatory prison term of at least ten years. Agents Ramos and Compean committed that crime, as well as others. Congress did not provide an exemption for law enforcement officers. The crimes committed by these agents were serious -- shooting 15 times at a fleeing, unarmed suspect -- and because of that this charge was warranted.

Allegation: THE GOVERNMENT WITHHELD CRUCIAL EVIDENCE FROM THE JURY

Response: The prosecution did not withhold any admissible evidence from the jury. The prosecution provided the defense an opportunity to see the government's evidence before trial. This is standard operating procedure. The trial judge ruled on a number of evidentiary issues during trial, and excluded evidence that was not relevant or admissible under the Federal Rules of Criminal Procedure and the Federal Rules of Evidence, which govern all federal trials. Those rulings are subject to review on appeal by the Fifth Circuit Court of Appeals and the United States Supreme Court. This procedure is what distinguishes a trial at law from a street fight or free-for-all. Deciding guilt or innocence according to established rules is what makes this a civilized country.

Allegation: THE JUDGE KEPT FROM THE JURY ALDRETE'S CLAIM THAT HIS FRIENDS HAD CONSIDERED A "HUNTING PARTY" TO GO SHOOT SOME BORDER PATROL AGENTS

Response: These allegations were addressed by the district court. *Vol. VII, pp. 215-217.* The admissibility of testimony is committed to the discretion of the trial judge, based on the Federal Rules of Evidence and other legal precedent, and is subject to review by the Court of Appeals. Beyond that, the government cannot comment other than to say that the defendants received a fair and thorough trial and will have full opportunity to have their case reviewed on appeal.

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Allegation: A DEPARTMENT OF HOMELAND SECURITY MEMO DATED MAY 15, 2005, SHOWS THAT THE TWO AGENTS DID GIVE A PROMPT, COMPLETE, ORAL REPORT TO SUPERVISORS WHO WERE ACTUALLY PRESENT ON FEBRUARY 17, 2005. THE SUPERVISORS DECIDED NOT TO MAKE A WRITTEN REPORT

Response: The evidence demonstrated that no supervisors were on the scene during the shooting. Two supervisors arrived after the shooting. Field Operations Supervisor Jonathan Richards arrived after the shooting, after all but two other agents were already on the scene. *Vol. X, p. 209.* The second supervisor, Robert Arnold, arrived shortly after Richards. *Vol. X, p. 216; Vol. XI, p. 72.* Radio transmissions admitted at trial corroborated this testimony. Richards was not aware there had been a shooting, *Vol. X, p. 225*, and no one reported the shooting to him. Supervisor Richards first learned of the shooting when he was interviewed about the incident by the Inspector General agent in mid-March, about a month after the shooting. *Vol. X, p. 239.* Supervisor Arnold first learned of the shooting in mid-March, when he was told two agents were soon to be arrested for it. *Vol. XI, p. 78.* Both Ramos and Compean admitted in their testimony at trial that they did not report the shooting as required.

Ramos admitted that he knew Border Patrol policy required him to report a shooting within an hour. *Vol. XIII, pp. 18-19.* He had been a firearms instructor and a member of the evidence recovery team responsible for investigating shootings. *Vol. XIII, pp. 19-20, 84.* Compean also knew he was required to report the shooting and he did not. *Vol. XIV, pp. 169-170.*

Allegation: THESE AGENTS WERE SENTENCED TO TOO MUCH TIME IN FEDERAL PRISON

Response: Congress determined the penalties imposed on Ramos and Compean by setting the punishment for discharging a firearm during a crime of violence at a mandatory minimum of ten years (in addition to any other sentence imposed). Title 18, United States Code section 924(c)(1)(A)(iii). Congress did not make an exception for law enforcement officers. Instead, Congress specifically debated the issue and determined that no exception should be made and that the law should apply to officers who misuse their privilege to carry a firearm.

Allegation: SINCE THE TRIAL, JURORS HAVE STATED THAT THEY WERE COERCED BY THE FOREPERSON INTO RENDERING A GUILTY VERDICT

Response: Because an appeal is pending, we cannot directly comment on the content or legal implication of possible juror statements. However, we can clarify a few facts. On March 8, 2006, the jurors were polled in open court immediately after announcing their verdicts and all said without hesitation or equivocation that the verdicts were theirs. Ramos and Compean filed motions for new trials based on juror affidavits in October 2006. The government responded and the District Court denied their motion.

Allegation: RAMOS WAS IMPROPERLY PLACED IN THE GENERAL PRISON POPULATION WHERE HE WAS BEATEN.

Response: Ramos was processed into the federal prison system in much the same manner as other former law enforcement officers who are convicted of crimes and currently serving sentences in prison. As a general

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matter, the Federal Bureau of Prisons (BOP) determines the appropriate institution in which to house inmates based on information from many sources, including the courts, the probation office, the U.S. Marshals Service and the prisoner. There are some inmates who, based on their backgrounds and other characteristics, have difficulty functioning in the general population. The BOP has the ability to segregate such offenders from other inmates. When inmates arrive at the institution to which they have been designated, as a part of the intake screening process, staff discuss with inmates the living conditions in segregation and in general population. The decision to segregate is based on the totality of the circumstances and necessarily limits the prisoner's freedom of movement, recreation, visitation, and communication. As such, whenever it is possible to do so safely, inmates are housed in the general population.

In this case, Compean, through his counsel, requested to be separated from the general prison population, and he was. In response to BOP's inquiry, Ramos' counsel indicated in a letter that Ramos did not want to suffer any of the "punitive consequences" of segregation and that he preferred to be housed in the general population. The Federal Bureau of Prison's objective is to ensure that all of its more than 195,000 inmates are housed safely and securely and provided appropriate programs and services, including appropriate medical care.

Allegations: THE GOVERNMENT WOULD NOT RELEASE THE TRANSCRIPT OF THE TRIAL WITHOUT WHICH THE BORDER PATROL AGENTS COULD NOT APPEAL

Response: The United States Attorney's Office has no involvement in the preparation of the trial transcript and made it available to the public soon after it was received. Indeed, our office requested an expedited copy of the trial transcript from the court reporter on October 17, 2006, even though the government did not plan to bring an appeal. The transcript was received from the court reporter on Friday, February 9, 2007, and as a public service, we posted it to our website by Tuesday, February 13, 2007.

The ability of Ramos and Compean to appeal has no relation to the prosecution receiving a copy of the transcript. The former agents had the same ability to order the transcript from the court reporter as the prosecution.

Allegation: THE GOVERNMENT DENIED RAMOS AND COMPEAN'S FREEDOM PENDING APPEAL

Response: The district court properly applied the law enacted by Congress, which mandated the agents' detention pending appeal after they were convicted of crimes of violence. On February 22, 2007, the Court of Appeals for the Fifth Circuit affirmed the District Court's ruling, No. 06-51489.

Allegation: ALDRETE HAS BEEN SUBSEQUENTLY ARRESTED FOR SMUGGLING MORE DRUGS INTO THE UNITED STATES, BUT THE GOVERNMENT WILL NOT PROSECUTE HIM

Response: Our office aggressively prosecutes drug offenders every day in court. If we had a provable case against Aldrete, we would prosecute him. There have been allegations about subsequent drug activity by Aldrete. As of today, to our knowledge there has been no arrest or indictment of Aldrete for any drug activity. As a general matter, U.S. Attorneys' offices do not comment on pending investigations. Moreover, because

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some evidence evaluated by the trial court has been placed under seal and the appeal in this case is currently pending, we cannot comment specifically on the facts alleged by some in the media and Congress. But, to be clear, the immunity provided to Aldrete extended only to offenses committed on February 17, 2005. In conjunction with law enforcement agencies that investigate crimes, this office vigorously enforces the nation's laws, and will continue to do so. If we obtain information that gives us a provable case of criminal activity by Aldrete, we will prosecute him.

Allegation: THE DRUG SMUGGLER WAS AWARDED A GREEN CARD OR OFFERED PERMANENT RESIDENT STATUS IN EXCHANGE FOR HIS TESTIMONY

Response: Aldrete was not given a green card or offered permanent resident status in the United States. As is common practice in investigations and law enforcement operations that require assistance from persons not legally residing in the United States, immigration officials obtained "paroles" or fixed term, limited use documents that permitted Aldrete to enter the United States. In this case, Aldrete was permitted to enter the United States for medical treatment associated with the removal of the bullet, a key piece of evidence in the case, as well as to help prepare for and provide testimony at trial in El Paso. To the best of our knowledge, the last time he was legally allowed to enter the United States was in February 2006, to testify at trial.

Allegation: ILLEGAL ALIENS DO NOT HAVE ANY CONSTITUTIONAL RIGHTS

Response: The United States Supreme Court has held that the Constitution protects all persons in the United States whether they are here legally or illegally. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is a violation of the Fourth Amendment to shoot an unarmed person who poses no threat to the shooter. *Tennessee v. Garner*, 471 U.S. 1 (1985). This law applies regardless of immigration status. *Zadvydas*, 533 U.S. at 693.

Allegation: AGENT RAMOS WAS BORDER PATROL AGENT OF THE YEAR

Response: Agent Ramos has never received any formal recognition or award for being the Border Patrol Agent of the year. In fact, he has been arrested on at least three occasions for domestic abuse and was formally suspended by the U.S. Border Patrol on two occasions. *Vol. IV, pp. 3-22.*

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U.S. Department of Justice
United States Attorney
Western District of Texas

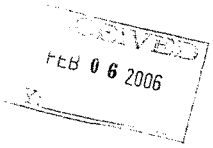
J. Brandy Gardes
Assistant United States Attorney

700 E. San Antonio, Suite 200
El Paso, Texas 79901

Telephone (915)534-6884
Facsimile (915) 534-6024

March 16, 2005

LETTER OF LIMITED USE IMMUNITY



TO: Osvaldo Aldrete-Davila

In connection with your cooperation with the Department of Homeland Security, Office of the Inspector General, and any subsequent testimony before the Grand Jury sitting in the Western District of Texas, El Paso Division, and any subsequent hearings and/or trials:

1. The Government agrees to provide you with all of the protection which would be provided to you under a formal court-ordered grant of immunity pursuant to the provisions of Title 18, United States Code, sections 6002 and 6003. In other words, no testimony or other information provided by you , or any information directly or indirectly derived from that testimony or other information, will be used against you in any criminal case in this district, provided you do not violate the terms of this agreement.

2. You agree to testify truthfully and completely at any Grand Jury hearing, court hearing, and/or trial when called by the Government as a witness.

3. You must neither attempt to protect any person or entity, nor falsely implicate any person or entity.

4. Notwithstanding this agreement, testimony given by you under oath may be used against you in a prosecution for perjury or giving a false statement.

This agreement constitutes the entire agreement between you and the United States Attorney's Office for the Western District of Texas, as evidenced by your signature below.

Sincerely,

JOHNNY SUTTON
UNITED STATES ATTORNEY

BY:

J. BRANDY GARDES
Assistant U.S. Attorney

AGREED AND ACCEPTED:

OSVALDO ALDRETE-DAVILA

16-MAR20-05

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U.S. Department of Justice
Drug Enforcement Administration

REPORT OF INVESTIGATION

Page 1 of 5

1. Program Code	2. Cross File	Related Files	3. File No.	4. G-DEP Identifier
			[redacted]	[redacted]

5. By: [redacted] At: Enforcement Group 4 El Paso Field Division	6. File Title VASQUEZ, Armando
7. ☐ Closed ☐ Requested Action Completed ☐ Action Requested By:	8. Date Prepared 10/25/05
9. Other Officers: SA [redacted]	

10. Report Re. Acquistion of Exhibit 2 on 10/23/2005.

DETAILS

1. Reference is made to a DEA 6 written by Special Agent (SA) [redacted] on 10/24/2005 titled "Arrest of Armando VASQUEZ and the seizure of 79.7 pounds of marijuana on October 22, 2005 in Fabens, Texas".

2. On October 22, 2005, SA [redacted] and SA [redacted] spoke to a Source of Information (SOI) who provided information of a stash house located in Clint, TX. The SOI stated that he/she was at [redacted] Clint, Texas and observed [redacted] deliver burlap sacks containing marijuana. The SOI stated that the residents of that location, Cipriano ORTIZ and [redacted] opened their back shed on the residence and allowed [redacted] to store the marijuana. The SOI stated that ORTIZ and [redacted] allow people to store marijuana at their residence on a frequent basis.

3. On October 23, 2005 at approximately 1:00 A.M., SA [redacted] and SA [redacted] along with Border Patrol Agents [redacted], [redacted], [redacted], [redacted] and [redacted] went to [redacted] Clint, Texas. SA [redacted] knocked on the front door of the residence and made contact with a male subject who was later identified as Cipriano ORTIZ-Hernandez. SA [redacted] advised ORTIZ that he had reason to believe marijuana was being stored at his residence. ORTIZ hung his head down and said there was marijuana on the property. SA [redacted] asked ORTIZ if he would sign a consent to

11. Distribution:	12. Signature (Agent)	13. Date
Division EPFD	[redacted]	[redacted]
District	14. Approved (Name and Title)	15. Date
Other SARI	Group Supervisor [redacted]	[redacted]

DEA Form - 6
(Jul. 1996)
[redacted]

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REPORT OF INVESTIGATION (Continuation)	1. File No. [redacted]	2. G-DEP Identifier [redacted]
	3. File Title VASQUEZ, Armando	
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5. Program Code	6. Date Prepared 10/25/05	

search of the property. ORTIZ agreed and signed a DEA form 88 Consent to Search for the residence to include the trailer, shed and the entire fenced area of his property.

4. Border Patrol Agent [redacted] along with K-9 [redacted] conducted a search of the property. K-9 [redacted] alerted to a stucco storage shed and a 1990 Chevrolet Astro Van with TX Tag: [redacted]. The Chevrolet van had bundles of marijuana in plain view, only partially covered with a blanket. The van also had a strong odor of marijuana coming from it. A search of the shed found seven burlap sacks containing individually wrapped bundles with marijuana. A search of the van found six bundles wrapped in tape containing marijuana. The van and marijuana were subsequently transported to the Fabens Border Patrol Station for processing. The residents were not taken into custody at that time per Assistant United States Attorney Laura Gregory.

5. On October 24, 2005, ORTIZ contacted SA [redacted] by telephone. ORTIZ stated that the owners of the marijuana had been calling him wanting paperwork showing the seized marijuana. ORTIZ said he was called by a Lino LNU and "Pajero" from number [redacted] about the missing marijuana. ORTIZ stated he was willing to go to jail and wanted to talk with agents regarding the marijuana.

6. On October 26, 2005, SA [redacted] and SA [redacted] met ORTIZ at the Fabens, TX Border Patrol Station. ORTIZ was told by SA [redacted] that he was not going to be arrested at that time and was free to leave. ORTIZ agreed to talk with agents. Also present at the Border Patrol Station was Intelligence Agent [redacted].

7. ORTIZ stated that on October 22, 2005, a male Hispanic juvenile approximately 15 years of age, hereafter referred to as JUVENILE 1, arrived at ORTIZ'S residence at [redacted] Clint, Texas. ORTIZ said that JUVENILE 1 is the son of [redacted] and [redacted]. ORTIZ stated that his wife is related by marriage to [redacted]. ORTIZ stated that JUVENILE 1 is a student at Horizon High School and lives in the Horizon City, Texas area. ORTIZ stated that when JUVENILE 1 arrived, he asked ORTIZ if he could store some marijuana for a short time in ORTIZ'S storage unit on the property.

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REPORT OF INVESTIGATION
(Continuation)

1. File No. [redacted]
2. G-DEP Identifier [redacted]
3. File Title VASQUEZ, Armando
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5. Program Code
6. Date Prepared 10/25/05

ORTIZ said he initially said "no" but then agreed. ORTIZ said he was to be paid $200.00. ORTIZ stated that he had only stored marijuana at his residence three times and all three times the marijuana was seized by law enforcement. SA [redacted] stated to ORTIZ that he found it hard to believe that he had only stored marijuana three times and had been caught all three times. ORTIZ then sighed and said he would be completely honest.

8. ORTIZ stated that after marijuana was seized from his house in March 2004 by DEA, he stopped storing marijuana. ORTIZ stated that he had stored marijuana that one time in 2004 for someone he did not know. ORTIZ said a mutual friend had sent someone over with the load of marijuana and asked him to store it overnight for $1,000. ORTIZ said that DEA came that night and seized the marijuana.

9. ORTIZ said that in early July 2005, JUVENILE 1 came to his house and asked him to store marijuana for him and his mother [redacted]. ORTIZ agreed to store that marijuana and said he was to be paid $300.00 for storing it for a short time in his storage shed. ORTIZ stated that when JUVENILE 1 delivered the marijuana, ORTIZ and JUVENILE 1 counted the burlap sacks. ORTIZ said that it was five sacks weighing approximately 300 pounds. ORTIZ said that JUVENILE 1 brought the marijuana with Armando VASQUEZ and another unidentified Hispanic male. ORTIZ said that JUVENILE 1 left the marijuana in the shed over night. ORTIZ stated that the next morning JUVENILE 1 came back with a vehicle that had New Mexico tags and picked up the marijuana. After JUVENILE 1 left, ORTIZ said that [redacted] arrived and paid him $300.00 for storing the marijuana.

10. ORTIZ stated that since July 2005, he has stored marijuana for JUVENILE 1 and [redacted] approximately 10 times. ORTIZ stated that every time was the same scenario. ORTIZ said JUVENILE 1 would always come on Saturday afternoon with VASQUEZ and another Hispanic male and drop 5 burlap sacks off weighing approximately 300 pounds. ORTIZ said that the next day JUVENILE 1 would arrive in a different vehicle with New Mexico tags and pick up the marijuana from his storage shed. ORTIZ stated that after the marijuana was gone, [redacted] would arrive and pay him $300.00 for storing the marijuana.

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[redacted]

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REPORT OF INVESTIGATION
(Continuation)

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2. G-DEP Identifier [redacted]
3. File Title VASQUEZ, Armando
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5. Program Code
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11. After talking with ORTIZ, SA [redacted] and SA [redacted] went to Horizon High School in an attempt to identify JUVENILE 1. SA [redacted] spoke to the administrative staff at Horizon High School who allowed SA [redacted] to view yearbooks. SA [redacted] identified JUVENILE 1 based on his name and age given to SA [redacted] by both ORTIZ and VASQUEZ. SA [redacted] was given JUVENILE 1's immediate family information which was Virginia GRIEGO with an address in Horizon City, Texas. The location of the address is also in the same area that ORTIZ and VASQUEZ described.

CUSTODY OF EVIDENCE

1. Exhibit 2 is described as 342.18 kilograms (752.8 lbs.) of marijuana contained in burlap sacks. On 10-23-2005 SA [redacted] and [redacted] seized Exhibit 2 from ORTIZ. SA's [redacted] and [redacted] transported Exhibit 2 to the El Paso Field Division for processing. On 10-25-2005, SA [redacted] processed Exhibit 2 in the prescribed manner as witnessed by SA [redacted] Exhibit 2 was remanded to the El Paso Field Division Evidence Custodian for storage and safekeeping.

2. Exhibits 2A-2K are representative samples of Exhibit 2. On 10-25-2005, SA [redacted] processed Exhibits 2A-2K in the prescribed manner as witnessed by SA [redacted]. Exhibits 2A-2K were delivered to the DEA South Central Mobile Laboratory in El Paso, Texas, for analysis.

3. Exhibit N-3 is described as a DEA Form-88, Consent to Search, signed by Cipriano ORTIZ on October 23, 2005. Exhibit N-3 was witnessed and signed by SA [redacted] and SA [redacted]. SA [redacted] processed Exhibit N-3 in the prescribed manner, as witnessed by SA [redacted], and later submitted to the DEA El Paso Evidence Custodian for storage and safekeeping.

4. Exhibit N-4 is described as two computer disks containing photographs taken by U.S. Border Patrol Agents and SA [redacted] subsequent to the arrest of Armando VASQUEZ. SA [redacted] processed Exhibit N-4 in the prescribed manner, as witnessed by SA [redacted].

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REPORT OF INVESTIGATION (Continuation)	1. File No. [redacted]	2. G-DEP Identifier [redacted]
	3. File Title VASQUEZ, Armando	
4. Page 5 of 5		
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and later submitted to the DEA El Paso Evidence Custodian for storage and safekeeping.

VEHICLE INDEXING

1. 1990 Chevy Astro Van, bearing Texas license plate [redacted] with VIN# [redacted]. This vehicle is registered to [redacted] El Paso, TX. The checks revealed that the vehicle was not stolen. This vehicle's value was below the required DEA threshold, and was therefore towed by El Paso wrecker to be turned over to the registered owner.

INDEXING

1. ORTIZ-Hernandez, Cipriano - NADDIS #[redacted].

2. [redacted] - NADDIS negative, DOB: [redacted], Hispanic female, [redacted], Address: [redacted] Clint, TX 79836, TX ID#[redacted], Mexican Citizen.

3. [redacted] - NADDIS Negative. Hispanic Female, [redacted] El Paso, Texas 79928, Phone: [redacted].

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[redacted]

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REPORT OF INVESTIGATION

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1. Program Code	2. Cross File	Related Files	3. File No.	4. G-DEP Identifier
5. By: SA [redacted] At: El Paso Field Division Group 4	☐ ☐ ☐ ☐ ☐		6. File Title VASQUEZ, Armando	
7. ☐ Closed ☐ Requested Action Completed ☐ Action Requested By:			8. Date Prepared 11/14/05	

9. Other Officers: [redacted]

10. Report Re: Supplemental Report

DETAILS

1. Reference is made to DEA 6 written by Special Agent (SA) [redacted] titled "Acquisition of Exhibit 2 on 10/23/2005".

2. On October 26, 2005, SA [redacted] and SA [redacted] met with Cipriano ORTIZ-Hernandez who provided the following information not included in the above referenced DEA 6:

3. ORTIZ-Hernandez stated that Osvaldo DAVILA was the individual that dropped of the 1990 Chevy Astro Van, bearing Texas license plate [redacted] (previously indexed) at his residence on 10-22-2005. This van contained approximately 6 bundles of marijuana. The total weight of the marijuana seized by DEA on 10-23-2005 from the van and the residence was approximately 752.8 pounds. ORTIZ-Hernandez stated that on 10-22-2005, at approximately 2:00p.m., his brother called him and asked ORTIZ-Hernandez if he could repair the transmission on the 1990 Chevy Astro Van.

4. ORTIZ-Hernandez stated that at approximately 3:00 p.m., DAVILA dropped of the 1990 Chevy Astro Van at ORTIZ-Hernandez's residence. DAVILA stated that he would be back later to pick up the van. ORTIZ-Hernandez stated that he did not know that the van contained marijuana.

11. Distribution:	12. Signature (Agent)	13. Date
Division El Paso Field Division District Other SARI	[redacted]	[redacted]
	14. Approved (Name and Title) [redacted] Group Supervisor	15. Date [redacted]

DEA Form - 6
(Jul. 1996)
[redacted]

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REPORT OF INVESTIGATION (Continuation)	1. File No. [redacted]	2. G-DEP Identifier [redacted]
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5. Program Code	6. Date Prepared 11/14/05	

5. ORTIZ-Hernandez described DAVILA as a Mexican male, 5'10", dark skin, 20-30 years of age, short hair, and has a colostomy bag. DAVILA lives on [redacted] in San Elizario, Mexico.

INDEXING

1. ORTIZ-Hernandez, Cipriano - NADDIS #[redacted]

2. DAVILA, Osvaldo - NADDIS Negative, Hispanic male, DOB: Unknown, Mexican male, 5'10", dark skin, 20-30 years of age, short hair, and has a colostomy bag. Address: [redacted], San Elizario, Mexico. Illegal Alien.

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REPORT OF INVESTIGATION

1. Program Code	2. Cross File	Related Files	3. File No.	4. G-DEP Identifier
			[redacted]	[redacted]

5. By: SA [redacted]
At: El Paso Field Division
Enforcement Group 4

6. File Title
VASQUEZ, Armando

7. ☐ Closed ☐ Requested Action Completed
☐ Action Requested By:

8. Date Prepared
11/16/05

9. Other Officers: SA [redacted] and Homeland Security OIG SA Christopher Sanchez

10. Report Re: Follow-up interview with Armando VASQUEZ and Cipriano ORTIZ on 11/16/2005 and the acquisition of Exhibit N-5

DETAILS

1. Reference is made to all previous DEA 6's written to this case file and title.

2. On November 16, 2005, Special Agents (SA) [redacted], [redacted] and Homeland Security Office of Inspector General (OIG) SA Christopher Sanchez met with Armando VASQUEZ at his residence in Clint, Texas. SA [redacted] had some follow-up questions regarding his drug smuggling activities.

3. SA [redacted] told VASQUEZ that he needed him to be completely honest in regards to his past marijuana smuggling activities. Initially VASQUEZ was nervous and reluctant to provide any information. SA [redacted] told VASQUEZ that he had information that VASQUEZ had in fact transported marijuana on several occasions prior to being caught. VASQUEZ then looked down and stated that he had in fact transported marijuana times.

4. VASQUEZ stated that approximately a year ago he was at [redacted]'S house and saw a large quantity of marijuana being stored there. At that time, VASQUEZ said [redacted] asked if he wanted to work for her transporting marijuana. VASQUEZ said that shortly after that, law enforcement conducted a raid on [redacted]'S residence and seized marijuana so he did not start working for [redacted].

11. Distribution:
Division El Paso Field Division
District
Other SARI

12. Signature (Agent) [redacted]
SA [redacted]

13. Date [redacted]

14. Approved (Name and Title) [redacted]
Group Supervisor

15. Date [redacted]

DEA Form -6
(Jul. 1996) [redacted]

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REPORT OF INVESTIGATION
(Continuation)

1. File No. [redacted]
2. G-DEP Identifier [redacted]
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5. VASQUEZ said that approximately three to four months ago he started working with [redacted]'S son transporting marijuana (NOTE: [redacted]'S son has been previously identified as JUVENILE 1 and will eventually be federally indicted with AUSA approval). VASQUEZ said that he and JUVENILE 1 would usually drive in a blue Dodge Neon down to the Rio Grande to pick up marijuana being backpacked across from Mexico. VASQUEZ said that he and JUVENILE 1 would always pick up marijuana on the weekends at approximately 3:00 P.M. in the afternoon, during Border Patrols shift changes. VASQUEZ said that after he and JUVENILE 1 pick up the marijuana they would drive it to a stash house at [redacted] in Clint, Texas. Once at the house, VASQUEZ said that either Cipriano ORTIZ-Hernandez or his wife [redacted] would open the storage shed behind their trailer and they store the marijuana in the shed. VASQUEZ said that they always had 5 burlap sacks with a total weight of approximately 200 pounds. VASQUEZ said he transported the marijuana with JUVENILE 1 approximately 5 or 6 times. VASQUEZ said he was paid $1,500 each time he helped transport the marijuana. VASQUEZ said that after the marijuana was secured in the stash house he and JUVENILE 1 would go to Mexico and get paid by [redacted].

6. SA [redacted], SA [redacted] and SA Sanchez left VASQUEZ at his residence and went to [redacted] to talk with Cipriano ORTIZ-Hernandez. SA [redacted] and SA [redacted] spoke to ORTIZ-Hernandez about the marijuana that was seized from his residence on October 23, 2005. ORTIZ-Hernandez had stated that the marijuana that was found in the storage shed on his property had belonged to [redacted]. ORTIZ-Hernandez stated that the marijuana located in a 1990 Astro Van had belonged to Osvaldo DAVILA. ORTIZ-Hernandez said that his brother, Jose Roberto ORTIZ, had sent DAVILA to ORTIZ-Hernandez's house to have ORTIZ-Hernandez fix the van. ORTIZ-Hernandez said he did not know there was marijuana in the van, even though it was in plain view parked in front of ORTIZ-Hernandez's residence in a fenced yard. ORTIZ-Hernandez had previously described DAVILA as a Hispanic male, approximately 20 years of age with a colostomy bag (NOTE: DAVILA was previously involved in marijuana smuggling and was shot in an incident with Border Patrol Agents that resulted in the BP Agents being charged criminally. DAVILA is now a victim/witness in the

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[redacted]

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criminal investigation being headed by Homeland Security OIG). SA [redacted] provided ORTIZ-Hernandez with a photo line-up containing DAVILA'S picture. ORTIZ-Hernandez positively identified DAVILA and the photo line-up was subsequently submitted as Exhibit N-5.

7. SA [redacted] asked ORTIZ-Hernandez if his brother Jose ORTIZ, who referred DAVILA to him could provide any information. ORTIZ-Hernandez said his brother Jose ORTIZ lived in Mexico but could be contacted by phone. ORTIZ-Hernandez stated that his brother had previously been in prison in the United States for drug charges and could not return to the United States. ORTIZ-Hernandez called his brother on SA Sanchez's cell phone at # [redacted]. SA [redacted] spoke to Jose ORTIZ on speakerphone. SA [redacted] asked Jose ORTIZ how he knew DAVILA and he stated that they were just friends but not too close. Jose ORTIZ said that DAVILA called him and said he was having problems with his van and needed someone to work on it. Jose ORTIZ said he referred him to his brother to fix the van. Jose ORTIZ said he did not know of any marijuana smuggling that DAVILA was involved with. SA Sanchez asked Jose ORTIZ if he could describe and identify DAVILA. Jose ORTIZ thought for a minute and then stated that we should know DAVILA'S identity because he is the person who was shot by Border Patrol agents about six months ago. SA [redacted] terminated the telephone call at that time along with the interview with ORTIZ-Hernandez.

CUSTODY OF EVIDENCE

1. Exhibit N-5 is described as a photo line-up containing a photograph of Osvaldo DAVILA. SA [redacted] processed Exhibit N-5 in the prescribed manner, as witnessed by SA [redacted], and later submitted to the DEA El Paso Evidence Custodian for storage and safekeeping.

INDEXING

1. ORTIZ-Hernandez, Cipriano - NADDIS #[redacted].

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2. DAVILA, Osvaldo - NADDIS pending.

3. [redacted] - NADDIS pending.

4. ORTIZ-Hernandez, Jose Roberto - NADDIS # [redacted].

DEA Form (Jul. 1996) - 6a

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[redacted]

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