

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

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

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

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

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

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

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 United 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 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.