

THE CASE OF RAMOS AND COMPEAN: THE ACROSS-BORDER CONTEXT

HEARING BEFORE THE SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT OF THE COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS

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CONTENTS

	Page
WITNESSES	
The Honorable Charles S. Shapiro, Principal Deputy Assistant Secretary, Bureau of Western Hemisphere Affairs, U.S. Department of State	21
Mr. T.J. Bonner, President, National Border Patrol Council of the American Federation of Government Employees, AFL-CIO	41
David L. Botsford, J.D., Botsford & Roark	59
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
Letter dated June 18, 2007, to the Honorable Tom Lantos, a Representative in Congress from the State of California, and Chairman, Committee on Foreign Affairs, from Brian A. Benezkowski, Principal Deputy Assistant Attorney General	4
Letter dated April 18, 2005, to Mr. Don G. Lettsinger, Sheriff, Edward Coun- ty, from the Consulate of Mexico	9
Copies of free transit border passes permitting Mr. Aldrete-Davila unescorted entrance into the United States	14
The Honorable Charles S. Shapiro: Prepared statement	23
Press release dated March 10, 2003, from Mr. Johnny Sutton, U.S. Attorney, U.S. Department of Justice	37
Mr. T.J. Bonner: Prepared statement	43
David L. Botsford, J.D.: Prepared statement	61
APPENDIX	
Written responses from the Honorable Charles S. Shapiro to questions sub- mitted for the record by the Honorable Dana Rohrabacher, a Representative in Congress from the State of California	103
Written responses from Principal Deputy Assistant Secretary of State Greg- ory B. Starr to questions submitted for the record by the Honorable Dana Rohrabacher	105

THE CASE OF RAMOS AND COMPEAN: THE ACROSS-BORDER CONTEXT

TUESDAY, JULY 31, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,
HUMAN RIGHTS, AND OVERSIGHT,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 o'clock p.m. in room 2172, Rayburn House Office Building, Hon. William D. Delahunt (chairman of the subcommittee) presiding.

Mr. DELAHUNT. I just want to make an announcement that we are scheduled to have nine votes over the course of the next hour or so. So I want to apologize to our witnesses and indicate that 3 o'clock looks pretty good in terms of commencing this hearing. So I ask for your indulgence, and look forward to seeing you again and hearing your testimony in about an hour. It is obviously beyond my control. I would have liked to have commenced and heard your testimony, asked questions and allowed you to return to your important roles and functions, but thank you for your patience.

[Whereupon, at 2:02 p.m. the subcommittee recessed, to reconvene at 3:26 p.m., the same day.]

Mr. DELAHUNT. This hearing will come to order, and let me express my apologies to our witnesses, but as I know you are aware we did have a series of votes. Hopefully we will be able to conclude this hearing prior to the next series of votes. On behalf of myself and my colleague, ranking member and friend from California, Mr. Rohrabacher, I want to welcome everyone, and I ask unanimous consent that any member attending today's hearing be considered a member of the subcommittee for the purpose of taking testimony and asking questions. Without objection, so ordered.

The purpose of this hearing is to review the interaction, if any, between the Mexican and United States Governments in the cases of Ignacio Ramos and Jose Compean. These Border Patrol agents are now in prison after a shooting incident on the United States/Mexican border. This is not a hearing to determine guilt or innocence but I feel compelled to make several observations.

Before coming to Congress, I served as the elected District Attorney in the metropolitan Boston area for some 22 years. I know all too well that mistakes can be made and that our system of justice is not perfect. One only has to know that with the advent of DNA testing a number of wrongful convictions have been reversed. Some 124 individuals have been released from death row.

Over the weekend I had the opportunity to review much of the record in this case, including recent testimony before the United States Senate. As a result, I do have serious concerns about the verdicts themselves. Now I recognize that these cases are on appeal, and the multiple issues that have been raised will be presumably addressed.

In any event, the criminal justice system is not simply about guilt or innocence. At its core it is a search for the truth, and once the truth is ascertained, determining an appropriate sentence or sanction, and I would submit that given the harsh, disproportionate, excessive sentences that were imposed on Ramos and Compean justice was not done. There was no need to charge the defendants with a violation of a statute that carried with it a 10-year mandatory minimum sentence.

Representative Duncan Hunter in his statement before the Senate committee observed that murder sentences average 12–13 years, and the Congressional Research Service reported to me just yesterday that in 2004, the latest year for which they have data, sentences in Federal cases where murder was involved averaged 9¼ years. In his testimony before the Senate, U.S. Attorney Johnny Sutton cited examples where the statute was used in the prosecution of other law enforcement officials. He noted a case involving a Texas police officer who raped a woman after removing her from her vehicle after a traffic stop.

Another case he cited involved four police officers in Memphis, Tennessee, who were charged after using their guns to rob narcotic traffickers of their drugs and money for personal gain. To make these comparisons with the cases of Ramos and Compean are simply absurd on their face but it underscores the excessive punishment meted out to these two Border Patrol agents.

Former Deputy Chief Luis Barker who headed the Border Patrol office in the El Paso sector at the time of this incident states before the Senate that he did not disagree that the penalty was disproportionate. U.S. Attorney Sutton himself at the same hearing—and I am using his words—said, “Some say it is too much time and I have sympathy for that.” Even the so-called victim, Osvaldo Aldrete-Davila, was reported in a press account to have stated that he thought the sentences were too harsh.

Well the law does provide a remedy, and that remedy is a commutation of the sentence, and I join with others today who have called on President Bush to commute the sentences of these two men. Commutation is a constitutional provision. It respects the rule of law and this is certainly an appropriate case for its use. I also believe that the American people who just recently witnessed the commutation of Lewis Libby before serving a single day of incarceration must wonder at the disparity of treatment in that case and in these cases.

It is this kind of disparity that erodes the confidence of the American people and the integrity of the criminal justice system. So I do hope that the President responds swiftly and exercises his constitutional prerogative, not just for the sake of these two men, but for the sake of the criminal justice system.

Now as to the topic of today’s hearing. Both our Government and the Mexican Government are parties to the Vienna Convention

which is obviously implicated in this case. From my own examination of the record, the Mexican Government had minimal contact with the United States Government in this matter, and no contact with their own national Aldrete-Davila, as he declined consular representation to which he was presumably entitled under the Vienna Convention.

This is reflected in a letter dated July 25, 2007, from the Department of Homeland Security Inspector General Richard Skinner. I will include this for the record as well as an exchange of correspondence between the Department of Homeland Security Office and the Mexican consulate in El Paso. It would appear from the correspondence that the Mexican Government was unaware that Aldrete-Davila had already cut a deal with DHS and Johnny Sutton's office on March 16, 2005.

The dates of the correspondence, by the way, obviously post date that of March 16 where Davila received a letter of immunity. The exchange of correspondence was initially dated March 28, and the response from the Department of Homeland Security was March 31. Chief Barker, whom I identified earlier as being in charge of the El Paso office of the Border Patrol, testified before the Senate—and again these are his words:

“On or about March 4, 2005, we received a memorandum from a Border Patrol agent in Tucson informing us of a shooting incident that occurred in the El Paso sector on February 17, 2005. It has been subsequently confirmed that the agent was one Rene Sanchez who had a family connection with Aldrete-Davila.”

The absence of any role in this case by the Mexican Government is further confirmed in a letter dated June 18, 2007, to Mr. Lantos, the chairman of the full committee, from the Department of Justice stating—and again this is an excerpt from that letter—that “the U.S. Attorney's office did not have contact with the Mexican Government regarding this case.” And I would like to submit this letter for the record as well.

[The information referred to follows:]



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 18, 2007

The Honorable Tom Lantos
Chairman
Committee on Foreign Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated July 3, 2007, to United States Attorney Johnny Sutton inviting him to testify before the Subcommittee on International Organizations, Human Rights, and Oversight, at a hearing regarding the prosecution of Mr. Ignacio Ramos and Mr. Jose Alonso Compean and, particularly, any communications between the U.S. Attorney's office and other U.S. government officials with Mexican government officials regarding the case.

As you may know, this case is still pending on appeal filed by the convicted defendants. It is the Department's longstanding policy not to testify about non-public matters pertaining to pending cases. Although we recently provided information to the Senate Judiciary Committee from the public record of this case, there is no public record relating to the focus of the Subcommittee's hearing. And as we recently advised Subcommittee Chairman Delahunt, the U.S. Attorney's office did not have contact with the Mexican government regarding this case. Accordingly, there is no basis for U.S. Attorney Sutton to testify before the Subcommittee. You may wish to contact other agencies for information about any communications they may have had with the Mexican government.

Should you proceed with your hearing, we want to respectfully advise you of a serious concern related to the disclosure of information about pending investigations. It has come to our attention that certain Committee Members or their staffs may have come into possession of law enforcement sensitive documents regarding an active, ongoing investigation and may have provided those documents to others. We urgently request that those in possession of such sensitive law enforcement materials not disclose them further or make them public. We believe that their dissemination may have already damaged an ongoing investigation and may compromise the Government's ability to successfully bring charges in the future. Additionally, dissemination could impact potential cooperating sources or even put witnesses in peril.

The Honorable Tom Lantos
Page Two

We realize that you would not want the Committee to take any action that could inadvertently compromise ongoing law enforcement investigations. We would appreciate your efforts to prevent further dissemination or disclosure of these documents. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,



Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Ileana Ros-Lehtinen
Ranking Minority Member
Committee on Foreign Affairs

The Honorable William D. Delahunt
Chairman
Subcommittee on International Organizations, Human
Rights, and Oversight

The Honorable Dana Rohrabacher
Ranking Minority Member
Subcommittee on International Organizations, Human
Rights, and Oversight

Mr. DELAHUNT. Both U.S. Attorney Sutton and Inspector General Skinner have been invited to testify at this hearing. Both have declined. I would note that Inspector General Skinner had agreed to testify at this hearing when it was originally planned for June but just last week he appeared to change his mind and refuses to appear.

Johnny Sutton testified before the Senate on this very matter some 2 weeks ago but the Justice Department decided he could not be here today. Yet I note that he has found time for numerous appearances on TV talk shows and interviews with newspaper reporters, not to mention a plethora of press releases issued by his office.

Clearly he has not been reticent about sharing his views about this case with virtually anyone who would listen. So I will not hold him personally responsible for his absence. I can only conclude that this is one more example of arrogance on the part of the Department of Justice of a refusal to cooperate with Congress. This is not just rhetoric.

I happen to serve on the Judiciary Committee. The staff of that committee has informed me that out of 17 requests for information from the Attorney General this year only five have even been responded to, 5 out of 17, and as everyone well knows, we have had to cite the President and former administration officials for contempt for refusing to testify before that committee.

So I am especially pleased to announce that I have spoken with the chairman of the Judiciary Committee, Mr. Conyers, about the lack of cooperation we have received, and he will conduct a subsequent hearing on this matter. I also intend to speak with the chair of the Committee on Homeland Security, Mr. Thompson, regarding this matter.

Finally, I want to note for the record that while the Departments of Justice and Homeland Security refused to participate, the State Department did send a witness. I think that is a reflection of the commitment of the State Department to work with Congress. On behalf of all my colleagues, I want to thank you, and by extension to every employee of the State Department for the work that you do.

State Department employees risk their lives every day for us, and they deserve our respect, and I would note the presence of Mr. Starr, who heads diplomatic security. I can personally attest to the professionalism and the courage of the men and women who work for diplomatic security. I have been the beneficiary of their professionalism.

Now before I turn to the ranking member for his comments, I would like to make one housekeeping announcement, particularly for those members who do not serve on the subcommittee so that we can get through our patient witnesses. It is my intention to limit opening statements just to myself—I know I have been verbose but I had this visceral need—and to the ranking member.

However, when it comes to the Q and A, each member will get 10 minutes, and we will do multiple rounds as necessary. So now I would like to turn to my friend from California, Mr. Rohrabacher, at whose request I agreed to hold this hearing. Dana.

Mr. ROHRABACHER. Thank you very much, and obviously, Mr. Chairman, you have my gratitude and the gratitude of the families

of Ramos and Compean, who have been separated from their loved ones for so long and are languishing in prison right now; and I thank you for that very strong statement and that very honest approach to this because I know we live in a city that is filled with politics, and the chairman did not need to hold this hearing, and I appreciate deeply the fact that he has moved forward and here we are today.

The Ramos and Compean case appears to be a blatantly bad call by prosecutors at its inception, followed not by admitting a mistake in judgment but by compounding the damage with lies, malicious vilification, and further bad calls. Bad calls like giving a free border crossing pass to an admitted drug dealer, leading to the obstruction of Congressional investigations and inquiries, and lies to Congress and to Congressional inquiries, and then a cover-up of the facts.

What should have been a reprimand of agents and supervisors for not doing the drudgery of paperwork that is required after a shooting incident has been transformed into a prosecutorial debacle, into ruined lives, and a disruption of the security operations at America's southern border. U.S. Attorney Johnny Sutton has been morphed into Mike Nifong. Battling not to admit mistakes, he has been all over the country stating his case to the media.

Significantly, however, as the chairman noted he has refused to appear here today. Of course here he would be held libel for perjury or lying to Congress if he were intentionally to distort the truth. That is not the situation when he is talking to the media.

He should have come today. There have been so many questionable statements and bad decisions that this case stinks to high heaven. No shows at hearings, as we have no shows today from Mr. Sutton or from the Department of Homeland Security, oblivious denials, further misstatements of facts, none of that is going to remove the stench that surrounds this case.

The prosecutors had prosecutorial discretion, as do all prosecutors. They decide who to charge and what to be charged. It was the prosecutor's decision, now defended by U.S. Attorney Johnny Sutton, to give immunity to an illegal alien drug smuggler and to throw the book at Border Patrol agents. The names Ramos and Compean have been added to a growing list of law enforcement officers prosecuted in Mr. Sutton's quest to supposedly protect the legal rights of illegal alien criminals.

There is an alarming pattern here. For example, the case of Border Patrol agent Gary Brugman, a 9-year veteran of the Coast Guard. He was convicted and sent to prison for over 2 years for using his foot to push down a noncompliant, would-be illegal alien. The same illegal had been caught and released four times within 2 weeks of this incident. So what did the repeat trespasser do on the fifth time that he was caught, this time by Agent Brugman? Well, what he did is he made an official complaint of misconduct.

Clearly the illegals invading our country have been instructed, and oftentimes by the Mexican consulate, on how to work the system in the United States. Johnny Sutton's office jumped at the opportunity to prosecute not one of the intruders but one of those who have been trying to protect us against this invasion to our southern border. The prosecutorial wrath was not aimed at the intruder but

instead targeted one of our guys, the only ones who are preventing a total breakdown at America's southern border.

Mr. Brugman was charged with a Federal civil rights violation. Does that sound familiar to anybody? Mr. Sutton secured this bogus conviction of Mr. Brugman by springing from prison a drug smuggler who had been injured while resisting arrest after being arrested by Agent Brugman. Does that sound familiar?

Mr. Brugman of course was never charged with any misconduct in that incident with the drug smuggler. Another law enforcement officer's life destroyed because of a decision by Mr. Sutton to side with the bad guys. Mr. Sutton was so proud of this conviction he bragged about it in an official press release thanking the Mexican Consul for all the cooperation and assistance in this case.

Next is the case of Texas Deputy Sheriff Gilmer Hernandez. In 2005, he pulled over an SUV that ran a stop sign in his hometown of Rock Springs, Texas. The driver sped off, trying to run over Deputy Hernandez. The officer, his life in danger, shot at the tires trying to disable the vehicle. Predictably, the SUV was packed with contraband. This time not drugs, but with illegals being smuggled into the United States.

Two of the illegal entrants suffered minor injuries from bullet fragments. Deputy Hernandez followed all the proper procedures, and was about to be cleared by the Texas Rangers until 17 letters were sent to our Government by the Mexican Consul demanding prosecution. I would enter this into the record at this point which is a letter from the Mexican Consul demanding prosecution of Officer Hernandez.

Mr. DELAHUNT. Without objection.

[The information referred to follows:]



CONSULADO DE MÉXICO
EAGLE PASS, TEXAS, EUA

File: 710-03(EAG)8101

Number: 00815

Eagle Pass, Tx. April 18, 2005.

Mr. Don G. Leitsinger
Sheriff Edward County
P.O. Box 156
Rocksprings, Texas

I am addressing to you, regarding the case of the Mexican national, Ms. MARICELA RODRIGUEZ GARCIA (DOB 4-11-1979), who based on the information obtained by this Consulate, received a gunshot wound by an agent of the Sheriff Department of Edward County, that caused injuries in her face.

As far as we know, last April 15, 2005 the Mexican national was transported in first instance to Val Verde Hospital in Del Rio, Tx, and then to San Antonio, Tx., where she was attended at the University Hospital. Today, Mr. Gabriel Salas a member of the staff of this office had the opportunity of interviewed Ms. RODRIGUEZ Who confirms the facts of the incident.


Based on the Consular Convention between Mexico and the United States and the Vienna Convention on Consular Relations, the Consulate of Mexico is entitled to represent, protect and defend the rights of Mexican nationals in this country. Therefore, I would like to point out, that is the care of my Country that this kind of incidents against our nationals, do not remain unpunished.

A handwritten signature in black ink, appearing to be the name of the Consul, is written over the typed text.

According with the information provided above, I would appreciate your kind assistance, so this Consulate can be informed of the current investigation, and your support, so you present and file a complaint with the necessities arraignments.

I would like to express my gratitude for your kind attention in this matter.

Sincerely,


Jorge Ernesto Espel Montes
Consul of Mexico.

Ccp. Mr. Bobby Smith, Texas Rangers, 2012 Avenue F., Del Rio, Tx 78840
Lic. Gerónimo Gutiérrez Fernández.- Subsecretario para América del Norte.
Min. Miguel Gutiérrez Tinoco.- Director General de Protección y Asuntos Consulares
Emb. Arturo Aquiles Dáger Gómez.- Consultor Jurídico
Emb. Carlos de Icaza.- Embajador de México, Washington, D.C.
Emb. Martha I. Lara.- Cónsul General de México, San Antonio, Tx.

Jeem/gsi

Mr. ROHRBACHER. The FBI then swooped in and took over the case with U.S. Attorney Johnny Sutton's office bringing charges of Federal civil rights violations against Deputy Hernandez. Sound familiar? The coyotes were never prosecuted. Sound familiar?

As a matter of fact, the illegal victims in this case were given visas and are now living in Austin, Texas, enjoying a \$100,000 settlement awarded to them. Deputy Hernandez is currently incarcerated in a Federal prison in West Virginia, 1,200 miles away from his young wife and infant daughter, courtesy of Mr. Sutton. Does that sound familiar?

And now we have the travesty of Border Patrol agents Ramos and Compean, who are at this moment languishing in prison in solitary confinement for over 6 months. Let us get this straight. Solitary confinement for over 6 months. We would not do that to a murderer.

I recently visited a prison, Mr. Chairman, and I happened to see Charles Manson in that prison. Charles Manson was not in solitary confinement, but two border guards who may have made a mistake in decision, according to the prosecutor, in a split second decision as to whether they should fire their guns at a drug dealer, they are in solitary confinement. Johnny Sutton chose to take the word of an admitted drug smuggler over our border agents.

Both agents are of course veterans of the Navy and Coast Guard. They are military veterans. Both of them are fathers. They have three children each. They have unblemished records in the Border Patrol. They have served for 5 years and 10 years, respectively. As I say, both exemplary records. Ramos in fact was recommended to be Border Patrol agent of the year just before this happened.

Common sense would dictate that throwing the book at the drug smuggler would be the course of action, not giving him immunity. Yet Johnny Sutton felt compelled to destroy Ramos and Compean's lives and side with the drug smuggler. Sutton, again, contrary to his public statements, was not required to charge these men with a Federal gun statute carrying a mandatory minimum sentence of 10 years.

Again, you hear Mr. Sutton. He refuses to testify here but he makes these kind of outrageous, inaccurate statements or impressions, leaving false impressions. Maybe he is a lawyer and thinks he can leave a false impression without actually lying and that is not lying. Well that is not what the rest of us believe. He had the discretion as to what laws he would charge that these men had broken.

Senator Feinstein stated the gun statute, of course, was never intended to be used against law enforcement officers who in the line of duty are required to carry guns and make split second decisions as to when to use them. No. The prosecutors in this case had every prosecutorial discretion what to charge these men with. Mr. Sutton is running around the country saying he had no choice at all. It was Congress that mandated that this 10-year sentence be on the law. Yes, but he was not required to charge them with that particular offense.

In this case the prosecutors were proactive. They initiated the most damaging and harshest course of action, and then set out to achieve their goal with a vengeance. The prosecutors could have re-

frained, for example, from intimidating witnesses. Granting immunity to two other officers who were on the scene that day was in reality a threat to those two officers. You testify against Ramos and Compean or we will go after you, otherwise why would they have to give them immunity if they were not threatening to go after them?

According to the Homeland Security memo dated April 12, 2005, all nine agents on the scene shortly after this shooting incident either heard or knew about the shooting. That includes the two supervisors who were on the scene. The prosecutors portrayed it as a cover-up but what it was instead was an unspoken understanding of these nine—and here is a copy of that report that I just quoted for the record, Mr. Chairman.

Mr. DELAHUNT. Without objection.

[NOTE: The information referred to is not reprinted here but is available in committee records.]

Mr. ROHRABACHER. The prosecutors portrayed it as a cover-up but what it was was an unspoken understanding among all of those professionals, these Border Patrol agents and their supervisors, all with distinguished records, veterans, they just decided not to carry this matter any further. They did not know or did not believe that that escaping drug dealer had been hit so they were not going to carry it any further to free themselves from the burden of hours of extra, voluminous paperwork and bureaucratic procedures that are required of every shooting incident, and that was their mistake. They did that.

That perhaps required a response of some kind of reprimand. Perhaps a couple of days off. Perhaps a bad mark on their record for not willing to fill out the paperwork. It was a mistake, and not a crime, not to go forward with the paperwork. It certainly did not justify the blood lust and the heavy-handed prosecution that has moved forward since.

They painted a deliberately false picture of Aldrete-Davila, the drug smuggler. Not only did they paint a false picture of the Border Patrol agents but Aldrete-Davila, the drug smuggler, has been portrayed as if he was a first time offender trying to just make some money to pay for his sick mother's medicine, and he needed to renew his driver's license so he could make money for his sick mother's medicine.

They perpetuated this lie. This lie was perpetuated through the grand jury presentations and throughout the trial. They perpetrated this lie. It was a lie through the grand jury and through the trial. Sutton's prosecutors, while they falsely portrayed the drug smuggler, knew at that moment while they were portraying him as just a one-time guy and he was just trying to earn money for his sick mother, at that time they knew that Aldrete-Davila, the drug smuggler, had been ID'd by the DEA in a second drug smuggling incident. We have the documents from the DEA indicating that Mr. Aldrete-Davila was involved with a second shipment. This is before the trial, yet they moved forward in the trial portraying him in that positive light.

They then of course not only portrayed him in a false light to the jury, but then they made sure that the jury never got any information to the contrary. This is not just a lie. This is a damn lie, and

it sounds like prosecutorial misconduct to me, and I do not know what does not sound like prosecutorial misconduct.

Every time Mr. Sutton says the Border Patrol agents were convicted by a jury of their peers, remember the jury was lied to. Sutton claims the judge is at fault for keeping information about the drug dealer's shipment, which was the second lie of course, from the jury. Of course that too was a lie, because the judge simply ruled that the prosecutor's motion to put the second drug incident under seal and away from the jury, the judge was simply of course ruling in favor of the prosecutor's motion.

So for Mr. Sutton to claim that it was the judge's fault is again a falsehood being presented to us. So not only the jury but the American people have been given a false picture. Maybe that is why Mr. Sutton is not here today. Maybe he does not want to answer these type of questions.

For example, Mr. Sutton has repeatedly claimed that Ramos and Compean were corrupt, rogue agents who shot an unarmed man in the back while fleeing. Let us set the record straight. He was not just an unarmed man. This is not some fellow out for a picnic on the border. He was vermin. He was a drug smuggler bringing in hundreds of pounds of narcotics into our country. There is no way to know if he was armed or not because he escaped back to Mexico.

Thus by Mr. Sutton repeating that he is of course taking the word of the drug smuggler in the incident. He was not shot in the back, as Mr. Sutton repeatedly says. He was shot in the buttocks, sustaining a wound consistent with someone who turned as he ran pointing something. That is the testimony of the U.S. army doctor who removed the bullet. But what is it that he could have been pointing if he was shot in a way that he was leaning backwards? Maybe it was a gun. Maybe Ramos and Compean, as they testified, thought there was a gun in his hand, and at that split second decided to use their weapons.

These officers are far from corrupt, in fact another charge made by Sutton, that these are corrupt officers. They have unblemished service records. Mr. Sutton knows these things, and if he were interested in the truth or justice instead of trying to justify all this vile prosecution, he would not be engaging in personal vilification and deception. He might even be here to answer some questions, but he chose not to do so.

Mr. Chairman, I am aware that much of this is not in the committee's jurisdiction. However, if there were six free transit passes issued to the drug dealer in this case so we have the U.S. Government officials permitting a drug smuggler to cross freely into our country without being escorted, that decision to do that is part of our jurisdiction. I now submit for the record copies of the six free transit border passes that permitted this drug dealer to come in unescorted into our country, two of which were granted to the drug dealer after the second drug shipment was known to the U.S. Attorney's office.

Mr. DELAHUNT. Without objection, and I just would note for the record that the passes that the gentleman alludes to are passes that are issued by the Department of Homeland Security, not the Department of State.

[The information referred to follows:]

Warning: A nonimmigrant who accepts unauthorized employment is subject to deportation.
Important: Retain this permit in your possession; you must surrender it when you leave the U.S. Failure to do so may delay your entry into the U.S. in the future.
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 - Across the Canadian border, to a Canadian Official;
 - Across the Mexican border, to a U.S. Official.
 Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-94 prior to surrendering this permit.

Record of Changes

212 (A)(5)
 [Signature]
 Port: _____
 Date: _____
 Carrier: _____
 Flight # / Ship Name: _____

Departure Record

Multiple entries per IAPD Mullins
 Christopher Sanchez Agent Budge #143

Departure Number 820299399 11	
Department of Homeland Security CBP I-94A (11/04) Departure Record	
HANDLED UNTIL 04/15/2005 PURPOSE PUBLIC INTEREST PLP/DOA 03/10/05 #2035 (PORT) (DATE) (OFFICE)	
Family Name ALDERETE AVILA	
First (Given) Name OSBALDO	Birth Date (Day Mo Yr) 20, 09, 80
Country of Citizenship MEXICO	
20050316 US-VISIT	MULTIPLE
See Other Side	STAPLE HERE

①

- "Parked into Country" for this sort of time
- This sets precedent giving additional area

Brundage - long. Affairs
344-1760

8253339882	PROCEEDING 5-06-80 PURPOSE Public Forelist Evidence 5/6/85 #0714
Department of Homeland Security CBP I-94A (11/04) Departure Record	Country Name ALDREWE DAVILA (Last) (First) OSVALDO Country of Citizenship MEXICO
	Birth Date (Day, Mo, Yr) 20, 09, 80
	SINGLE USE 20050506 US-VISIT
See Other Side	STAPLE HERE

- CBP rec'd a request from Sanchez for this

②

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Record of Changes

82 (b) (6) **MEDICAL**
APPROVED BY CBP VENEZIA
 Port: _____
 Date: _____
 Carrier: _____
 Flight # / Ship Name: _____

Departure Record

Departure Number

827007877

PAROLED UNTIL SEP 01, 2005

PURPOSE HUMANITARIAN

Department of
Homeland Security

MEDICAL

CBP I-94A (11/04)
Departure Record

YSL-ELH 06-21-05 6077

(PORT) (DATE) (OFFICE)

Family Name

ALDRETE DAVILA

First (Given) Name

OSVALDO

Birth Date (Day Mo Yr)

20.09.80

Country of Citizenship

MEXICO

20050601 US-VISIT PAROLED SINGLE ENTRY

See Other Side

STAPLE HERE

3

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☐ 212(d)(4)(A) ☐ 212(d)(4)(B) ☐ 212(d)(4)(C) ☐ 212(d)(4)(D) ☐ 212(d)(4)(E) ☐ 212(d)(4)(F) ☐ 212(d)(4)(G) ☐ 212(d)(4)(H) ☐ 212(d)(4)(I) ☐ 212(d)(4)(J) ☐ 212(d)(4)(K) ☐ 212(d)(4)(L) ☐ 212(d)(4)(M) ☐ 212(d)(4)(N) ☐ 212(d)(4)(O) ☐ 212(d)(4)(P) ☐ 212(d)(4)(Q) ☐ 212(d)(4)(R) ☐ 212(d)(4)(S) ☐ 212(d)(4)(T) ☐ 212(d)(4)(U) ☐ 212(d)(4)(V) ☐ 212(d)(4)(W) ☐ 212(d)(4)(X) ☐ 212(d)(4)(Y) ☐ 212(d)(4)(Z)

ADDRESS IN U.S. 1200 GOLDEN KEY #200, EL PASO, TX 79905

ELP ONLY ☐ N-HQ AUTHORIZED MULTIPLE ENTRY

Port: **60621A** Departure Record

Date: _____

Carrier: _____

Flight # / Ship Name: _____

Departure Number
838317105 11

PAROLED UNTIL 14 20

PURPOSE Public Interest

Department of Homeland Security

CBP I-84A (11/04)
 Departure Record

VSL/ELP 07/14/05 01255
 (PORT) (DATE) (OFFICE)

Family Name
ALDERETE DAVILA

First (Given) Name
OSVALDO Birth Date (Day Mo Yr)
20.09.80

Country of Citizenship
MEXICO

20050815 US-VISIT SINGLE USE

See Other Side **STAPLE HERE**

(4)

See Other Side **ENGLISH STAPLE HERE**

Departure Number
441089909 10

PAROLED UNTIL 15 2005

PURPOSE PUBLIC INTEREST

John C. Davila

ELP/1027105 SKC

(PORT) (DATE) (OFFICE)

MULTIPLE ENTRY

Family Name
ALDERETE DAVILA

First (Given) Name
OSVALDO Birth Date (Day Mo Yr)
20.09.80

Country of Citizenship
MEXICO

For sale by the Superintendent of Documents, U.S. Government Printing Office
 Washington, D.C. 20402

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Record of Changes

212(d)(5)
A79 180 417

Departure Record

Port: _____

Date: _____

Carrier: _____

Flight #/Ship Name: _____

U.S. Government Printing Office

(5)

Departure Number 441141178 10	PAROLED UNTIL MARCH 31, 2006 PURPOSE TURIST BENEFIT SIGNATURE [Signature] ELP 1/24/06 SNC PORT DATE OFFICE
Immigration and Naturalization Service I-94 Departure Record	MULTIPLE ENTRY 14. Family Name ALDRETE-DAVILA 15. First (Given) Name OSVALDO 16. Birth Date (DD/MM/YY) 20/09/80 17. Country of Citizenship MEXICO

See Other Side. STAPLE HERE

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Record of Changes

212 (d) (5)

A79 190 417

Departure Record

Port:

Date:

Carrier:

Flight #/Ship Name:

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

6

Mr. ROHRABACHER. Correct. At the direction of the Department of Justice, I might add. If Mr. Sutton were present, I would ask him about whose decision it was to issue six unconditionally unescorted border crossing cards to this drug smuggler even after the second drug shipment was identified. Mr. Sutton seems to have changed his story several times since being asked about this in front of the Senate Judiciary Committee 2 weeks ago. Was the drug dealer escorted on every visit? We need to know about that.

Who is responsible for this decision to give him a free transit pass which required no escort? And is it not true that other transit passes require escorts? Well no wonder Mr. Sutton and representatives of the DHS, Department of Homeland Security, declined our invitation to come before this committee to explain this travesty because they would be under oath and not just in front of the media where they could say anything that they want.

The Justice Department and Homeland Security in fact fought tooth and nail to prevent this committee, Mr. Chairman, from seeing the official documents issued to the drug dealer. The documents that I just simply put into the record. My office was stonewalled for months by these departments. They went so far as to tell us that we needed a privacy waiver to be signed by the drug smuggler before we, as an investigative body in Congress, could see these official Federal documents. A privacy waiver for a drug smuggler issued official entry status into our country? That is something that we cannot look into? That we do not have a right to request documents of?

This represents the type of cooperation, as the chairman pointed out, that we in Congress have received since this administration began, and I am sad to confirm the chairman's observation on that. That too is part of a pattern.

Speaking of Homeland Security, I would like to ask Inspector General Richard Skinner two questions, however Mr. Skinner also felt it unnecessary to appear before this committee, even though part of his charge as Inspector General is to report to Congress. The Department of Homeland Security Office of Inspector General played a large role in this heinous prosecution. In fact, they are the only agency who stepped foot both on Mexican and American soil in this case.

It was the Office of Inspector General Special Agent Christopher Sanchez who began this investigation, March 4. However, there are conflicting accounts as to exactly how this investigation started. According to a briefing given by high DHS officials to Members of Congress, some of whom are present in this room today, the case started because of a phone call from the Mexican consulate to the United States Attorney's office.

But according to the Department of Homeland Security report released to the public, another border agent in Arizona who grew up with the drug smuggler initiated the investigation. Members were also told by the Department of Homeland Security—and some of them are here today—that Ramos and Compean admitted that they knew the drug smuggler was unarmed, and that they bragged that day that they wanted to go shoot a Mexican.

These are Mexican-Americans. Proud Mexican-Americans, and we were told in an official inquiry by members of the House of Rep-

representatives looking into this issue, officially told by the Department of Homeland Security that they bragged about wanting to go out and shoot a Mexican. This later turned out to be a bald-faced lie, and it was conveyed to U.S. Congressmen making an official inquiry; a lie that was passed on to the public, a lie which Johnny Sutton, U.S. Attorney, sat back and let be disseminated. He was aware of what was being said. Where is the accountability?

Mr. Skinner should have been here to answer these very troubling questions yet he thumbed his nose at our oversight capacity, and decided to hide behind his separation of powers fortress. Mr. Skinner needs to answer for the actions of his investigator Christopher Sanchez. Why was he authorized to present an immunity agreement to a drug smuggler in a United States consulate in Juarez, Mexico? Why did he only escort Aldrete-Davila once across the border for medical treatments but then felt it was acceptable to continue issuing him unfettered border crossing cards?

Did Mr. Sanchez have any contact with the Mexican Government during this investigation? All this seems to be reasonable for us to question. According to official DEA investigative reports, Aldrete-Davila was clearly identified in a second drug shipment, probably while in possession of the border crossing document given to him by our Government; but there is no one here who can directly talk to us and be responsible, tell us what happened and why.

The actions of the U.S. Attorney in this case look more and more like a cross between Nixon and Nifong. This case is the greatest miscarriage of justice I have witnessed in my 30 years in Washington, DC. The lives of two of America's defenders have been destroyed by an overzealous, overreaching U.S. Attorney who believes he is untouchable because he has a personal relationship with the President.

Border Patrol agents Ramos and Compean languish in prison. Their families suffer agonizingly as they watch themselves slide into destitution with no health care, no source of income, with their retirement benefits totally gone. We cannot let this nightmare go on. Mr. Chairman, you were absolutely right when you compared this to Scooter Libby.

In a nanosecond this White House issued Scooter Libby, a crony of the President, a commutation of his sentence. Yet when we begged and pleaded for him to intercede to try at least make sure Ramos and Compean were safe in prison, we were told it is a long, drawn out process. You know a lot of people have to decide on these things. Yes, it is long and drawn out when it comes to the ordinary men and women who are protecting our country. Regular human beings. Mexican-Americans who are proud to serve us. But it takes a millisecond to make sure that one of your cronies in the White House is protected.

With that, we need to free Ramos and Compean for their families, for them, and for the United States of America. Thank you, Mr. Chairman.

Mr. DELAHUNT. Thank you, Mr. Rohrabacher. I think you exceeded the record for an opening statement. Let me note the presence of colleagues. On my left, although they are usually on my right, let me begin with Ed Royce, who is the ranking member on the Subcommittee on Terrorism, Nonproliferation, and Trade of the full

committee, and to his left is another colleague who serves on the committee, and that is Congressman Mike McCaul of Texas.

And another member of the full committee from Texas, Congressman Ted Poe, and a non-member of this committee but also from Texas, Congressman Culberson, John Culberson. To his left is a man for whom I have profound respect, a man of great courage, and a man of passionate convictions, the gentleman from North Carolina who is not on this committee—I wish he were on this committee—Mr. Walter Jones.

Now I think it is time that we recognize our witnesses who are before us and again thank them for their patience. Charles Shapiro has been the Principal Deputy Assistant Secretary in the Department of State's Bureau of Western Hemisphere Affairs since July 2005. Mr. Shapiro was the United States Ambassador to Venezuela from February 2002 until August 2004, a very interesting time in the bilateral relationships between Venezuela and the United States. That is where I met Ambassador Shapiro for the first time and grew to have tremendous respect for his service as well.

He also served as Deputy Assistant Secretary for Indian and Caribbean Affairs from September 2004 until July 2005. He joined the Department of State in 1977. He has previously served overseas as Deputy Chief of Mission at the United States Embassies in Chile and Trinidad and Tobago. Other overseas postings include El Salvador and Denmark.

Mr. Shapiro served as Director of Office of Cuban Affairs from June 19 through September 2001. His other Washington assignments have been in the Bureau of Western Hemisphere Affairs, the Bureau of International Narcotics and Law Enforcement Affairs, and the Bureau of Public Affairs. He holds the rank of Minister Consular in the Senior Foreign Service.

His foreign languages are Spanish and Danish. I never realized that the Ambassador spoke Danish. A proud native of Atlanta, Mr. Shapiro is a graduate of the University of Pennsylvania, Georgia State University and Department of State Senior Seminar.

I would like to note that Ambassador Shapiro is joined by the Director of the State Department's Diplomatic Security Service, Gregory Starr. DS, as the Service is known, is the State Department's security and law enforcement agency. I alluded to the department earlier in my own opening remarks, and although Mr. Starr will not make a statement he will be available to answers members' questions, and he has served in the diplomatic security service for almost 30 years and is a native of New York. However, he is a Boston Red Sox fan.

Ambassador Shapiro, you may begin.

STATEMENT OF THE HONORABLE CHARLES S. SHAPIRO, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. SHAPIRO. Thank you very much, Mr. Chairman, members of the committee. Thank you for the opportunity to testify today. The United States and Mexico enjoy excellent bilateral relations including cooperation on trade, law enforcement, environment, energy, gangs, and a host of issues related to our common border. We are working together with the Government of Mexico on a joint strat-

egy on fighting narcotics-related violence in Mexico. Our Presidents will meet together with the Prime Minister of Canada in Montebello, Canada, August 20–21.

One of the most important functions of U.S. Embassies overseas is the protection of U.S. citizens. U.S. consular officers work to ensure that U.S. citizens are treated in accordance with local law. Mission Mexico comprises one of the largest and most extensive United States diplomatic and consular missions in the world. It consists of the Embassy in Mexico City, four consulates general, five consulates as well as 14 consular agencies. In the United States, Mexico, in addition to its Embassy here in Washington, operates 48 consulates with the 49th in New Orleans slated to reopen in the near future.

Slightly under 2,000 Americans a year are arrested in Mexico. American prisoners are visited by consular staff at a minimum, more often if needed, on a quarterly basis. Some prisoners actually request no visits. Worldwide, our consular officers conducted 5,694 prison visits through the third quarter of this fiscal year. We responded to over 13,000 welfare and whereabouts requests worldwide from concerned parties regarding U.S. citizens who are either missing, hospitalized, arrested or to pass emergency messages to them.

Two hundred and fourteen fugitives worldwide were returned to the United States through extradition, deportation and repatriation. The chairman referred to the Vienna Convention on consular relations, and what that means is that when foreign nationals are arrested or they are detained they must be advised of the option to have the consular officials of their own country notified, whether it is U.S. citizens abroad or foreigners in the United States.

Consular officials are entitled to access to their nationals who are detained, and they are entitled to provide consular assistance. The United States has no additional bilateral consular notification agreement with Mexico that would require consular notification of their arrest or detention of a Mexican national regardless of the national's wishes.

The Bureau of Diplomatic Security is the security and law enforcement arm of the Department of State. The Bureau of Diplomatic Security is responsible for providing a safe and secure environment for the conduct of U.S. foreign policy around the world. Operating from a global platform in 25 U.S. cities and 159 foreign countries, DS ensures that America can conduct diplomacy safely and securely.

Mr. Chairman, I would be delighted to answer your questions.

[The prepared statement of Mr. Shapiro follows:]

Testimony of Principal Deputy Assistant Secretary of State Charles S. Shapiro
Before the House Committee on Foreign Affairs, Sub-Committee on International Organizations,
Human Rights and Oversight
July 31, 2007

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Under the Vienna Convention on Consular Relations, when foreign nationals are arrested or detained, they must be advised of the option to have their consular officials notified. Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance. The United States has no additional bilateral consular notification agreement with Mexico that would require consular notification of the arrest or detention of a foreign national, regardless of the national's wishes.

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I would be delighted to answer your questions.

Mr. DELAHUNT. Thank you, Mr. Shapiro. Well, let me begin. Are you aware of any State Department records that would reflect communication between the Department of State and the Mexican Government in the Ramos-Compean case?

Mr. SHAPIRO. First let me say we have searched our records in Mexico City, in our consulate in Ciudad Juarez and here in Washington. We have received no diplomatic note from the Government of Mexico with regard to this, and that is fairly standard practice. When they are concerned about one of their nationals, they would send us a diplomatic note, just as we do when we are concerned about one of our nationals abroad.

Mr. DELAHUNT. Let me interrupt at that point in time. How many diplomatic notes would you normally receive from the Mexican Government in the course of a year or calendar year?

Mr. SHAPIRO. I cannot give you an exact number. I would guess dozens if not hundreds in the course of a year.

Mr. DELAHUNT. And how many diplomatic notes do we forward to the Mexican Government, Mexico City?

Mr. SHAPIRO. I do not have a number. I have got some examples of three of them that we have sent, if you are interested, but we send these. It is fairly standard if we have got concern about the treatment of a United States citizen in Mexico or whatever the country. In this case we are talking about Mexico. But in the posts where I have served, we send diplomatic notes to the host government when we are concerned about a U.S. citizen.

Mr. DELAHUNT. Is there a diplomatic note coming from the United States to Mexico that is short and concise that you have in your presence?

Mr. SHAPIRO. We do not do short and concise, sir.

Mr. DELAHUNT. I thought that was going to be your answer, Ambassador. But if you—

Mr. SHAPIRO. I would be delighted to give you copies of these.

Mr. DELAHUNT. Sure.

Mr. SHAPIRO. We blanked out the names because obviously these are U.S. citizens that we are concerned about.

Mr. DELAHUNT. How many American citizens are currently detained, incarcerated in Mexico?

Mr. SHAPIRO. I cannot tell you how many are incarcerated but close to 2,000 are arrested a year.

Mr. DELAHUNT. About 2,000 arrested a year.

Mr. SHAPIRO. Yes.

Mr. DELAHUNT. Okay.

Mr. SHAPIRO. But I cannot tell you how many are in Mexican jails, and obviously a number of people are dual nationals, both Mexican and United States nationals in jail in Mexico, and so you get into issues of whose national is it you are talking about. I do not want to mislead you, sir. There was contact with the Government of Mexico between our consulate in Ciudad Juarez and the local police authorities in this case, and it was through the regional security officer, the representative of diplomatic security in the consulate general in Ciudad Juarez.

Mr. DELAHUNT. Can you describe the basis for that contact and what was involved?

Mr. SHAPIRO. If you do not mind, I would ask my colleague, Greg Starr, to respond to that.

Mr. DELAHUNT. Sure. Mr. Starr.

Mr. STARR. Sir, we have two regional security officers at the consulate in Ciudad Juarez. These regional security officers perform a wide variety of functions. However, many of the functions have to do with helping U.S. law enforcement agencies. In this case they were contacted by DHS OIG. I understand that our foreign service national investigator, who is a Mexican national who works for the regional security office, located the victim, the shooting victim, Mr. Aldrete-Davila, and made arrangements for him to come to the Embassy. This is a normal function, sir.

Mr. DELAHUNT. I really want to be clear because I think clarity is important. The Department of Homeland Security, the Office of the Inspector General contacted the American consulate in Juarez. The American consulate employed a Mexican national that used his contacts with local Juarez police, local Mexican police to locate Aldrete-Davila. Am I stating that accurately?

Mr. STARR. Sir, I do not believe that is exactly accurate. I have no information that he contacted the Mexican police at that time. I can tell you that the RSO's office did liaison with the local Mexican police at the behest of the DHS OIG when they were asked to go to the region where Mr. Aldrete-Davila crossed the border. I do not think they would want to go that close to the border without notifying the police that they were going to do it, and that I understand is where they actually notified the police.

Mr. DELAHUNT. Okay. In other words, DHS requested help from the RSO, the regional security officer, and the Department of Homeland Security Office of Inspector General came to Juarez and the security service, the diplomatic security service made arrangements with the local police to investigate or to observe what I will call a crime scene, is that correct?

Mr. STARR. I think they notified them that they were going to the border. I do not believe the Mexican police accompanied them, sir.

Mr. DELAHUNT. Okay. So it was a question of notification.

Mr. STARR. Just a notification, sir.

Mr. DELAHUNT. Okay. And there was a second occasion you said?

Mr. STARR. That was really the only occasion that I am aware of that they actually notified the police.

Mr. DELAHUNT. Okay. Was there any communication between the Department of Homeland Security Office of Inspector General and the American consulate in Juarez, and specifically with the RSO, the regional security officer?

Mr. STARR. Your question was did DHS OIG contact the American RSO? Yes.

Mr. DELAHUNT. Okay. And for what purpose?

Mr. STARR. To assist them, sir. They were coming to Mexico. They had asked the regional security officer, I believe, to find Mr. Aldrete-Davila, and to make arrangements for an interview, and subsequent to finding him, there was a meeting at the U.S. consulate.

Mr. DELAHUNT. Do you know the date of that meeting?

Mr. STARR. No, sir, I do not. I know it was approximately a month after the alleged 217 incident.

Mr. DELAHUNT. If I indicated to you that there is evidence that exists that there was a meeting at the American consulate with Aldrete-Davila on March 16, where he was offered a letter of so-called limited use immunity, would that refresh your recollection?

Mr. STARR. No, sir. I was not there. I am going by reports from my regional security officer but that would appear to be consistent with what they observed.

Mr. DELAHUNT. So it is consistent.

Mr. STARR. Yes, sir.

Mr. DELAHUNT. Okay. Are you aware of any other United States Government agencies' communications with the Mexican Government?

Mr. STARR. In this case, sir, no.

Mr. DELAHUNT. In this case.

Mr. STARR. No, sir, I am not.

Mr. DELAHUNT. The case that is the subject of this hearing.

Mr. STARR. Right. No, sir, I am not. There were not notes exchanged. That is correct.

Mr. SHAPIRO. I mean I have seen them because I pulled them out of the case file and your staff sent me stuff, and other folks have sent me stuff. So in fact I have seen communications between the Mexican Consul in El Paso and, if I am not mistaken, Border Patrol.

Mr. STARR. Correct.

Mr. SHAPIRO. Where they asked to have consular access to this individual, and the response is the one which you alluded to in your statement where they said he does not want to see you. "No, thanks."

Mr. STARR. And in fact, he was in Mexico.

Mr. SHAPIRO. Yes.

Mr. STARR. Right. He had returned to Mexico.

Mr. DELAHUNT. Well there is in the record now a letter that I introduced earlier dated March 28, and it is from the acting consul general of Mexico, Mr. Victor Trevino, directed to Mr. James Smith regarding the need of this office to contact Mexican national Aldrete-Davila, and therein the body of the letter is referenced article 36 of the Vienna Convention. That is dated March 28, 2005. It is in the record.

On March 31, 2005, there is a response from Homeland Security, Mr. James Smith, resident agent in charge—presumably that is the El Paso office—to the consul general of Mexico, and I am just going to read out loud excerpts that I think are germane:

"I would like to thank you for your recent correspondence dated March 28. The U.S. Department of Homeland Security Office of Inspector General appreciates your inquiry and the concerns expressed. On the date your letter was received, I contacted the United States Department of State, Office of Foreign Missions, regarding the matter and how it relates to article 36 of the Vienna Convention on consular relations.

"However, per my direction we contacted the victim and expressed your concerns and desire to make contact. The victim . . ."

i.e. I would not necessarily describe him that way, but the Mexican national,

“ . . . stated he felt no need to speak with the consul general from Mexico or any other officer of the Mexican consulate at this time, and reiterated his desire not to be contacted by anyone outside of the Office of Inspector General. We feel obligated to honor this request.”

This is from the Department of Homeland Security, the Office of Inspector General in the El Paso division. I think those dates are very important. With that, I will yield to Mr. McCaul of Texas.

Mr. MCCAUL. I thank the chairman. I did have a brief opening statement but I will forego that. I worked in the U.S. Attorney's office. I will say that prosecutors are dedicated individuals, not always a glamorous job, but then again Border Patrol agents have a tough job down at the border getting shot at very often. I am not going to engage in personal attacks but rather raise some serious questions that have been raised throughout the course of hearings and our constituents have raised these questions as well.

Questions regarding the cooperation of Mr. Aldrete-Davila, the immunity agreement, and other issues. I know the next panel I think, Mr. Chairman, we will have an opportunity to get more into the actual case itself. Ambassador Shapiro, your testimony is that the State Department has no documents pertaining to Mr. Aldrete-Davila?

Mr. SHAPIRO. Our documents relating to him have to do with facilitating DHS coming to Ciudad Juarez and facilitating the meeting that he had. We did not issue him a visa. Our contact with him was in fact initiated because of the Department of Homeland Security. We do not have any diplomatic notes from the Government of Mexico, and in fact you know we have had freedom of information requests, and what they turn up are e-mails back and forth about the freedom of information requests and about this but nothing that is directly related to the Department of State, sir.

Mr. MCCAUL. The only documentation I have would be from the consul general's office to Department of Homeland Security, the two letters that the chairman just referred to. Did you have a copy of those letters?

Mr. SHAPIRO. I received them in preparation for this hearing but no, they were not addressed to the Department of State.

Mr. MCCAUL. So prior to this hearing, you had not seen those either. There is a real question as to how this case got to the attention of the Department of Homeland Security, the Office of the Inspector General. One theory is that Mr. Aldrete-Davila, the drug dealer, called a friend in the United States who happened to know a Border Patrol agent, Special Agent Rene Sanchez. Are you familiar with that contact at all?

Mr. SHAPIRO. No, sir.

Mr. MCCAUL. Mr. Starr?

Mr. STARR. No, sir.

Mr. MCCAUL. Okay. We were briefed by the Inspector General's office with the Department of Homeland Security last September on several issues pertaining to this case, and one has been brought out by Mr. Rohrabacher. Several representations were made to us.

One was that the agents woke up that morning stating that they wanted to shoot a Mexican. You can imagine how that got our attention being Members of Congress wanting to seriously look into this case. Very sensationalized.

The other was that the agents knew he was unarmed. Those accusations, particularly the “shoot the Mexican,” when we finally got the report which by the way I had to get through a FOIA request turned out not to be accurate, and then with respect to at least one of the statements Compean says I saw a shiny object that I thought may have been a gun.

But another representation—now I have to say I do not recall this statement—but a member of the staff present during this meeting stated in his notes that were made contemporaneously that several weeks later the Mexican consulate contacted—and this is what the IG briefing the Members of Congress—several weeks later the Mexican consulate contacted the United States consulate in Mexico saying that they have a person who claims to have been shot by a Border Patrol agent.

On March 4, 2005, the U.S. consulate contacted the U.S. Attorney. Now these are notes taken by a staffer in a meeting. As I said, I was more focused on some of these other comments that were made. Do you have any knowledge of anything? Is that an accurate statement or not? I guess that is what I am asking.

Mr. SHAPIRO. To the best of my knowledge, no. We double-checked. As you can imagine, we went through the files, scoured them, talked to the people involved, and the best we can piece together is in fact that our involvement in this, the first involvement, was as a result of contact from DHS to the regional security officer in Ciudad Juarez.

Mr. MCCAUL. And so no one from the United States consulate in Mexico would recall something like that happening to your knowledge?

Mr. SHAPIRO. No, sir.

Mr. MCCAUL. And so if the Inspector General’s office did make that representation, then that just was not accurate, is that correct?

Mr. SHAPIRO. I do not have any information to support that.

Mr. MCCAUL. Okay. I yield back.

Mr. DELAHUNT. Congressman Ted Poe from Texas.

Mr. POE. Thank you, Mr. Chairman.

Mr. DELAHUNT. The gentleman is recognized.

Mr. POE. Thank you, Mr. Chairman. I appreciate you holding this meeting. I appreciate your background as the District Attorney along with Congressman McCaul in the Federal prosecutor’s office. I was a state prosecutor for 8 years, and I have tried police officers, and I have tried people who hurt police officers. And then as a judge for 22 years, I tried people who killed police officers, and I tried police officers who harmed other individuals. I have no use for a bad cop.

But this case is very disconcerting because of some of the things that have occurred in this whole episode. As Mr. McCaul alluded to, Members of Congress just wanted to find out what happened, and so on September 26 we met with the Department of Homeland Security’s Inspector General’s office and they gave us some infor-

mation that they said was true. It turned out that that information was false, and that is somewhat disturbing that Members of Congress who are just seeking the truth would get information that was false, and then Skinner makes the comment, well, it was mistakes. They were not really lies. They were just mistakes.

One being that these were officers that were out to shoot Mexican nationals that morning. They were not in fear of their life. The drug dealer did not have a gun. None of those things happened to be true, and it took literally an act of Congress to get the truth out of this situation, and it came from sworn testimony or testimony before Congress.

And I am not sure of the chairman's experience when he was District Attorney, but I have never seen or heard of a case where a prosecutor goes on a nationwide PR campaign at taxpayer expense, I suppose, to justify the prosecution of a particular matter, and then that prosecutor is not here today nor is the real trial lawyer, Debra Kanoff, to answer questions about whether the Mexican Government was involved in this case at all; which is really the only question we are concerned about.

Mr. DELAHUNT. Would the gentleman yield for a moment?

Mr. POE. Yes, I will.

Mr. DELAHUNT. Because you raised that question, and I find a certain irony that it was several weeks ago when Mr. Sutton testified before the United States Senate, and I also find it very ironic that the letter that was addressed to Chairman Lantos where I was cc'd along with Mr. Rohrabacher, which is dated June 18, 2007, I found this particular sentence particularly interesting:

"As you may know, this case is still pending on appeal filed by the convicted defendants. It is the Department's longstanding policy not to testify about nonpublic matters pertaining to pending cases."

You know, I have noted that Mr. Sutton has achieved a celebrity status on the circuit if you will, and again as I said in my opening statement, he certainly does not appear to be reluctant. So my only inference is that he was instructed not to appear before this particular committee, and I find that as an insult and disconcerting, and therefore I had a conversation with Chairman Conyers, and he has consented to proceed with a hearing, and we will bring the Department of Justice in for a more full and ample explanation.

But as Yogi Berra said, "I mean, give me a break, folks. It is our longstanding policy not to testify about nonpublic matters pertaining to pending cases." What has been happening since this particular matter erupted into a high profile case of national interest? But again my experience, Congressman, I think is comparable to yours. Any prosecutor that would have been speaking to this matter until a full conclusion of this case outside of the strictures of the canon of ethics would find himself in Massachusetts in a disciplinary action in front of the board of overseers, and with that I yield back, and I thank the gentleman for yielding, and he can have what additional time he needs.

Mr. POE. Thank you, Mr. Chairman. You made my point precisely that normally throughout the lands of this country prosecutors do not comment on cases that are still pending; and a case

that is on appeal is a pending case. But this seems to be an exception until all of a sudden we hear through the letter to Chairman Lantos, we want to hide behind the ethics rules, and we are not going to comment any further, especially to this committee under oath.

And so I think the blissful absence of the prosecutor's office, the U.S. Attorney and the trial prosecutor is worth noting and it is very disturbing why they—

Mr. DELAHUNT. If the gentleman would yield again?

Mr. POE. Certainly, Mr. Chairman.

Mr. DELAHUNT. You know, Mr. Poe, you raised the issue too of the trial attorneys in this case, and from my reading of the record they were the ones that made the prosecutorial decisions in this case, and in fact according to testimony before the United States Senate, Mr. Johnny Sutton was not consulted.

I would like to hear directly from trial counsel in this matter, and it will be my recommendation to Chairman Conyers that he conduct the hearing and seek the appearance of trial counsel, Mr. Gonzalez, and I think that there is the lead counsel, a woman by the name of Debra Kanoff. I think that they should come and explain the prosecutorial decisions that have been made in this case, and again I thank the gentleman for yielding, and I yield back.

Mr. POE. Thank you, Mr. Chairman. I do have some questions, Mr. Ambassador. You can only speak for the State Department. You cannot speak for what information, if any, Homeland Security has received from the Mexican Government, is that correct?

Mr. SHAPIRO. That is correct, sir.

Mr. POE. You cannot speak for any information, if any, the Mexican Government and pressure they put on the Justice Department?

Mr. SHAPIRO. No, sir.

Mr. POE. Just the State Department.

Mr. SHAPIRO. Exactly.

Mr. POE. And of course the Justice Department and Homeland Security, they are not here today.

[Pause.]

Mr. POE. Excuse me, Mr. Chairman. I thought you would want to ask another question. Are you familiar with a somewhat parallel case of Gilmer Hernandez, a deputy sheriff in southeast Texas or south Texas?

Mr. SHAPIRO. Sir, I read it in preparation for this hearing today. I had not seen it until then.

Mr. POE. Have you seen the two letters that the Mexican consulate sent to our Government, different agencies? Have you seen those two letters?

Mr. SHAPIRO. I have read them very briefly, sir.

Mr. POE. Have you seen those kind of letters before?

Mr. SHAPIRO. We send letters like that abroad where U.S. citizens are involved.

Mr. POE. Have you seen them? I am running out of time. We are voting. Have you seen them come into the United States from the Mexican Government? That is the question.

Mr. SHAPIRO. I will have to tell you until I started preparing for this hearing, I had not seen letters from Mexican consuls general to Border Patrol, to other folks.

Mr. POE. Would you find it unusual that in his case, Gilmer Hernandez's case for example, that the Mexican Government was present in the courtroom sitting behind the prosecutors' table and conversing with the prosecutors during portions of the trial? Would you find that somewhat unusual?

Mr. SHAPIRO. We appear in court when U.S. citizens are on trial.

Mr. POE. I am not talking about what we do. I am talking about what the Mexican Government does in the United States. Would you find that unusual that the Mexican Government would be present in an American courtroom when American border protectors are on trial talking to the prosecutor? Would you find that unusual or not?

Mr. SHAPIRO. I cannot comment on talking to the prosecutor. I know our courts are open to the public, and that would include the consuls of the country of a citizen who is being tried.

Mr. POE. I know it is open to the public, but you would not think that would be unusual that they would converse with the prosecutor during the trial?

Mr. SHAPIRO. I cannot comment on that, sir.

Mr. POE. All right. Are you familiar with the Mexican Federal Institute for Mexicans Abroad program located in Mexico City?

Mr. SHAPIRO. Yes.

Mr. POE. Does that program offer assistance to Mexican nationals that are in the United States, both legally and illegally?

Mr. SHAPIRO. I believe that it does, sir.

Mr. POE. Do they help with, in your opinion, or your information—and I sent my staff down to talk to these folks in Mexico City this year—they obtain American social services, matricular cards, other documentation while they are in the United States? Do they help with that?

Mr. SHAPIRO. They do.

Mr. POE. Are there other nations in the world that have similar programs that help illegals that are in the United States with issues with the United States?

Mr. SHAPIRO. I am not aware but I would not be surprised if there were.

Mr. POE. But you do not know of any except the Mexican Government?

Mr. SHAPIRO. That is correct, sir.

Mr. POE. All right. Thank you, Mr. Chairman. I will yield back due to the time. Thank you very much.

Mr. DELAHUNT. I thank the gentleman, and I will call on my friend from North Carolina, Mr. Walter Jones.

Mr. JONES. Mr. Chairman, thank you, and I know we have got votes, and I am just going to make a few comments. I want to thank Mr. Shapiro. I am sure that a couple of days ago you did not know you would be here. Maybe a week ago somebody called and said we need you to go appear before the committee but you have done very well.

This is an issue that has really just outraged the American people. I am outraged myself. When I think about the fact that these two men, Hispanic-Americans with families that are financially broke now, families without a daddy and a husband, are sitting in Federal prison and Scooter Libby is getting ready to have a cocktail

with his wife. Mr. Chairman, if nothing else, that burns me up more than I could ever tell you.

This White House has shown no interest in what has happened to these two border agents in over a year because all of us, more than us at this dias, have been calling on the White House for God's sake to look into this issue and the Justice Department. And I know how the Justice Department is in chaos anyway. We need a new Attorney General—I hope that will happen sooner rather than later—to get the Justice Department back doing what they should do.

But I am listening to you and others, and I understand having relationships with other countries but have we not done enough for Mexico? We have 12 million illegal Mexicans primarily in this country that we are taking care of, and this drug dealer, Aldrete-Davila—I cannot even say his name—he is treated like a hero. The Mexican consulate wants to make sure that he is treated fairly. The U.S. Attorney Sutton gives him immunity, and we cannot even get information as Members of Congress from Homeland Security and other Departments.

I mean this thing I said it the other night. Maybe I should have picked a better word, but I said, “You know, this whole thing smells like a skunk.” But to know that we here today—and I want to thank the chairman again and his staff for holding this hearing. I want to thank him for talking to Chairman Conyers which I have done myself, and I do not have the same influence he does. I am not an attorney. That is probably pretty evident.

But I know one thing about justice and injustice, and when the President of the United States and Tony Snow months ago was asked about these two border agents, and his answer was it is nonsensical, and these guys have been doing what they could, and Johnny Sutton and his staff need to be investigated, and they need to be exposed, and that is what is going to happen. They will be exposed because there is one thing about God. God wants to know the truth for His people, and the truth will be exposed by this House. Just like Senator Feinstein; she deserves a lot of credit for what she did stepping out, and we will be doing the same thing.

And with that, Mr. Chairman, I will close this. As Mr. Shapiro said, we have got great relations with Mexico. We have got a trade deficit with Mexico for \$45 billion. We have got the 12 million people I mentioned earlier here illegally that are about to break the bank of this country and the states of this country, and many people across this nation are concerned about a NAFTA super-highway.

We are not going to get into that but things might be good to many people in this administration as it relates to Mexico, but it is not with many members, and I close by saying this: If the President can find it in his heart to give a commutation to Scooter Libby, then why can he not find it in his heart to say to two border agents who had outstanding records that were trying to stop a drug smuggler from selling poison to our adults and children in this country, why can he not find it in his heart to either commute or to pardon those two men? That is the justice that needs to take place, and Mr. Chairman, I really do not have much more to say. I just thank you for holding the hearing.

Mr. DELAHUNT. I thank Mr. Jones. There is a quorum call, however, and it has 3 minutes to go for those who wish to make that particular vote. I understand it is a single vote. I have agreed with the ranking member to skip that particular vote and break my 100-percent record. I say that facetiously. I have already broken my string a long time ago.

But with that now I will recognize my colleagues. Is Mr. Royce still here? No. Hopefully he will return in due course after he casts his vote and will be able to inquire, but now I will go the ranking member, Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. I will forego these votes that are going through now, as they are not substantially important votes. Mr. Shapiro or Ambassador Shapiro, excuse me, your testimony seems to be actually limited in scope because what you are saying other things might be happening outside of the parameters you are putting on your testimony, is that not right?

Mr. SHAPIRO. Sir, I can—

Mr. ROHRABACHER. That is right, is it not?

Mr. SHAPIRO. I can only testify to Department of State involvement in this case, sir.

Mr. ROHRABACHER. There are a lot of other things going on here, and even the Department of State may be here but a lot of other things may be going on around that you just would not know about or just are not commenting on today.

Mr. SHAPIRO. I would have been delighted to be accompanied by witnesses from other departments.

Mr. ROHRABACHER. Now let me ask you this. If these other departments and agencies or other parts of our Government are actually contacted by representatives of the Mexican Government, for example, and there is some sort of communication going on, are they required by a law or by procedural direction or regulation to make reports on all of those communications that you would be aware of?

Mr. SHAPIRO. No, sir.

Mr. ROHRABACHER. All right. Well, so that means that there could be a lot of other things going on in terms of the Mexican Government and the United States prosecutors that you would never hear about?

Mr. SHAPIRO. I cannot—

Mr. ROHRABACHER. The answer is yes?

Mr. SHAPIRO. Yes, the answer would be yes.

Mr. ROHRABACHER. Okay. Thank you. Well, I would suggest, Mr. Chairman, that there probably is a lot going on in this case. There seems to be a great many meetings and things going on in determining who gets what card. You are suggesting your department had nothing to do and did not know anything about the issuance of a free transit pass to this drug dealer?

Mr. SHAPIRO. They were issued by the Border Patrol. They were not issued by the Department of State. We did not know about them. I cannot answer that because I do not know.

Mr. ROHRABACHER. Okay.

Mr. SHAPIRO. I mean somebody may have known but—

Mr. ROHRABACHER. Okay. So not only now are you saying that you did not know, but you do not know if you do not know or not, right?

Mr. SHAPIRO. Well, I do not know what I do not know.

Mr. ROHRABACHER. You do not know that you do not know because you may. There may be some people in the Department of State who do know but that——

Mr. DELAHUNT. That sounds very Rumsfeldian to me.

Mr. SHAPIRO. I can tell you this. We did not issue visas to this individual.

Mr. ROHRABACHER. Right. But somebody did, and they did it without the knowledge of the State Department, is that what we are saying?

Mr. SHAPIRO. That is in the purview of the Department of Homeland Security.

Mr. ROHRABACHER. Okay. Right.

Mr. SHAPIRO. They would not have to inform the Department of State.

Mr. ROHRABACHER. Okay. Even if they were operating out of a U.S. consulate?

Mr. STARR. Not visas, sir. No. They were not. They were never issued visas.

Mr. ROHRABACHER. Right. Free transit cards.

Mr. STARR. Correct. They were not issued out of a consulate.

Mr. ROHRABACHER. Right.

Mr. STARR. They were actually issued at the border.

Mr. ROHRABACHER. Right. Well this was multiple entry, was it not? A multiple entry transit card. Thus it does not have to be someone giving it to you at the border. I mean you can get it and then go back and forth across the border. Have you examined the free transit cards that were issued to this drug smuggler?

Mr. STARR. No, sir. The first I heard about it was you stating that you have got copies of them.

Mr. SHAPIRO. I have not seen them, sir.

Mr. ROHRABACHER. So we have some people in the United States Attorney's Office and the Drug Enforcement Agency or whatever; they are dealing, having these dealings with the Mexican Government. Somebody in the Mexican Government. You are not suggesting to us that the Mexican Government did not know about any of this, are you?

Mr. SHAPIRO. I am sorry. That the government——

Mr. ROHRABACHER. You are not suggesting that the Government of Mexico was not aware of these things?

Mr. SHAPIRO. I am not sure they were.

Mr. ROHRABACHER. I know. But you are not saying that they were not?

Mr. DELAHUNT. Would the gentleman yield?

Mr. ROHRABACHER. Yes.

Mr. DELAHUNT. I am the one that made that statement because my review of the record indicates that the Mexican Government was kept in the dark. That the deal was cut between Mr. Sutton's office working with the Department of Homeland Security Office of Inspector General, without the knowledge of both the Department of State and the Mexican Government.

Mr. ROHRABACHER. So let me put it this way. Would it have been the responsibility of the Department of State to notify the Mexican Government if representatives of our Government had identified a drug dealer and were actually involved with giving him a transit card to enter and exit the United States unescorted? Would it have been your responsibility if the guys down there said, by the way our fellows today issued this card to a Mexican citizen? We have identified him as a drug dealer. We do not have a responsibility to notify the Mexican Government?

Mr. SHAPIRO. You have got me way out on a hypothetical. I am not——

Mr. ROHRABACHER. No, this is a hypothetical. Okay. Let me ask you a hypothetical.

Mr. SHAPIRO. I am not sure that——

Mr. ROHRABACHER. There was an identified drug dealer named Aldrete-Davila. We identified him. We knew he was a drug dealer. They had captured 750 pounds of drugs on the border, and we identified him as a drug dealer, and we were about to go into some negotiations with him. Is it then the responsibility of our Government to inform the Mexican Government that we have located a drug dealer, and there he is?

Mr. SHAPIRO. No, sir.

Mr. ROHRABACHER. No? No. Okay. Well that surprises me. That surprises me. So we have no agreement with the Mexican Government that we are required to do that.

Mr. DELAHUNT. If my friend would yield for a moment?

Mr. ROHRABACHER. Sure.

Mr. DELAHUNT. I am unaware of any agreement with any nation that would mandate that a law enforcement agency or any division or subdivision of the Executive would be required to inform. Now, I would entertain the idea that it would be good practice for the United States law enforcement agencies to notify their counterparts in other nations to provide that information, because I would conclude that those law enforcement agencies might want to have information available to them to identify individuals that would violate their laws.

Mr. ROHRABACHER. Yes.

Mr. DELAHUNT. But do not be surprised, my friend, because just recently in the Boston office of the FBI there was a verdict rendered of \$100 million to individuals who had been wrongfully incarcerated because the Federal Bureau of Investigation argued that it had no obligation to inform state prosecutors and local prosecutors in the government. So it is not just happening internationally. It happens here, and your friend and my colleague and friend, Mr. Lundgren and I will be filing legislation which would mandate that our own agencies, our own Federal agencies inform state and local law enforcement agencies involving a crime of violence, and I would welcome you on board as a cosponsor.

But it is my understanding of the law that there is absolutely zero requirement to provide any information to any other, and I do not know of any treaty that requires that.

Mr. ROHRABACHER. Let us just note at this point that there is all kinds of mandates for these Border Patrol agents that they have to fill out this paperwork, and the genesis of this entire situation

which I have suggested earlier in my opening remarks comes from the fact that there is such heavy paperwork requirements after any shooting incident at the border that everybody present just decided we are going to forego that because the guy was not hit, and we are just not going to do all the paperwork.

But yet we now are discovering this incredible freedom to operate without paperwork and without reporting requirements at a whole other level which is way above and perhaps much more demanding and much more needed for accountability than those people who are just right on the border like that.

If the U.S. Attorney decides to file a civil rights charge on behalf of an illegal alien, is the State Department consulted in that in any way?

Mr. SHAPIRO. No, sir.

Mr. ROHRABACHER. Okay. And so there are no background checks on the illegal immigrant involved? So if our Government is going to get involved in filing some sort of action suit, say, and the civil rights were violated of an illegal, we do not even go to the State Department or our Embassy and say, what is the background on this man in Mexico? Like he might be a drug dealer or something.

Mr. SHAPIRO. People have common databases. They share information. I cannot answer your question specifically would they be required to or would they necessarily. One would hope they would.

Mr. ROHRABACHER. Yes, one would hope they would, and I would think that the answer would be yes, you know without any hesitation but it sounds like that maybe the requirements are a little vague in terms of that. And a couple of specific questions. Are you familiar with Mexican Consul General Jorge Espejel? Yes?

Mr. SHAPIRO. Only in that I saw the letter that he signed.

Mr. ROHRABACHER. Okay. And Mr. Starr, what about you?

Mr. STARR. I am not familiar with him, sir.

Mr. ROHRABACHER. All right. And he is based in El Paso, Texas, and—are either one of you aware of the 17 letters that we mentioned earlier that were sent in the Gilmer Hernandez case? The earlier case where the patrol officer was almost run over by this illegal alien smuggling ring. No?

Mr. SHAPIRO. Not until I prepared for this hearing.

Mr. ROHRABACHER. Okay. So this consul general actually was there at the trial, and this consul general, just for the record, we have evidence—and this is clearly, you know, proven—that he has actually participated to some degree in the decision about prosecuting both the patrol agent, Gary Brugman and then, of course, Officer Hernandez.

We do not seem to have the people right here to give us that information whether or not that happened in the Ramos/Compean case, and I would suggest that here is for the record again, a press release sent out by Mr. Sutton, who is basically saying that Mr. Sutton commended the investigative cooperation received by Jorge Espejel, the consul of Mexico in El Paso, Texas, and he thanked him for locating the victim in Mexico and making him available to authorities.

[The information referred to follows:]



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FORMER BORDER PATROL AGENT SENTENCED FOR CIVIL RIGHTS VIOLATION

(DEL RIO, TEXAS) U.S. Attorney Johnny Sutton announced today that former U.S. Border Patrol agent **GARY MARK BRUGMAN** was sentenced to 27 months in federal prison for violating the rights of a Mexican citizen while acting as a peace officer. In addition to the prison term, U.S. District Judge William Wayne Justice also ordered that Brugman be placed under supervised release for a period of two years after completing his prison term.

On October 31, 2002, a federal jury in Del Rio convicted the 36-year-old Eagle Pass, Texas, resident on one count of deprivation of civil rights under color of law. The jury found that on January 14, 2001, a group of ten Mexican Nationals illegally crossed the Rio Grande river onto Rosetta Farms, a pecan orchard just outside Eagle Pass. U.S. Border Patrol agents were dispatched to the area to investigate ground sensor activity. When they arrived at the location, the agents discovered the aliens and a foot chase ensued. The aliens ultimately gave up and sat down on the ground. Brugman caught up with the group of aliens and in front of two other Border Patrolmen, began kicking and punching one of the captured aliens.

"Law enforcement officers are entrusted to uphold the law, not break it," stated U.S. Attorney Johnny Sutton. "Mr. Brugman's actions were inexcusable."

Mr. Sutton commended the investigative cooperation received by Jorge Espejel, the Consul of Mexico in Eagle Pass, Texas, for locating the victim in Mexico and making him available to U.S. authorities.

This case was investigated by Special Agent Gary Moore with the Office of Inspector General and prosecuted by Assistant U.S. Attorney Bill Baumann and Department of Justice Civil Rights trial attorney Brent Gray.

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Mr. ROHRABACHER. There seems to be a high level of cooperation going on among the United States Attorney's office and people who represent the Mexican Government yet the Border Patrol agents are right in between. The Border Patrol agents are supposed to be protecting the border but yet even when it comes to a drug dealer it seems there is a level of cooperation to try to protect the drug dealer and not try to facilitate the job of the Border Patrol agent.

I appreciate you both being here. I would say that it is a disgrace that Mr. Sutton and a representative of the Department of Homeland Security are not here to answer these important questions. Again, I agree with the chairman that this reflects an overall atti-

tude demonstrated by this administration which is in contempt of Congress' authority and our role that we play in this great democracy of ours. Thank you very much, Mr. Chairman.

Mr. DELAHUNT. The gentleman from California, Mr. Royce, is now recognized. I would note that there is now a motion to rise with some 4 minutes left but we will stay here until the conclusion.

Mr. ROYCE. I appreciate that very much, Mr. Chairman. According to Border Patrol policy, failure to report a shooting is a violation that carries a maximum penalty of a 5-day suspension, and for that Agents Ramos and Compean could have been subject to an administrative inquiry. If information developed during the inquiry that led investigators to suspect criminal wrongdoing, then a preliminary criminal inquiry would have been called for, the findings of which would normally be brought to the U.S. Attorney, who would then decide whether to prosecute.

What is different about this case is it appears that the first several steps of this process were ignored by the Inspector General. Instead, the IG opted to immediately open a criminal investigation into the actions of the Border Patrol agents. As part of that investigation, Agent Sanchez traveled to Mexico, for which he would have needed permission from the Mexican Government, to locate Aldrete-Davila and offer him immunity and medical treatment for the bullet wound and permission to cross the border freely into the United States, in exchange for his testimony against Agent Ramos and Compean.

Did the DHS Office of Inspector General agent need permission to enter into Mexico to meet? I would ask that question again. And if so, under what auspices would the OIG have sought such permission?

Mr. SHAPIRO. It is executive branch policy that when a member of the executive branch, whether it is from the State Department or another agency goes abroad on official business, that they seek permission from the Embassy before they do so. I will not say there are not exceptions. Clearly there are people who travel and do not let us know. They would have, and I believe they did, sought permission to enter Mexico.

Mr. ROYCE. I appreciate that information for the record. Now, when Aldrete-Davila agreed to the deal, Sanchez accompanied him to the William Beaumont Army Medical Center in El Paso, Texas. There a doctor removed the bullet from his backside and gave the bullet to Sanchez. Sanchez took the bullet and took the drug dealer home for the night, thus breaking the chain of evidence which should have made the bullet inadmissible at trial had the defense attorneys been made aware of the breach in protocol.

Again, what we are talking about here is all the breaches in protocol which did not come up in the trial, and I think certainly in October 2005 when Aldrete-Davila was indicted for smuggling additional—I think 1,000 pounds of marijuana into the U.S.—the sealed indictment was subsequently expunged, and the jury in the Ramos/Compean trial never permitted to learn of the subsequent smuggling.

In answer to questions about why he prosecuted the Border Patrol agents rather than the drug smuggler, the U.S. Attorney asserted that he was not able to prosecute the drug smuggler because

the agents did not identify him, found no fingerprints, could not tie him to the van, and did not apprehend him after shooting him so the case against him could not be proven.

Now IG Agent Sanchez had no difficulty identifying and locating that drug smuggler in Mexico. In addition to the suspect or witness, the IG investigation turned up ballistic and fingerprint evidence, videotape, photographs, witness statements. Evidence technicians were videotaped lifting a dozen sets of fingerprints from the very van that the drug smuggler drove.

Once the IG finished its investigation, the Office of the U.S. Attorney for the Western District of Texas prosecuted the agents relying on the word of that drug smuggler. Relying on his word and as a consequence we have Agents Ramos and Compean sentenced to prison terms of a 11 and 12 years respectively at a time when prosecutors say they do not have the resources to go after the drug smugglers.

I will just remind you I think it was \$140 billion we learned last year came across that border, and I would just ask if my assessment there of the situation is approximately correct.

Mr. SHAPIRO. Of drugs smuggled back and forth? Yes.

Mr. ROYCE. Of the drugs that come over that border. I also understand that there were, in terms of violent incidents against Border Patrol agents, over 700 last year. The testimony that I took in Laredo, Texas, of attacks on Border Patrol agents and deputy sheriffs indicated that they in many cases were better armed, better armed than our own agents, and then lastly I would just point out that the family members of this particular drug smuggler say that he would never move drugs without a weapon on him.

And certainly for the agents that I have talked to and the deputy sheriffs in that region where the cartels really hold sway, it is amazing that someone would attempt to move this much drugs when their own families say that he carries a gun, when the agents perceive that they thought he had one, and when indeed if it was not a gun we know we never found the second cell phone, and we know somebody picked him up in a getaway car 5 minutes after.

So it could easily have been him turning around with a cell phone or a gun that the agents perceived. For the jury not to know any of that I just think was really unusual in this case. Thank you, gentlemen. Thank you, Mr. Chairman. Any additional commentary you would like to make, I would appreciate hearing.

And for the record, there is one piece of information, Mr. Chairman, that I would like to have presented, if it is in the file. In 2002, the year 2002, if there was an I-131 travel document given to the smuggler, to Aldrete-Davila, I would like to know what is in that file or I would like you, Mr. Chairman, to have access to what is in that file and your subcommittee because I think it might be pertinent. Thank you very much, Mr. Chairman.

Mr. DELAHUNT. Thank you, Mr. Royce, and per your request, I would ask Ambassador Shapiro and Mr. Starr if they could follow up on that request and get back to me, and I would be happy to share it with my colleague from California.

Mr. SHAPIRO. Of course we will look for that document, sir, and look for the file.

Mr. DELAHUNT. Well Ambassador, Mr. Starr, thank you for your patience and your testimony. You get gold stars for just simply appearing today, and with that I am just going to recess for just 2 minutes to determine what the status of votes are, and I will welcome forward our next panel, Mr. Botsford and Mr. Bonner. Again, thank you, Mr. Starr and Ambassador Shapiro.

[Whereupon, at 5:10 p.m. the subcommittee recessed, to reconvene at 5:12 p.m. the same day.]

Mr. DELAHUNT. Gentlemen, again my apologies for this rather erratic hearing but my understanding is that there are unexpected votes that are occurring as a result of some differences on the floor. But let me continue to proceed but if staff can notify me as to the next vote, I may excuse myself. I am looking for my counsel, wherever he may be, so I can give you both the appropriate introduction.

I know that Mr. Bonner is the head of the Border Patrol Union that is affiliated with the AFGE; am I correct?

Mr. BONNER. Yes, sir.

Mr. DELAHUNT. And I know Mr. Botsford is a renowned counsel. Do you have their curricular vitae? Lawyer of the Year and winner of various awards. Let me read into the record the following about Mr. Bonner. He is the President of the National Border Patrol Council of the American Federation of Government Employees, AFL-CIO. The labor organization that represents approximately 12,000 nonsupervisory Border Patrol employees.

He has held that position since 1989, and has been a Border Patrol agent in San Diego since 1978. A strong advocate for secure borders and fair treatment of the dedicated men and women who patrol them, he has testified before Congress on numerous occasions concerning a variety of related issues. He is a regular guest on CNN's *Lou Dobbs Tonight* and has made numerous appearances on other network and cable news programs, including *60 Minutes*, *America's Most Wanted*, *The O'Reilly Factor*, *The Glenn Beck Show*, and *The News Hour with Jim Lehrer*.

I have a roommate, Mr. Bonner, whose name is Charles Schumer, who is a member of the U.S. Senate, who would be very jealous of your appearance schedule here. And Mr. Botsford, as I indicated, is Appellate Counsel to Mr. Ignacio Ramos. He is a graduate of the University of Connecticut cum laude in economics, and the SMU School of Law, order of the coif, which for the uninitiated is an award of high distinction, one that I was unable to attain.

He is a graduate of the National Criminal Defense College. He was designated as the Outstanding Criminal Defense Lawyer of the Year in 1993. He is the Texas Criminal Defense Lawyer's President from 1996 to 1997. He is listed in a variety of compendiums such as the *Best Lawyers in America*. Listed as one of the top five go-to lawyers in Texas criminal defense practice by the Texas lawyer.

He is listed as a "Super Lawyer" by *Texas Lawyer*. He clearly has an outstanding reputation and commands respect, I am sure, from both the prosecution side as well as from the defense bar. Let me begin with Mr. Bonner, if you could make your statement.

**STATEMENT OF MR. T.J. BONNER, PRESIDENT, NATIONAL
BORDER PATROL COUNCIL OF THE AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO**

Mr. BONNER. Thank you very much, Chairman Delahunt, Ranking Member Rohrabacher, and other members of the subcommittee and Congress for holding this important hearing and especially thank you, Mr. Chairman and Ranking Member for your excellent synopsis of the facts leading up to the prosecution; and those facts that bear on subsequent actions which have caused so many Americans to become so upset about what happened to two innocent Border Patrol agents who were simply doing their job, defending our borders, and instead of getting a commendation for capturing 743 pounds of marijuana and keeping that poison from entering our society, they are not just disciplined—in fact they received no discipline—they were prosecuted by the United States Government and received sentences of 11 and 12 years, respectively. Eleven for Mr. Ramos. Twelve for Mr. Compean.

This case revolves around whether the actions of those two officers on that day were proper and justified. The courts have held that an officer does not have to be absolutely certain that a suspect has a weapon. They just have to have a reasonable belief. Given what happened on that day, both of those agents had a reasonable belief that the drug smuggler, Osvaldo Aldrete-Davila, had a weapon.

This is an individual who fled when the Border Patrol tried to stop him with their emergency lights. He fled, took them on a high speed chase, came to a screeching halt near the border, got out of his vehicle, and when confronted with armed officers, chose to run. Armed officers who were screaming at him in Spanish to stop. He chose to run, and he chose to slide down a drainage ditch and run straight up at an armed agent, an agent who had a shotgun pointed at him.

These are not the actions—as U.S. Attorney Johnny Sutton would have us believe—of someone who simply wants to surrender or someone who simply wants to get away. He would have kept running and found a different way to make it across that border instead of directly confronting a Federal agent, and that Federal agent gave chase to him, jumped on his back, and then was assaulted by the drug smuggler, and the drug smuggler got up after he freed himself from the grasp of Agent Compean, ran toward Mexico and pointed something at Agent Compean, which Agent Compean believed to be a weapon.

I have talked to hundreds of law enforcement officers, not just Border Patrol agents, outlined those facts to men and women. Every one of them says, “I would have done the same thing.” And personally from my 29 years of experience in law enforcement, I would have done the same thing. So what did they do wrong? Well, they failed to report the discharge of their firearms. Under Border Patrol policy, they have an obligation to make an oral report of the fact that they discharged their weapon.

As has been pointed out on several occasions during this hearing, that carries with it a maximum penalty of a 5-day suspension, not criminal prosecution. If the shooting was justified—and it was—there can be no cover-up of your justifiable actions. If a Border Pa-

trol agent goes out and captures a dozen illegal aliens and fails to do all the proper paperwork, that is not a cover-up of a crime because it is not a crime for someone to do their job. These agents were simply doing their job, and the real question here is: How the U.S. Attorney arrived at the decision to prosecute two innocent agents?

When I first learned about this case a little over a year ago I thought to myself there has got to be more to this. The U.S. Attorney just does not go after two Border Patrol agents just for giggles. There has to be more to this, and as I looked into it, I found out that indeed there is more but not on the part of the agents. There is more on the part of our own Government.

There are things that quite frankly stink about this case. This is like diving into last week's trash. The deeper you dig into this the more it smells, and the more that comes to light it does not look good for Johnny Sutton and those other prosecutors in the El Paso office, the Western District of Texas. They made the wrong call. They went after the wrong guys. They should have and they had enough to prosecute the drug smuggler but they chose to go after two innocent law enforcement officers. Justice demands that we find out why that happened, and that we punish the people who are responsible for that.

There is a case that happened back in the early 2000s with another Border Patrol agent, David Sipe, down in south Texas, who found himself in a similar strait. He got convicted by a jury of his peers. The U.S. Attorney's office down there in the Southern District of Texas withheld information from the jury that, on retrial after it came back from the Fifth Circuit Court of Appeals, the whole case unraveled because they claimed that they had given no benefits to these illegal aliens, when in fact they had given Social Security cards, driver's licenses, use of government telephones, permission to travel back and forth, and the smuggler they had let him go with a get out of jail free card.

The Border Patrol had captured him with other illegal aliens in tow, and he had a card from the U.S. Attorney's office that caused him to be let free. None of that was disclosed to the defense. When that was made known to the Fifth Circuit, they said that is reversible error, went back in front of the jury, and lo and behold, he was freed.

The troubling part of that is no one was ever disciplined from that U.S. Attorney's office for that prosecutorial misconduct. When people go unpunished, then others believe that it is okay to engage in that type of misconduct.

Mr. Sutton, Debra Kanoff and the others involved in the prosecution of Ignacio Ramos and Jose Compean need to be held accountable for their actions. We need to get to the bottom of this. I would urge the Congress of the United States to appoint an independent counsel with subpoena power and prosecutorial power to peel away the layers of this onion, to dig deeper into this trash can to find out why this travesty occurred and to correct it.

Justice demands that. We have thousands of Border Patrol agents, hundreds of thousands of other police officers throughout this country who are watching this case intently wondering if the same thing could happen to them. We have millions of our fellow

citizens wondering what the heck is going on with our system of justice when two innocent men go to prison and a known drug smuggler goes free. Thank you very much.
[The prepared statement of Mr. Bonner follows:]

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

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,
HUMAN RIGHTS, AND OVERSIGHT
COMMITTEE ON FOREIGN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

POTENTIAL MEXICAN GOVERNMENT INFLUENCE
ON THE CASE OF RAMOS AND COMPEAN

PRESENTED BY
T.J. BONNER
NATIONAL PRESIDENT

JULY 31, 2007

On behalf of the 12,000 front-line Border Patrol employees that it represents, the National Border Patrol Council appreciates this opportunity to share its views and concerns regarding the potential influence of the government of Mexico on the prosecution of Border Patrol Agents Ignacio “Nacho” Ramos and José Alonso Compean. Because our own Government steadfastly refuses to disclose any information or documents related to this matter, it is difficult to know with any degree of certainty whether its decision to prosecute these agents was influenced by a foreign government. This refusal certainly causes reasonable people to view our Government’s actions in this case with suspicion, especially since a careful review of the relevant facts leads to the inescapable conclusion that these two Border Patrol agents are innocent and do not belong in prison. In order to rectify this terrible injustice and ensure that other law enforcement officers do not suffer a similar fate, it is important to understand the underlying causes.

The incident that gave rise to the prosecution of Border Patrol Agents Ramos and Compean was not particularly unusual. 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. The courts have upheld the right of law enforcement officers to defend themselves against assaults with a level of force that corresponds to the threat, including deadly force where appropriate. Moreover, the U.S. Supreme Court has set forth the following standard for evaluating the actions of officers in these situations:

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. . . . 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.¹

¹ Graham v. Connor, 490 U.S. 386, 396-397 (1989).

The failure of the U.S. Attorney's Office for the Western District of Texas to utilize this standard in assessing the February 17, 2005 actions of Border Patrol Agents Ramos and Compean is but one of many troubling aspects of the prosecution of those two agents. Some of the others include:

- The fact that the U.S. Attorney's Office based the prosecution of these two agents exclusively on the word of a lieutenant in one of the Mexican drug cartels. The sworn testimony of the other eyewitnesses, as well as the physical evidence and the laws of physics, was completely disregarded.
- The U.S. Attorney's Office threatened to prosecute three other Border Patrol agents who were near the scene of the incident if they did not testify against Agents Ramos and Compean, and then improperly dictated the scope and content of their testimony.
- The prosecution's successful efforts to keep the jury from hearing testimony about the Government's seizure of another 753 pounds of marijuana smuggled by Osvaldo Aldrete-Davila, the key witness against Agents Ramos and Compean. It was also able to suppress evidence about the dangerous nature of the border.
- The full transactional immunity that the Government granted to the drug smuggler in order to secure his testimony against Agents Ramos and Compean.
- The fact that our Government issued at least six parole visas to a known drug smuggler, enabling him to legally enter the United States for almost an entire year, and undoubtedly facilitating further criminal activities.
- The strong likelihood that the government of Mexico demanded that these two agents be punished, as it did in the case of Edwards County Deputy Sheriff Guillermo "Gilmer" Hernandez.
- The possibility that the government of Mexico interviewed the drug smuggler before he spoke with U.S. law enforcement authorities, as it did in another border shooting case. (The Border Patrol agent who shot and killed an illegal alien was subsequently indicted based in part upon the statements of those witnesses.)

Although some of the relevant facts regarding the shooting that occurred on the afternoon of February 17, 2005 in Fabens, Texas are in dispute, it is clear that there were only three eyewitnesses to that event: Border Patrol Agents Ignacio Ramos and José Compean, and Osvaldo Aldrete-Davila, a Mexican national who was transporting 743 pounds of marijuana into the United States.

The testimony of the three other Border Patrol agents who were nearby at the time of the shooting is useless for two reasons. First, they could not possibly have seen whether or not the drug smuggler pointed a weapon at Agents Ramos and Compean, because their view of the shooting scene was completely obstructed by a levee access road which is eleven feet higher than the ground on which they stood. Thus, Agent Oscar Juarez' testimony that he saw the shooting take place is utterly false. Second, their cooperation was coerced under threat of prosecution, and the U.S. Attorney's Office bullied them into providing false and misleading testimony during the trial.

There is no credible evidence that Osvaldo Aldrete-Davila 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. Of course, Osvaldo Aldrete-Davila denies that, but the credibility of an individual who had been involved in trafficking narcotics for the previous twelve years and occupied a position of high trust in the notorious Juarez cartel is extremely suspect, to say the least. Since he 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.

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. Warne, 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 Warne, 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 Warne 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 his left arm straight back 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 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."² 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; . . ."³ 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.

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

³ I&NS Firearms Policy, Section 7(B)(1), [page 17], February 19, 2003. (This policy is still in effect for all Border Patrol personnel.)

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, the incident would have ended peacefully. A careful analysis of the facts reveals that 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, which 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 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.”⁴ 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.”⁵ 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

⁴ U.S. Customs and Border Protection Table of Offenses and Penalties, Section G.1. (June 21, 2004).

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

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 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).⁶

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.

The Government also paroled this drug smuggler into the United States for a total of more than nine months, allowing him to come and go freely without supervision. The conditions for this type of visa are set forth in section 212 of the Immigration and Nationality Act:

The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.⁷

The six visas were issued as follows:

⁶ I&NS Firearms Policy, Section 12(B)(1)(e), [page 28], February 19, 2003.

⁷ 8 U.S.C. § 1182(d)(5)(A).

- March 16, 2005 to April 15, 2005 for “public interest” reasons.
- May 6, 2005 for “public interest” reasons.
- June 1, 2005 to September 1, 2005 for “humanitarian/medical” reasons.
- September 14, 2005 to November 14, 2005 for “public interest” reasons.
- October 27, 2005 to December 15, 2005 for “public benefit” reasons.
- January 24, 2006 to March 31, 2006 for “public benefit” reasons.

The only visas that overlap are the fourth and fifth ones, and the timing of the reissuance is extremely suspicious, as it closely followed the October 23, 2005 seizure of 753 pounds of marijuana tied to Osvaldo Aldrete-Davila. The Border Patrol and the Drug Enforcement Administration found those drugs 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.” The cancellation of a parole visa in the wake of evidence of serious criminal activity is perfectly understandable. Its immediate reinstatement is both puzzling and troubling.

Even more disturbing is the fact that the U.S. Attorney’s Office for the Western District of Texas was made aware of this situation immediately, but 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 average, a Border Patrol agent is assaulted every ten hours.) 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 reported the shooting to the Office of Inspector General, was not allowed in open court, and remains sealed. This individual, who 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].”⁸ 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.

Less than two months after the incident involving Border Patrol Agents Ramos and Compean, an illegal alien smuggler attempted to run over Deputy Sheriff Guillermo “Gilmer” Hernandez in Rocksprings, Texas. Deputy Sheriff Hernandez fired his pistol at the rear tires of the Chevrolet Suburban in order to disable it and stop the assault. A fragment from one of the bullets struck Maricela Rodriguez-Garcia, an illegal alien hiding in the back of the vehicle, causing minor injuries. Three days later, Jorge Ernesto Espejel Montes, the Mexican Consul in Eagle Pass, Texas wrote a letter to Edwards County Sheriff Don Lettsinger, urging him to ensure that Deputy Sheriff Hernandez was prosecuted for the aforementioned actions. Two days after that, a similar letter was sent to the Federal Bureau of Investigation in Laredo, Texas. Copies of both letters were distributed to a number of officials in both countries. The relevant part of the first letter states:

⁸ U.S. Customs and Border Protection Table of Offenses and Penalties, Section I.6. (June 21, 2004).

Based on the Consular Convention between Mexico and the United States and the Vienna Convention on Consular Relations, the Consulate of Mexico is entitled to represent, protect and [sic] defend the rights of Mexican nationals in this country. Therefore, I would like to point out, that is the care [sic] of my Country that this [sic] kind of incidents against our nationals, do not remain unpunished. According with [sic] the information provided above, I would appreciate your kind assistance, so this Consulate can be informed of the current investigation, and your support, so you present and file a complaint with the necessities [sic] arraignments.

Although Deputy Sheriff Hernandez was cleared in an investigation conducted by the Texas Ranger Division of the Texas Department of Public Safety, U.S. Attorney Johnny Sutton decided to prosecute him, and managed to secure a conviction on charges that he violated the civil rights of the illegal alien. Deputy Sheriff Hernandez is currently serving a one-year prison sentence.

Several Border Patrol Agents in the El Paso Sector where Agents Ramos and Compean were assigned have reported that Chief Patrol Agent Luis Barker told agents at a pre-shift muster shortly after their arrest that the Mexican Consulate had written to the Secretary of State demanding a full investigation of the incident, and that they would be prosecuted to the fullest extent of the law.

In early January of this year, Border Patrol Agent Nicholas Corbett shot and killed an illegal alien who was assaulting him with a rock. All of the illegal aliens who witnessed the incident were taken to the Naco, Arizona Border Patrol Station to be interviewed by law enforcement authorities conducting an investigation of the incident. Before the investigation was concluded, however, several individuals from the Mexican Consulate arrived at the facility, and, according to two Border Patrol agents who were present, were afforded unfettered access to some of these witnesses before they were interviewed by U.S. law enforcement officers. This is very troubling, as it compromised the integrity of the investigation. Agent Corbett has been charged with murder by the Cochise County District Attorney, and is awaiting trial.

The influence of the Mexican government in the aforementioned cases is undeniable. Why the United States of America, a sovereign nation, would acquiesce to the unreasonable demands of another nation to prosecute some of its law enforcement officers for acting within the scope of their authority is a disturbing mystery. It must be solved, however, in order to restore the faith of the American public, as well as that of our law enforcement officers, in our system of justice.

Those who believe that there should be no intervention in these cases 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 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.⁹ 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 any of those who were responsible for this travesty.

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

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.

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 and a half 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.

Mr. DELAHUNT. Thank you, Mr. Bonner, and before I go to you, Mr. Botsford, and let me just pose the question, has to the knowledge of either of you there ever been a complaint filed with the board of discipline in the State of Texas to review the conduct of the office, not in just this particular case, but are you aware of any filing that would prompt the kind of review that you seem to be seeking?

Mr. BONNER. I am not aware of that but I have not made any inquiries directly to ascertain whether that is the case or not.

Mr. DELAHUNT. Counsel Botsford?

Mr. BOTSFORD. Mr. Chairman, the State Bar of Texas has a procedure whereby if somebody makes a complaint about a prosecutor or defense attorney that can be investigated, it has been my experience in almost 30 years of practicing law in Texas that rarely would a complaint leveled against a prosecutor, or really even a defense attorney, but more so a prosecutor, undergo any great degree of scrutiny. Texas has a legion of cases that have been reversed. People getting off of death row due to prosecutorial misconduct and rarely has anything happened to any of the prosecutors.

Mr. DELAHUNT. Again, and I do not want to interrupt your testimony, but let me do it.

Mr. BOTSFORD. Please. My pleasure.

Mr. DELAHUNT. And you know there is, I understand as part of the Department of Justice, an Office of Professional Responsibility that purportedly reviews complaints regarding government or Justice Department attorneys. Has that avenue ever been pursued if you are aware, not just in relation to the Ramos/Compean matter but any of the cases that you have raised or if you are aware of any in your capacity as a member of the Texas bar?

Mr. BOTSFORD. There have been prosecutors who have had references. Been referred to the Office of Professional Responsibility that I am aware of in the past 20, 30 years. Two occasions I am aware of personally. On neither occasion was any action taken by the Office of Professional Responsibility. I am not aware that anybody has made a complaint vis-à-vis Mr. Sutton or any of his underlying prosecutors in this case to the Office of Professional Responsibility.

Mr. DELAHUNT. And if action were taken, is there any guarantee that publication would ensue? In other words, is the process itself, if you are familiar with it, is it one that lends itself to transparency or does it implicate private reprimands and no sense of justice on the part of the public at large?

Mr. BOTSFORD. I cannot truthfully answer that other than from what I have heard through the years because I have never personally dealt with the Office of Professional Responsibility, but I believe on some occasions they have taken actions against Assistant U.S. Attorneys but it is the possibility of—

Mr. DELAHUNT. Nonpublic?

Mr. BOTSFORD. Yes. Generally it is a private situation unless something drastic occurs based on my understanding of the process but I am certainly no expert, Mr. Chairman, not on that.

Mr. DELAHUNT. I apologize, Mr. Botsford.

Mr. BOTSFORD. No.

Mr. DELAHUNT. Please proceed with your testimony.

Mr. BOTSFORD. No apology necessary.

STATEMENT OF DAVID L. BOTSFORD, J.D., BOTSFORD & ROARK

Mr. BOTSFORD. Firstly, I appreciate the invitation to be here. It is important from my perspective as a member of the bar in Texas. It is important for my client but more importantly I think it is important to the American public. I need to make two statements briefly. Number one, I am Appellate Counsel for Ignacio Ramos. I was not involved in the trial. I can only relate to you the facts from the 33 volumes and the exhibits which I have reviewed, and to that extent there are certain portions of that that were ordered sealed by the District Court that I have reviewed that I will not touch upon and will not comment upon in order to honor those court orders.

With those two disclosures at the start, I will try to give you a truthful rendition of the facts as I have seen them. I have given you a written statement. I am going to try to be brief in an opening statement.

You know when I appeared before the Senate, I had the opportunity and pleasure to hear Ranking Member Rohrabacher address Senator Feinstein and say, "If this was Osama bin Laden, would we really be here?" And I like to think that brilliant minds think alike. I was going to try to say that but he beat me to the punch, and I am not sure that I would have said it nearly as eloquently as he did but the point remains. At the borders of America, all Americans deserve the best and the brightest protecting us.

Mr. Sutton and his line prosecutors have turned two honest law enforcement officials that were trying to do their job to the best of their ability into victims. These two agents are victims. This entire sequence of events turns around a 17-minute sequence of time on February 17, 2005, where an illegal alien was noticed and dispatched by Agent Compean to his fellow agents.

A sensor had been tripped in area 76, an area known for narcotics trafficking and alien trafficking. Agent Compean broadcast that out. He was on the levee right by the border, and I believe that you have some copies of exhibits that have been supplied to the members of the committee. So perhaps it will be a little bit more understandable.

But that broadcast went out. Agents responded. The long and the short is there was a high speed chase. Two different agents, Oscar Juarez and, subsequently, Ignacio Ramos attempted to stop this van driven by Aldrete-Davila. Aldrete-Davila did not stop in the town of Fabens. He fled two Border Patrol agents with overhead flashers going trying to stop him. Fled back toward the border a different way.

Obviously there is communications on the radio. The agents converge. They follow him to the border, and although I do not need to get into the deep facts of it, the bottom line is this man had no intention of stopping. He had every intention based on what the agents could see and observe at that time that he was a danger.

Under Supreme Court precedent, the agents clearly had the right to use deadly force to stop him during the high speed chase which was dangerous not only to the agents but to others, but they were

not there to shoot a Mexican or to harass a Mexican. They were there doing their jobs. I mean they got up every morning. They had to put a gun on. That is part of their duties.

And they went out there, and in the best of their judgment—maybe they made an honest mistake. I do not think so. I think they are 100 percent right that that man had a gun. I do not doubt that for a second but I was not the jury but the point remains they had the right to protect themselves and protect the border. In good faith I believe they were entitled to actually fire at this man.

Certainly Ramos who was down in an 11-foot deep ditch and was not able to see who was firing at who when he heard a series of shots, he comes out of that ditch and encounters Compean on the ground as if Compean had been assaulted, sees Aldrete-Davila running away toward the border, turns around with that left hand, and that is the shot that we believe hit him. It was so stipulated to at trial.

If he does not have the right to use deadly force, what kind of a message does that send out to our people along the border? More importantly do you think when he got up that morning or when any of the law enforcement agents get up in the morning and they are going out in the line of duty they reasonably anticipate that if they make a mistake in judgment in terms of pulling their guns that they are looking at 10 years mandatory minimum, stacked on a civil rights violation or assault? I submit no. It sends a terrible message to law enforcement.

Mr. Sutton says it is too harsh. Aldrete-Davila has admitted it is too harsh. The factual scenario did not justify it, and if you look at the sequence of the original complaint that was authorized on March 18, 2005, and then go through the series of indictments, we see that every time the government ups the ante. The government increases the charges. This is not a prosecution in my opinion that could be called anything but grossly overzealous. Grossly overzealous.

These gentlemen do not deserve to be in the penitentiary for 11 or 12 years. They deserve a salute because, if in fact the driver of that van who had crossed illegally into this country had a dirty bomb with him, we would have been thanking them, whether he shot and killed the person or missed him. And with that I will just note that justice is conscience but it is not a personal conscience so much as a consciousness and a conscience of the whole of humanity, and that was said by Alexander Solzhenitsyn. And it seems very, very appropriate here that our Government and our Executive.

I dealt with President Bush when he was the Governor of Texas. I asked him to exercise his clemency on behalf of a woman who I did not believe had to die. Her name was Carla Fay Tucker. She died. Then Governor Bush did not exercise his executive clemency. I appreciate the Congress of the United States asking him to exercise his executive clemency, an act of grace as the President of the United States, on behalf of Ramos and Compean, and pray to God that he does so for their families and those gentlemen. Thank you.

[The prepared statement of Mr. Botsford follows:]

STATEMENT OF

**DAVID L. BOTSFORD
APPELLATE COUNSEL FOR IGNACIO RAMOS**

BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS

**SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,
HUMAN RIGHTS, AND OVERSIGHT**

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

**"POTENTIAL MEXICAN GOVERNMENT INFLUENCE ON
THE CASE OF RAMOS AND COMPEAN"**

PRESENTED ON

July 31, 2007

Dear Chairman Lantos and Members of the Subcommittee:

Initially, I want to express my deep appreciation to you for the invitation to appear today, and for the opportunity to attempt to clarify the facts surrounding the prosecution of Ignacio Ramos and Joe Compean. It is an honor and a privilege, but also a solemn responsibility given the gravity of the situation. Indeed, much has been written and stated in many forums by many people and I would be remiss by not stating that what I have read, seen and/or heard concerning the facts of this case has not always been completely faithful to the actual trial/appellate record.

Given my obligation of complete candor, I must also qualify my testimony. I represent Ignacio Ramos on appeal only, meaning that I was not involved in the case prior to or during the trial. I was retained to handle Ramos' appeal in late 2006 and have read every word of the 33 volumes of the trial/appellate record. I have also reviewed all of the exhibits introduced in the District Court that are contained in the appellate record. In my capacity as appellate counsel for Ignacio Ramos, I prepared and filed his opening brief in early May 2007, with the United States Court of Appeals for the Fifth Circuit. The Government's response brief is due to be filed on or about August 6, 2007, and thereafter, I will have fourteen days to file a reply brief on behalf of Mr. Ramos. I do not represent Mr. Compean; he is represented on appeal by Bob Baskett and Ed Mason, who practice in Dallas,

Texas.

Let me also state that I cannot discuss certain matters which are still sealed, per various orders of the District Judge who tried the case. The appellate brief which I have filed contains references to some of these sealed materials, and because of this, the brief has been filed under seal at the United States Court of Appeals for the Fifth Circuit. I have, however, supplied a redacted copy of the brief (i.e., a copy which "blacks out" all references and allusions to the sealed materials to various interested parties) and I am entitled to discuss the contents of the brief, although without reference to the sealed materials.

The prosecution of Ramos and Compean -- and in particular, Ramos -- is a tragedy. Having defended citizens accused of crime for close to thirty years, I believe this case to be one of the greatest tragedies I have ever encountered.

Ignacio Ramos was a Border Patrol Agent who did not lie, did not destroy evidence, and did nothing other than his job on February 17, 2005, when he joined a high speed chase to apprehend an illegal alien who had entered this country illegally, and who, it was suspected, was in the process of importing large quantities of illegal substances into America.

Those suspicions were ultimately proven to be correct: Davila was driving a van which contained almost 750 pounds of marijuana: whose value was between

\$500,000 and \$1.0 million.

The truth is, as Representative Dana Rohrabacher so aptly noted during his July 17, 2007, testimony before the Senate Judiciary Committee, if the driver of van had been Osama Bin Laden, is there anyone who would believe that Ramos and Compean would have been prosecuted for their acts of February 17, 2005? Indeed, is there anyone who would believe that Mr. Sutton and the prosecutors working under his authority would have sought a 10 year mandatory minimum sentence against Ramos and Compean for attempting to apprehend Osama Bin Laden if he had been the fleeing felon behind the wheel of the van? Is there anyone of us who would believe that Mr. Sutton and the prosecutors working under his authority would have given that fleeing, dangerous felon -- Osama Bin Laden -- immunity from prosecution in order to prosecute Ramos and Compean? The answer is simple: of course not!

This case sends a terrible message to our law enforcement agents, due to the inclusion of a 10 year mandatory minimum contained within 18 U.S.C. Section 924(c) -- use of a firearm during the commission of a crime of violence.

Law enforcement agents who must carry a weapon on a daily basis have now been sent a message: if they pull their gun in the line of duty, they too run the risk of prosecution under this statute, thus presenting them with a substantial dilemma.

Is it better to refrain from pulling their weapons, thus exposing themselves to potential injury, or do make that split second decision knowing that they too may face a criminal prosecution. This, I submit, is a terrible message to send to law enforcement agents throughout America.

I believe that 18 U.S.C. Section 924 has been misapplied in this case. It seems fairly clear from the legislative history that the congressional purpose was to encourage criminals to "leave their guns at home." Moreover, legal niceties aside, in Ramos and Compean's case, there was no separate crime that a weapon was used in to help commit or facilitate, unlike many of those cases cited by Mr. Sutton in his testimony before the Senate Judiciary Committee. Mr. Sutton is on record as saying the sentence was too harsh, but it was his trial prosecutors who exercised their discretion to bring that count, knowing that a ten year minimum would be the result. Also, it was Mr. Sutton's trial prosecutors who indicted Ramos and Compean with the questionable obstruction of justice counts, which we believe also reflects their over zealousness.

Indeed, there cannot help but be a chilling effect on law enforcement officers, who must carry weapons, and who now have to fear the serious penal consequences that prosecutors may impose if it is decided that the discharge was unjustified in the cold and sterile light of an after-the-fact dissection of the incident.

As we know from the Supreme Court's opinion in *Graham v. Connor*, even a civil defendant has legal protections from being judged in hindsight. I submit that this prosecution was ill advised and that the trial prosecutors were overzealous.

I am going to attempt to give you an overview of the factual scenario which occurred between approximately 1:11 p.m. and 1:28 p.m. on February 17, 2005: seventeen minutes that have forever changed the lives of Ignacio Ramos and Joe Compean. I will try to give you a feel for the overall situation, in a chronological perspective:

1. The drug smuggling alien, Osvaldo Aldrete-Davila (hereinafter referred to as Davila), crossed the Rio Grande River, illegally entering the United States.
2. Davila was being paid between \$1,000 and \$1,500 to drive the van, previously laden with drugs which had been illegally "crossed" over the border. Davila claimed not to know what type of drugs or the quantity.
3. Davila began driving the van at a rapid rate of speed away from the border, an area referred to as area 76.
4. Compean was on duty at the border in his vehicle and reported a suspicious vehicle heading away from the border at a high rate of speed. This was a dispatch on his Border Patrol radio, which was overhead by other agents and recorded.
5. The van was leaving an area known to be used by drug and alien smugglers.
6. America's borders deserve security; the American people deserve security; and the Supreme Court has long recognized that there is a

heightened governmental interest in apprehending people who illegally enter this country at unauthorized points of access.

7. Compean's broadcast is heard by any number of other Border Patrol Agents, including but not limited to Agent Vasquez, Agent Juarez and Agent Ramos. Ramos was actually at the Border Patrol station in Fabens, Texas -- just a few miles from the border -- and responded to the broadcast, as did Vasquez and Juarez, among others.

8. As the person ultimately identified as Davila approached the town of Fabens -- just a few miles from his illegal entry into the United States -- Agent Oscar Juarez, who had left the border (where he was trying to "push back" a group of aliens threatening to cross the border and illegally enter the United States) located Davila and attempted to stop him by activating his overhead lights of his marked Border Patrol vehicle. Davila ignored the Juarez' efforts to stop him and attempted to elude Juarez.

9. Ramos, who had left headquarters and was in a marked Border Patrol vehicle in the center of Fabens, sees the van being driven by Davila and pursued by Agent Juarez, and takes over as the lead pursuit vehicle. Davila continues to attempt to elude what are now two Border Patrol vehicles attempting to stop him, and ends up heading back towards the border, although at a different location than that where he got into the van.

10. A third Border Patrol Agent, Arturo Vasquez, also responded to Compean's dispatch and monitored the radio communications (both those which were recorded, as being on the "repeater," and those which were on the local channel, and hence not recorded. As he monitored the communications, including those which Ramos dispatched during the pursuit of the van, Vasquez positioned himself along the path that Davila appeared to be taking back to the border. He joined the pursuit, following Ramos and Juarez, and so there were now three Border Patrol vehicles chasing Davila. The pursuit exceeded the posted speed limits of the various roads and allegedly reached speeds of 60 to 65 mph. Davila disobeyed repeated efforts by these agents to stop, and fled on a high speed pursuit back towards the

border.

11. Under Supreme Court precedent, including the April 30, 2007, opinion in *Scott v. Harris*, Agents Ramos, Juarez and Vasquez had the right to use deadly force to stop the fleeing suspect who was posing a risk of safety to them and others during the high speed pursuit. However, the Agents did not use deadly force to stop Davila, but pursued him until he stopped his vehicle near the border, where the dirt road T'ed into a canal or ditch.

12. While the pursuit was occurring, Agent Compean moved down the levee road to the location where Ramos' dispatches indicated that Davila could no longer proceed towards the border/Rio Grande River. He exited his vehicle with his shotgun and stood on the south side of the canal/ditch awaiting Davila.

13. Davila, still pursued by three marked vehicles, caused the van to come to a sliding stop with the front wheels of the van almost over the edge of the ditch.

14. Davila exited the van and fled south through the 11 foot deep ditch and approached Compean, who had walked from the levee road to a position near the south edge of the canal/ditch, holding his shotgun. Ramos, followed by Juarez and then Vasquez, pulled their vehicles up behind the van shortly thereafter.

15. Despite seeing Compean with a shotgun, and despite shouts to "stop" in spanish -- "parate" -- coming from at agents on the south side of the canal, Davila did not stop and surrender.

16. Rather, Davila attempted to get past Compean and ultimately, Compean and Davila had an altercation, which caused Compean to drop his shotgun. Compean then gave chase to Davila, with Compean ultimately ending up on the ground with Davila.

17. Ramos, who was on the north side of the 11 foot deep canal, saw that Compean was having an altercation with Davila, and went down into the canal to go assist Compean. Agents Juarez and Vasquez did

not go down into and through the canal to attempt to assist Compean; they remained on the north side of the canal.

18. While Ramos was in the 11 foot deep canal, he heard shots -- what he believed to be an exchange of shots -- but could not see what was occurring. At least 10 to 14 shots were fired without Ramos seeing who was actually firing.

19. Ramos, upon exiting the 11 foot deep canal, encountered Compean on the ground, saw Davila with what he thought and believed to be a gun in Davila's hand as Davila was turning towards Ramos, and Ramos then fired 1 shot at Davila.

20. Neither Ramos nor Compean believed Davila had been hit. Ramos and Compean both watched as Davila continued across the Rio Grande river and into Mexico where he was met by unidentified individuals in two different vehicles, the second one of which carried him away from the border.

21. Compean and Ramos returned to their respective vehicles, encountering no less than 7 other Agents (including two supervisors - Agents Richards and Arnold) who had arrived on the scene.

22. Ramos did not orally report the discharge of his gun, but only because he believed that the Agents -- Juarez and Vasquez -- who were physically following him during the pursuit and who had exited their vehicles on the north side of the canal -- had reported the discharge themselves. In fact, Ramos actually heard one of the agents talking about the shots when he returned to the area where Davila had stopped his van. Agent Juarez testified at trial that he remembered someone yelling "shots" while he was at the scene, but did not remember who it was. Agent Juarez also heard shots, but did not orally report them to a supervisor within one hour, as mandated by Border Patrol policy. Agent Vasquez also testified at trial that he heard shots as he was getting out of his vehicle, but he did not orally report them to a supervisor within one hour, as mandated by Border Patrol policy. Compean did not report the shots. Yet Ramos and Compean were the only two prosecuted for the failure to report the

shots.

23. Unlike Compean, however, Ramos did not pick up any bullet shells (spent brass) or ask anyone to do so for him. Compean did in fact pick up his spent brass and asked another agent to pick up any others that he might see.

24. Unlike Compean, Ramos did not make any written report that was false or incorrect. Compean prepared a seizure report for the marijuana because he received the "credit" for the "bust." His written report on the seizure did not reflect the discharge of shots. However, it was not a false report and a seizure report would typically include a reference to the discharge of a weapon.

25. For one hour and one hour only, all of the agents who heard shots (or fired their weapons) had a duty to report the discharge of the weapons to a supervisor.

26. Contrary to the statements of various interested individuals who have made public statements or provided testimony, Ramos did not lie, Ramos did not destroy evidence, and Ramos did not submit a false report. Many of the individuals who have spoken on this topic have attributed to Ramos the actions of Compean. Not only is this unfair, it is misleading.

27. The overriding legal issue is whether, given the totality of the circumstances, Ramos actions were objectively reasonable. I believe a properly instructed jury would have found Ramos's actions objectively reasonable because he heard gunshots while in the canal and was entitled in good faith to rely upon the fact that his fellow agent (Compean) had obviously fired his weapon. Ramos encountered Compean on the ground and then saw Davila with a weapon in his hand turning back towards Ramos as if to fire, which caused Ramos to fire his weapon one time at Davila. Regardless of Ramos actually saw a weapon in Davila's hand (or possibly saw something shiny, as Compean testified to seeing) or was simply incorrect in his belief that it was a weapon, the point remains that Ramos was entitled in good faith to discharge his weapon due to his belief that there had been an

assault on Compean, the discharge of weapon(s) when he was in the ditch, and his belief (even if mistaken) that Davila was turning and pointing a weapon at him. He had to make a split second decision and even if he was wrong, his actions were not criminal and certainly were not deserving of a mandatory 10 year sentence for firing his weapon. In other words, Ramos' actions in relying upon what he saw and heard were objectively reasonable and did not violate the law: his sole and only mistake was not immediately reporting the discharge of the weapon to one of the two supervisors at the scene. The failure to so report was a mere administrative violation which could have subjected Ramos to up to a five day suspension.

Additionally, I also want to address Mr. Sutton's statement on page 6 of his written statement tendered to the Senate Judiciary Committee. Therein, Mr. Sutton states that the District Judge ruled that the second load of marijuana -- the October 2005 load as Mr. Sutton refers to it -- was not relevant to the issues at the trial. This is simply inaccurate. The facts are as follows:

1. A letter granting Davila "use immunity" co-extensive with the federal use immunity statutes -- 18 U.S.C. Sections 6002 and 6003 -- was signed by Assistant United States Attorney J. Brandy Gardes on March 16, 2005. It was taken by DHS OIG Agent Chris Sanchez to the American Consulate in Ciudad Juarez, where Agent Sanchez met with Davila. Davila signed the agreement that same day, before Davila was interviewed, and before Compean or Ramos were ever asked one question about the situation.
2. Mr. Sutton testified on July 17, 2007, before the Senate Judiciary Committee, that he had no input into the decision regarding the issuance of that immunity. I believe that Mr. Sutton in fact had no knowledge of or involvement in that decision, based on my experience practicing in the Western District of Texas.
3. During the course of various pretrial and even trial proceedings in

this case, Mr. Sutton's prosecutors (the two who actually handled the pretrial and trial proceedings) represented to the District Court and to counsel for the defendants that Davila had received immunity for the events of the day in question: 2/17/05.

4. However, contrary to the representations of Mr. Sutton's trial prosecutors, the immunity was "use immunity" coextensive with the federal immunity statutes (as identified above); not merely immunity for the events on February 17, 2005.

5. When the defense told the District Judge that they wanted to cross-examine Davila about the second load -- after Davila had created a false impression before the jury and even the Judge had concluded that Davila had been less than candid with the jury -- the Judge ruled that Davila had the right to take the 5th Amendment as to any questions regarding this second load. The Judge's ruling was presumably based upon the prosecutor's representations that the immunity was only for the events of the day in question: February 17, 2005.

6. But the representations of Mr. Sutton's trial prosecutors' were incorrect: once a person has been given "use" immunity, the person no longer has a 5th Amendment privilege to refuse to answer the questions. The Supreme Court declared this in its 1972 opinion entitled *Kastigar v. United States*.

7. Mr. Sutton's trial prosecutors are intelligent, seasoned prosecutors who presumably knew this, but they did not inform the District Judge of the legal effect of the immunity agreement, as actually reflected in the letter agreement. Thus, presumably the District Judge prohibited the cross-examination of Davila on the second load based upon an incorrect understanding of the law; a belief that Davila would take the 5th Amendment as to questions about any other day than February 17, 2005.

8. So contrary to Mr. Sutton's written statement at page 6, the District Judge did not rule that the second load was not relevant. A copy of the use immunity agreement is attached to my written statement.

I also want to point out that it was uncontested at trial that Davila violated

his immunity agreement with Mr. Sutton's office. This was reflected by the trial testimony and even DHS OIG Agent Chris Sanchez -- the lead investigator for the Government -- opined that Davila had not honored his immunity agreement because Davila refused to provide all of the information requested by Sanchez.

Furthermore, I believe the sequence of charges leveled against Ramos and Compean, and the timing of the charges, is noteworthy. The original charging instrument -- called a criminal complaint -- against Ramos and Compean was sworn to by DHS OIG Chris Sanchez and was authorized by Assistant United States Attorney J. Brandy Gardes on March 18, 2005, a mere two days after Davila was given immunity. This criminal complaint contained but one allegation: one count of assault as to both Ramos and Compean.

Subsequently, on April 13, 2005, a three count indictment was returned against both Ramos and Compean. This indictment alleged assault with intent to murder, assault with a dangerous weapon, and assault with serious bodily injury as to both Ramos and Compean. In other words, three charges were leveled against both Ramos and Compean.

On September 28, 2005, shortly before the then scheduled trial date of October 14, 2005, a first superseding indictment was returned which alleged five (5) counts against Ramos and seven (7) counts against Compean. This first

superseding indictment contained the same three counts of assault as the April 13, 2005, indictment, but also added one count under 18 U.S.C. Section 924(c) (i.e., use of a firearm during and in relation to a crime of violence) as to each defendant, three (3) counts of tampering as to Compean, and one (1) count of tampering as to Ramos.

On December 21, 2005, a second superseding indictment was returned which alleged six (6) counts against Ramos and eight (8) counts against Compean. This second superseding indictment was essentially identical to the first superseding indictment, except that it added one (1) count of deprivation of civil rights as to both Ramos and Compean.

On January 25, 2006, shortly before the then scheduled trial date of February 17, 2006, a third superseding indictment was returned which alleged seven (7) counts against Ramos and nine (9) counts against Compean. This third superseding indictment was essentially identical to the second superseding indictment, although it added one (1) additional count of tampering as to both defendants.

Finally, I want to point out that Davila obtained counsel in El Paso at some point in time after he was given immunity. Davila's counsel sued the United States for \$5,000,000, although Davila has been quoted in the El Paso press (since the sentencing) that he believes that the sentences of 11 and 12 years imposed upon

Ramos and Compean (respectively) are too severe.

I welcome the opportunity to be of assistance and I hope that I can answer your questions with the degree of precision necessary and appropriate to assist you.

Thank you very much.



U.S. Department of Justice
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Western District of Texas



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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:

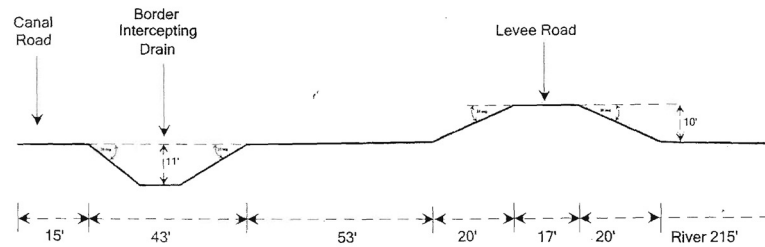
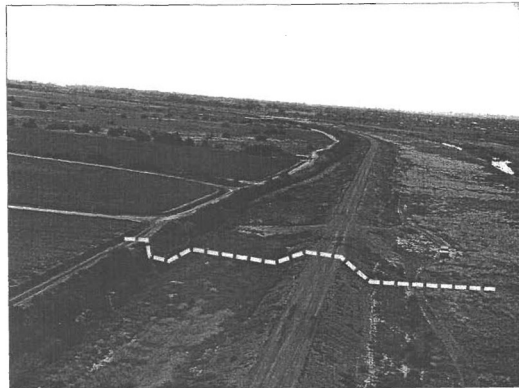

OSVALDO ALDRETE-DAVILA

16-MAR-20-05

Govt No. 30

SECTOR EVIDENCE TEAM

El Paso, Texas

**DIAGRAM (SIDEVIEW)****NOT TO SCALE / DISTANCES APPROXIMATE**

LIMITED OFFICIAL USE

Govt No. 31

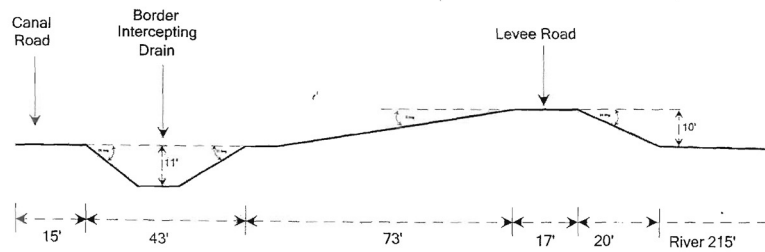
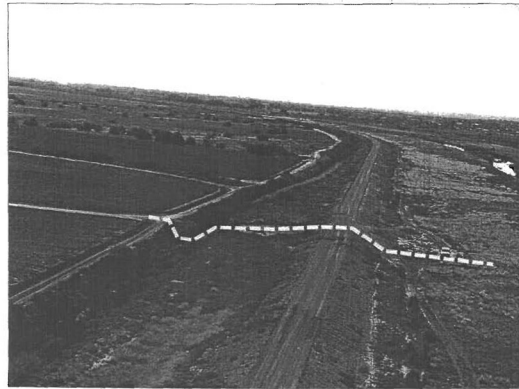
SECTOR EVIDENCE TEAM

El Paso, Texas



DIAGRAM (SIDEVIEW)

NOT TO SCALE / DISTANCES APPROXIMATE



LIMITED OFFICIAL USE

Govt No. 32

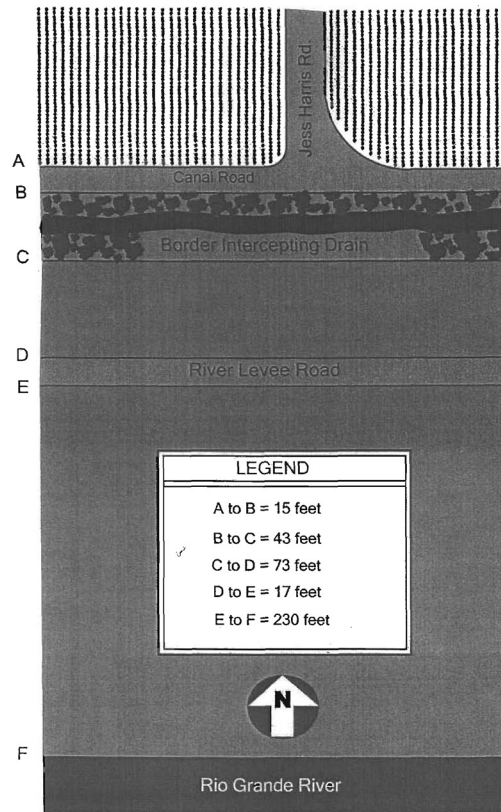
SECTOR EVIDENCE TEAM

El Paso, Texas



DIAGRAM (OVERHEAD)

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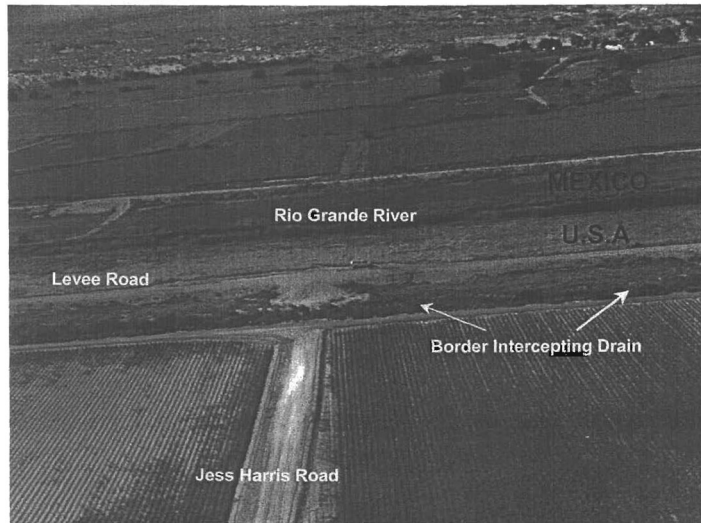


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Govt No. 28

SECTOR EVIDENCE TEAM

El Paso, Texas

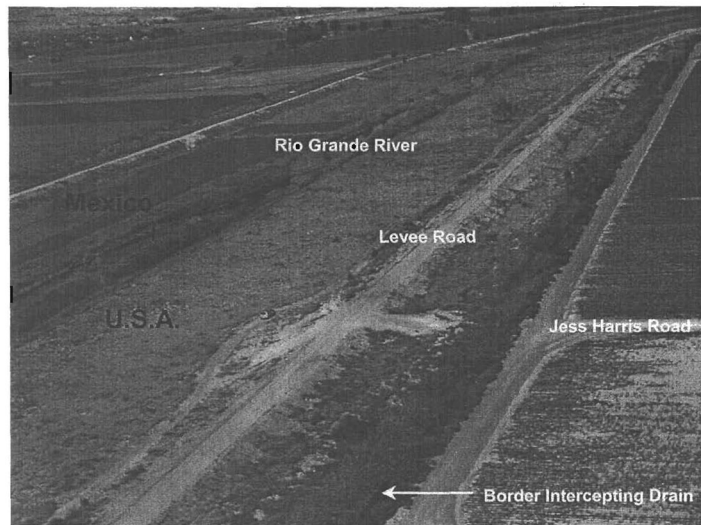
**PHOTOGRAPH 4 of 12****View:** Aerial**Description:** View from north to south.**Photographer(s):** Mark Marshall, Photograph taken 09/30/2005

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Govt No. 29

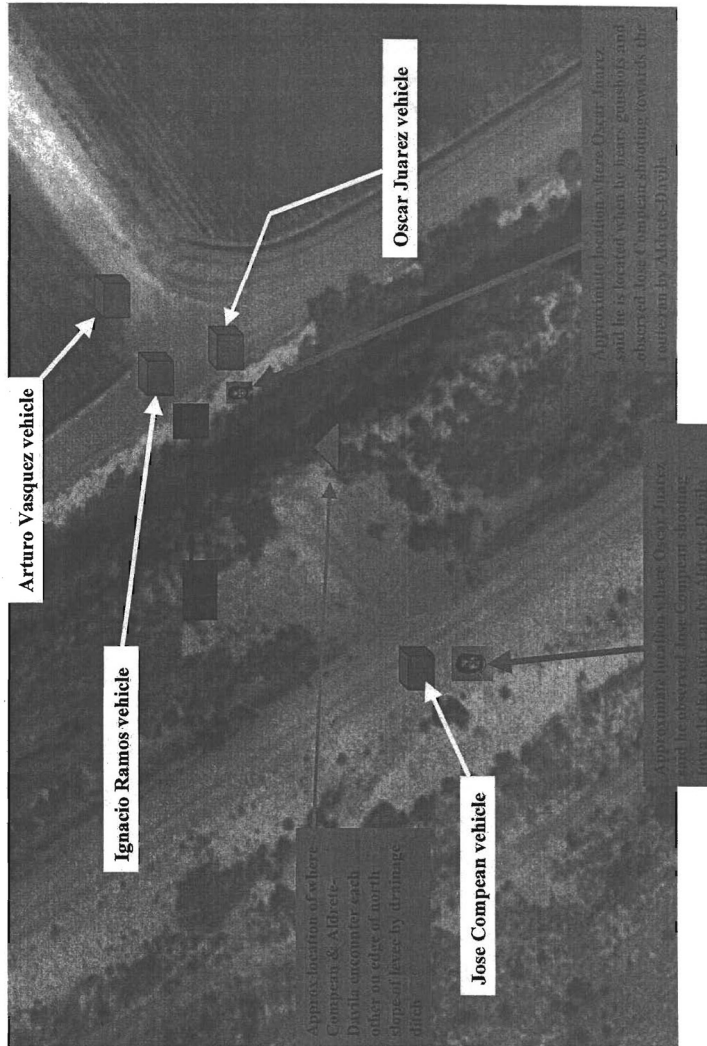
SECTOR EVIDENCE TEAM

El Paso, Texas

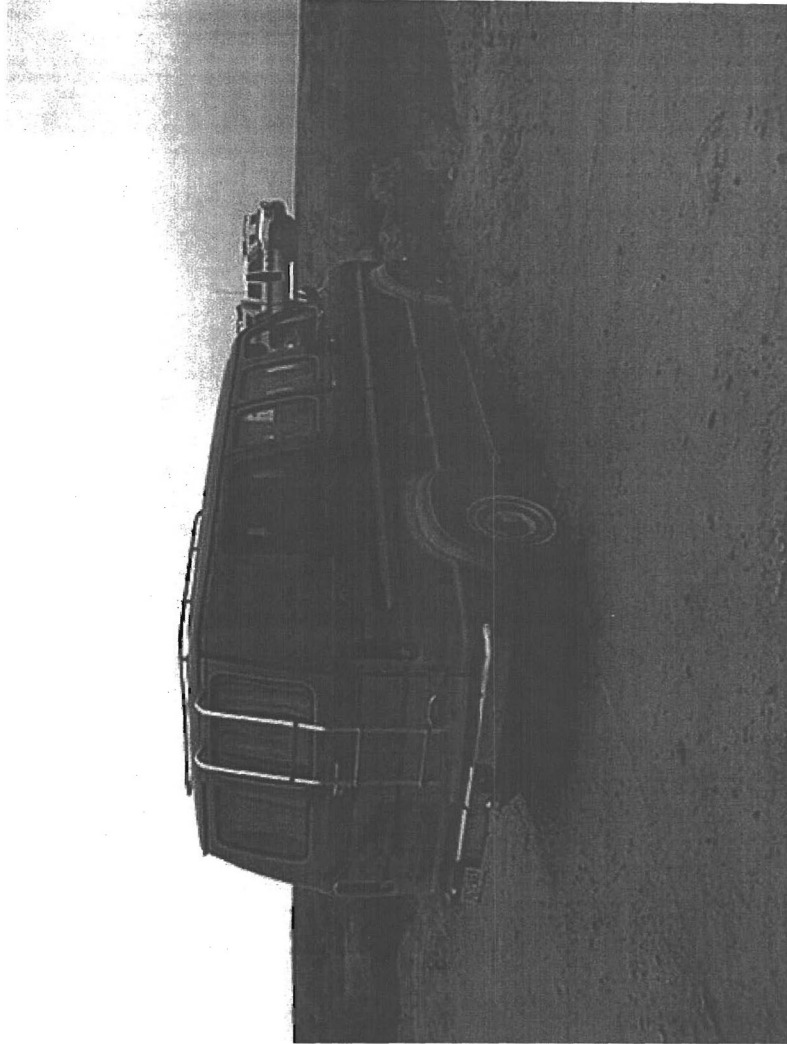
**PHOTOGRAPH 5 of 12****View:** Aerial**Description:** View from east to west.**Photographer(s):** Mark Marshall, Photograph taken 09/30/2005

LIMITED OFFICIAL USE

Govt No. 11



Govt No. 9



Govt No. 10



Govt No. 12



Govt No. 16



Mr. DELAHUNT. Thank you, Mr. Botsford. My intention now is to call on members to my left first, and inquire, and I would just simply reserve a little time for myself, and as they pose their questions, I am sure it will provoke in my mind some additional questions, and I would ask them to forebear with me, and if I ask them to yield it will be for a short period of time. I already see Congressman Poe smiling. So I will begin with him.

Mr. POE. Thank you, Mr. Chairman. Thanks once again for having this hearing. I appreciate both of you being here, Mr. Bonner and Mr. Botsford. Mr. Botsford, the chairman talked a little bit about what it is like in Texas to be a prosecutor and complaints filed against prosecutors, the DA's office by civilians or anybody else. Basically if Michael Nifong had been in Texas nothing would have happened to him. Would you agree with that?

Mr. BOTSFORD. I think that is a very fair statement. Very definite possibility.

Mr. POE. Because basically prosecutors can go wild in the State of Texas and nothing occurs except in the case that for which they are responsible for. There is a reversal. The person is set free or something like that. But as far as them personally suffering, generally based on what you have seen and I guess what I have seen too, they are never reprimanded, disbarred or sanctioned.

Mr. BOTSFORD. Correct.

Mr. POE. Is that a fair statement?

Mr. BOTSFORD. Yes, sir. It is a very fair statement.

Mr. POE. So it is a little different than in Massachusetts, Mr. Chairman. Yes, I will yield.

Mr. DELAHUNT. I cannot help but respond to the answer to your question. It is most illuminating, and I guess I would ask and maybe you, Congressman Poe, would find it appropriate to respond to me, is that condition true as well of Federal prosecutors within the State of Texas? Because if that is the case, then it is of concern to me in my role as a member of the United States Congress.

Mr. POE. I cannot answer that question, Mr. Chairman. I do know that some of the prosecutors involved in this Federal case used to be state prosecutors before they went to the U.S. Attorney's office. Mr. Botsford, can you answer that question?

Mr. BOTSFORD. Actually I can say that Federal prosecutors in Texas are subject to State Bar regulation.

Mr. DELAHUNT. I understand that, and again if the gentleman would yield. Are we talking about a culture in Texas that sets it apart from jurisdictions elsewhere, whether it be state or Federal attorneys? If that is the case, then it is our collective responsibility to address it to ensure that there is a full measure of justice, and I recognize that people can make mistakes.

I have made mistakes as a prosecutor. I have indicted individuals whom, because we pursued additional investigation, we discovered were innocent, and we nol-prossed those cases. We dismissed those cases and apologized publicly, and I am proud of that particular action because that is what justice is about. Again, I yield back.

Mr. POE. Thank you, Mr. Chairman. Just based on statistics that you are aware of from the State Bar and the Federal Bar, could you elaborate on the chairman's question about, is there a culture?

I mean has there been personal liability of any sort in previous cases? And that would account for either it is not occurring or there are no violations of the canons of ethics or they are not being pursued. So just briefly comment on that if you will.

Mr. BOTSFORD. Yes. I believe the statistics would show that very few acts of prosecutorial misconduct, whether it be committed by a state prosecutor or a Federal prosecutor, would result in any type of substantive action or discipline to that prosecutor, whether he is a Federal prosecutor or a state prosecutor in Texas.

For the last 20 years we have seen any number of reversals by the Texas Court of Criminal Appeals dealing with suppression of evidence. I personally have gotten two people off of death row due to the suppression of evidence, and there were no consequences for anybody in connection with those cases, with the possible exception of the county who may have paid out a little bit of money on one of those cases. I do not know that it is a culture so much as just a failure of a mechanism to really do anything. Most prosecutors are good. I actually married one. I love her. She is great.

Mr. POE. We are all married to prosecutors.

Mr. BOTSFORD. Good point.

Mr. POE. A couple more questions.

Mr. BOTSFORD. Certainly.

Mr. POE. I agree with you. I do not want to let the record reflect anything different. I think most prosecutors in Texas—county, Federal, State—they uphold their oath to seek justice and not convictions. I am convinced of that.

Mr. BOTSFORD. Certainly.

Mr. POE. Mr. Bonner, elaborate if you will on what you know, if anything, about the specific involvement of the Mexican Government in the Ramos and Compean case, and what border agents have been given, information they have been given through the Border Patrol or someone else about Mexican Government involvement in this case.

Mr. BONNER. Congressman, the only thing I am aware of is reports, corroborated reports that Chief Luis Barker addressed at least one muster in the El Paso area where he said—and the memories are somewhat different—but the essence of the report is that the Mexican Government had written to either State Department or the Secretary of State demanding action. It was not clear whether the action was an investigation or prosecution but that the two agents, in the minds of these agents were linked. The request for Mexico and the fact that these agents were going to be prosecuted to the fullest extent of the law.

Mr. POE. What has been the effect, if any, on Border Patrol morale regarding the job on the Texas/Mexico border, United States/Mexico border in this case?

Mr. BONNER. It has been devastating, Judge. It really has just sucked the last vestiges of morale right out of the organization. How can you expect men and women to get up in the morning, strap a gun on, and pin that badge on, and go out and enforce laws when they do not know whether they will be prosecuted for simply doing their job?

Mr. POE. I want to thank both of you for being here. I yield back, Mr. Chairman. Thank you.

Mr. DELAHUNT. I thank the gentleman for yielding. In the testimony of Chief Barker, who was unable to attend—and we did extend an invitation, he has since retired—before the Senate, he made this statement. I am reading just an excerpt because I think it is important we underscore, and there seems to be different things said by the same people at different times.

Because in response to what he might have said at a muster does not necessarily coincide with his statement before the United States Senate, and I am not saying he did not say that. But oftentimes human nature will dictate statements that are suspect in terms of their accuracy and authenticity, depending on the audience.

In front of the Senate he goes on to say:

“On or about March 4,”—this was several weeks after the incident itself—“we received a memorandum from an agent in Tucson informing us of a shooting incident connected with a narcotics seizure on February 17.”

Obviously this is the Ramos/Compean thing.

“At that point in time we had no recent report of shootings. So the information in the memorandum was surprising to us.”

This is his first understanding of the incident.

“After checking the records and making inquiries, we had reason to believe that the allegations in the memorandum had some merit. We immediately made the proper notifications and made the initial report to the Office of Inspector General because of the seriousness of the allegations.”

No reference to the Mexican Government.

Now I imagine it had to be very difficult for Chief Barker to stand before his men at a muster and be very frank and candid that it was another agent of the Border Patrol whom initiated this investigation by going to the Office of Inspector General, which has resulted in indictments. It would be a lot easier to implicate the Mexican Government because that is the Mexican Government.

I do not want to reach any conclusions but there is nothing in the record—and please believe me I have made every effort to examine it—the reconciliation of some of these statements with what I believe to be the truth is a real, real stretch. But in any event, I want to thank Ted Poe for his appearance here today, and let me go to my friend and colleague from Texas, Mr. McCaul.

Mr. McCAUL. I thank the chairman. You know like you, I see the border as the last line of defense in the war on terror. I think Border Patrol has a very tough job. They are getting assaulted down there on almost a daily basis. They do have the right to protect themselves in my view. At the same time, as a former Federal prosecutor working the U.S. Attorney’s office, I know there are a lot of dedicated, hard working, good men and women doing their job, and trying to do the right thing, and trying to put the bad guys in jail, and usually we are both on the same side of the issue.

When this happens, when we are not, that is when it I think gets dicey. I know this office of the Western District of Texas has prosecuted probably more drug and immigration cases than any other in the country. Operation Streamline was a real success in terms

of zero tolerance policy, and I think that is to be commended. However, I do think this case—and believe me as a former Federal prosecutor I am very loathe to second guess a prosecutor or a jury verdict—I do think this case does raise some serious questions.

You being the appellate lawyer, Mr. Botsford, I want to go over a few of these items that came to my attention throughout the course, and it has to do with this immunity agreement, which starts as a limited use immunity agreement, and it seems to expand in a full immunity agreement. Cooperation is key. Part of the deal that the government cuts is we will immunize you if you cooperate with us and you work with us.

Well there are a couple of things that came to my attention. One, this Aldrete-Davila talks about a hunting party in Mexico to hunt Border Patrol agents. That is very disturbing when you read this in the Inspector General's report yet when asked about this—and a BOLO goes out, "Be On the Lookout," for a Mexican hunting party that may shoot Border Patrol agents—yet when he is asked about this, he does not cooperate, is that correct?

Mr. BOTSFORD. That is correct from the reading of the record. Yes.

Mr. MCCAUL. Then he is asked about certain drug trafficking organizations. Again, no cooperation.

Mr. BOTSFORD. He would not give up the names of others involved. That is correct. Including the people that picked him up on the other side after he fled back over the border.

Mr. MCCAUL. Then he is issued a humanitarian visa to cross into the United States.

Mr. BOTSFORD. Appears to be the case, yes.

Mr. MCCAUL. And I do not know if you can comment on this but then there appears to be evidence—at least some evidence—that he may have brought a second shipment of drugs over using that visa.

Mr. BOTSFORD. I cannot address whether the second shipment was using the visa or not because I have no information from the record, but clearly it was in a timeframe, October 2005, when that second load came over, the exact details of which I cannot discuss because part of what I have seen is sealed, but the timeframe is consistent with one of those humanitarian visas, so to speak.

Mr. MCCAUL. Now there was an argument as to whether that should have come into evidence on cross-examination with the drug dealer. The judge ruled that it should not. Do you believe that is a basis? Obviously that is a basis for your appeal, is it not?

Mr. BOTSFORD. It is. It is the number one issue, so to speak, in at least Ramos' appellate brief, yes, and it does tie back to the immunity because the line prosecutors represented that the immunity agreement was just for the day in question, February 17, 2005, but the actual letter of limited use immunity bestows use immunity which means Aldrete-Davila, once he was on the witness stand, under oath he had no Fifth Amendment privilege because nothing he said on the witness stand could ever be used against him under the Kastigar case.

But unfortunately the court at the time it ruled, I do not believe, the court was acting under the full understanding of what that immunity was based on what Mr. Sutton's prosecutors were rep-

resenting, and the fact that the letter of immunity was not tendered to the court at that time.

Mr. McCAUL. So in other words, under Kastigar there were no Fifth Amendment concerns?

Mr. BOTSFORD. Exactly.

Mr. McCAUL. Is what you are saying?

Mr. BOTSFORD. Exactly.

Mr. DELAHUNT. Would the gentleman yield for a minute?

Mr. McCAUL. Yes, I will yield.

Mr. DELAHUNT. Was there ever a motion brought by trial counsel for the defendants? I presume that during the course of discovery they were provided with this immunity letter, and as information outside of the trial itself came to their attention, by motion did they ever raise this issue as to whether Aldrete-Davila violated the terms of the immunity?

Mr. BOTSFORD. Let me answer it this way: They raised the issue of whether they were entitled to cross-examine Aldrete-Davila with the second load, and ultimately they did get into the merits of the immunity agreement. Nevertheless, they were not permitted to do that because the judge believed Aldrete-Davila had a valid right to take the Fifth Amendment as to the second load. The government had also—I am sorry.

Mr. DELAHUNT. Is this a common practice in this jurisdiction? My understanding of the facts is that there was a single conversation between Chris Sanchez and Aldrete-Davila, who was in Texas, and then there is this meeting in the American consulate in Juarez, and the interviewer brings with him this limited use immunity letter.

Mr. BOTSFORD. Yes, sir. Yes, Mr. Chairman.

Mr. DELAHUNT. I mean I do not know. Again I will look to my friends from Texas, Congressmen Poe and McCaul, but I cannot imagine the limited vetting that a prosecutor's office by necessity had to do or should have done before issuing this immunity to an individual, whom all of these issues were swirling around. I mean, do you just hand out immunity down there? Maybe that is my question.

Mr. BOTSFORD. Well as use immunity, the gentleman can still be prosecuted. It is just a prosecution of him has to be totally separate and independent from anything he tells them, and it is used as an investigative tool by many prosecutors in the Federal and state systems in Texas. I have previously testified that notwithstanding that letter of immunity, Aldrete-Davila could have been prosecuted for the first load because they had everything they needed to prosecute him. The admission to Rene Sanchez, fingerprints in the van.

Mr. DELAHUNT. But can you explain to me why the U.S. Attorney before the Senate said that they could not prosecute Mr. Aldrete-Davila? I mean from where I sit and from my experience, it was not a difficult prosecution to seek and to prove.

Mr. BOTSFORD. I think a first-year prosecutor could have made that case. A baby prosecutor to say the—

Mr. DELAHUNT. I yield back to my friend.

Mr. McCAUL. I reclaim my time. You said there were fingerprints found in the van?

Mr. BOTSFORD. It is my understanding from materials I have learned outside of the Federal record, the trial record, that in fact that the van was processed, yes.

Mr. MCCAUL. And there are eyewitnesses to Mr. Aldrete-Davila?

Mr. BOTSFORD. Well clearly you have Agents Ramos and Compean that see him, along with Oscar Juarez. He flees across. He then calls, ultimately talks to Border Patrol Agent Rene Sanchez, and makes an admission to Rene Sanchez that, you know, he was doing this illegal smuggle and he got shot by Border Patrol agents. That is how they ultimately got to him.

Mr. DELAHUNT. Did Rene say that? If the gentleman would yield. Did Rene Sanchez testify at trial?

Mr. BOTSFORD. Yes, sir.

Mr. DELAHUNT. And was the testimony elicited by defense counsel that Aldrete-Davila acknowledged that he was involved in drug trafficking?

Mr. BOTSFORD. I believe that to be the case, Mr. Chairman. I have to double check to be 100 percent precise because there was a motion in limine.

Mr. DELAHUNT. Well the point is if he had been interviewed by somebody from the United States Attorney's office, I am referring to Mr. Rene Sanchez, prior to the issuance of the limited use immunity letter, they could have easily made a case in my professional judgment against Mr. Aldrete-Davila.

Mr. BOTSFORD. Well I believe that DHS OIG Agent Chris Sanchez talked to Rene Sanchez long before Chris Sanchez ever went to Mexico, on March 16, with that letter of immunity in hand having just gotten it that day. So he knew what Rene Sanchez could tell him about what Aldrete-Davila had admitted on the phone. So it was an independent source is what I am saying, Mr. Chairman.

Mr. MCCAUL. So according to your testimony, there was sufficient evidence to warrant prosecution of Mr. Aldrete-Davila?

Mr. BOTSFORD. I think he could have been prosecuted, yes.

Mr. MCCAUL. Is it your experience in most cases when you have a cooperator like this one that they will plead guilty to a lesser offense?

Mr. BOTSFORD. Typically my clients always get to plead guilty to a lesser charge in exchange for their cooperation. Rarely do they get immunity up front.

Mr. MCCAUL. Of course this is a little more complicated because your target is in a foreign country.

Mr. BOTSFORD. True.

Mr. MCCAUL. I wanted to ask you about a couple of other things. This has to do with the failure to report, and maybe, Mr. Bonner, you may be the better person to answer this, if the failure to report is done by a Border Patrol agent, what is a typical sanction for that?

Mr. BONNER. Well according to the table of offenses and penalties, it ranges from a written reprimand to a 5-day suspension. The typical one in my experience is the reprimand. It is not uncommon for agents to fail to report hence the reason that it is stated in the table of offenses and penalties as a distinct offense.

Mr. MCCAUL. So it is usually disciplinary action?

Mr. BONNER. It is usually a written reprimand that goes into the file for a couple of years.

Mr. MCCAUL. There is evidence of that and also the shell casings that we have heard about being put in a drainage ditch, but in your view would that have been the proper conduct or way to handle this case?

Mr. BONNER. This absolutely screamed out to be handled administratively. It never should have made it into our court system.

Mr. MCCAUL. Finally, and this goes to Compean's statement because it did catch my eye, and I just want to get some clarification. As I understand, Ramos hires an attorney almost immediately. Compean does not and gives a statement. In the statement though, he says, "I did not report the shooting because I thought I would get into trouble."

Mr. BONNER. Correct.

Mr. MCCAUL. Have you seen that? Can you explain that?

Mr. BONNER. This was at his oral response in front of the chief and he essentially said that the reason I did not report it is because you always side with the illegal aliens, Chief, and then there was a shouting match actually between, not Compean, but his union representative and the Chief. The Chief blew up and said, "I do not," and calmly the union rep said, "Well yes, you do, Chief." That is just the way it is, and the Chief became very agitated about that.

Mr. MCCAUL. Well just based on the equities, I along with many other colleagues have asked for a commutation of this sentence. I am concerned about morale of the Border Patrol officers and agents on the border. Can you tell me a little bit about what this has done to the agents on the border in terms of morale and recruiting?

Mr. BONNER. It has been devastating in terms of morale. Recruiting has suffered. They are in the process of trying to hire 18,319 agents by the end of December of next year, and they are far behind their goal. I think the latest figures as of about a week ago, they just barely brought on board 14,000 agents, and in testimony a few months ago in front of the Homeland Security Committee, the Border Patrol admitted that in order to bring on 5,000 agents they would have to, to add 5,000 agents, they would have to hire between 8,000 and 9,000 agents factoring in the attrition because especially during the first 18 months there is a very high attrition rate.

Total overall attrition is unacceptably high. It is somewhere between 11 and 12 percent which means that when you have a force of about 14,000 people that you can expect to lose over 1,500 people in any given year.

Mr. MCCAUL. My final question if I can, Mr. Chairman, has to do with the lawsuit filed by Mr. Aldrete-Davila. I understand he has filed a \$5 million lawsuit against the United States Government. At least when he testified at trial he indicated that Special Agent Rene Sanchez advised him as to his rights to be able to do so. Is that correct?

Mr. BOTSFORD. It is. I need to clarify. He hired an attorney at the suggestion of Rene Sanchez. Rene Sanchez told Aldrete-Davila you need to hire an attorney. You need to get immunity, and you

need to sue the government. Okay. A lawsuit was not technically filed that I can find.

A claim was tendered by Aldrete-Davila's attorney who actually appeared with him when he testified in this trial, an attorney by the name of Walter Boyaki, and the government gave a disclosure to trial counsel, Ramos and Compean's trial counsel, shortly before trial that they had just learned that Mr. Boyaki had filed a \$5 million claim with the Border Patrol back in March 2005. I do not know what happened to that claim. I have actually—

Mr. DELAHUNT. Would the gentleman yield for a minute?

Mr. MCCAUL. Yes.

Mr. DELAHUNT. Do you have a date on that because I would like to see how it coincides with the interview by Mr. Chris Sanchez in the American consulate? That was the date of March 16.

Mr. BOTSFORD. I do have a date, Mr. Chairman. That would have been 3-31-05, based on the disclosure made by government trial counsel to Ramos and Compean's trial counsel on February 15, 2006.

Mr. DELAHUNT. That was the date, by the way, of the letter from the Office of Inspector General of the Department of Homeland Security to the acting consul general of Mexico located in El Paso, that Aldrete-Davila wanted nothing to do with the Mexican Government. The only agents that he wanted to be interviewed by or talked to is the Office of Inspector General of the Department of Homeland Security.

In other words, I put it in the colloquial. The deal was cut a long time before between the office of the U.S. Attorney and the Office of Inspector General and Mr. Aldrete-Davila, including a recommendation for defense counsel with the encouragement of filing a suit against the United States. So I want to be really clear. You know I am not here defending the Mexican Government, but this is not about the Mexican Government and their conduct.

Mr. MCCAUL. One last question. When is the date of the appeal? When do you plan to have oral arguments?

Mr. BOTSFORD. The government's reply brief is due to be filed August 6. We will then have 14 days to file a response brief to the government's reply, and then we have asked for oral arguments, both Mr. Compean and Mr. Ramos. I do not know whether the government will request oral argument. But once all of the briefs have been tendered to the Fifth Circuit, then we will get a notification of either oral argument or they will submit it without oral argument and decide it on briefs.

Mr. MCCAUL. Thank you. I yield back.

Mr. DELAHUNT. To my ranking member, Mr. Rohrabacher.

Mr. ROHRABACHER. I think I am the only non-lawyer in this room. Actually I used to be a journalist, and I would cover the Pentagon papers trial and things such as that, and I would just have to say that I am in the company of some brilliant human beings here, including my chairman and my colleagues, and I have learned a lot about the law today, and appreciate your testimony, and appreciate how my colleagues have handled themselves today in I would say a very, very basic discussion of the legal issues that are at hand.

A couple of questions of my own to you, sir. Now I know you were not the lawyer at that time. You are handling the appellate thing, but in your review of the case we see a ratcheting up of the charges against these two men. Could we say that there was an attempt to try to intimidate these men into pleading guilty? So what we have here is evidence not of the government trying to get to the bottom of it and charge these people with what they should have been charged with honestly, but instead an attempt to intimidate them into accepting a plea and not having to bring it to trial.

Mr. BOTSFORD. That is a very fair statement based on the chronological sequence of events, and the charges in each of the charging indictments that actually were brought against Ramos and Compean.

Mr. ROHRABACHER. Now do you know if during that ratcheting up, that was done totally by the actual prosecutor on the scene or do we have any evidence that the U.S. Attorney's office was actually notified about this and approved of that ratcheting up?

Mr. BOTSFORD. All of the charges were filed with the approval of and under the signature of the United States Attorney for the Western District of Texas. I cannot tell you that Mr. Sutton was aware of what the charges were in each of the indictments from—

Mr. ROHRABACHER. Were you aware at his testimony in the Senate that he had suggested that his office or that he—I will have to go back and look at the actual wording—had not been part of that and not notified?

Mr. BOTSFORD. I think he testified that he was not aware of the inclusion of the 924-C charge, the gun charge that carries the 10-year stacked at the time it was originally put into the indictment.

Mr. DELAHUNT. Would the gentleman yield for 1 second?

Mr. BOTSFORD. That is my memory of it but I could be wrong about that.

Mr. DELAHUNT. My memory coincides with yours, and I think this is important to pursue. I found that statement by the U.S. Attorney to be rather shocking because it is a decision that is solely made by the prosecutor, and during the course of his testimony, Mr. Sutton acknowledges that he was not consulted in the charging decision.

Mr. ROHRABACHER. Right.

Mr. DELAHUNT. In other words, what crimes should Compean and Ramos be accused of? Is this a common practice in that jurisdiction that the United States Attorney is unaware of what is happening in high profile cases?

Mr. BOTSFORD. Mr. Chairman, I cannot answer that because I am not within the confines of the U.S. Attorney's office and in his office on a daily basis. I cannot address what he knows and what is common.

Mr. DELAHUNT. I yield back.

Mr. ROHRABACHER. Mr. Chairman, that is why we needed Mr. Sutton here today to testify under oath and to tell us. You know he can go around all over the country and talk on radio shows and give interviews, and he can word things in a way that make something appear to be true but number one, he is not under oath, and number two, you do not have a follow-up question that can then

mean anything because then he can continue. Again he is not under oath. He can create another false picture to cover up a false statement.

What we need is for people to be held accountable. Not just Mr. Sutton but everybody. I mean the people who want to participate in this endeavor that we are involved in and trying to direct the course of our country and trying to give liberty and justice for all to our people, they need to be held accountable. Mr. Sutton is not, and this particular incident that I am talking about—that is why I brought it up—we need to get the answer to that, and it makes no sense, Mr. Chairman, what Mr. Sutton has reported at the other hearing.

Mr. DELAHUNT. If my friend would yield.

Mr. ROHRABACHER. Certainly.

Mr. DELAHUNT. Senator Feinstein poses a question: "Did they," meaning the line attorneys, the assistants, "consult with you before they put on 924," which is the gun charge, "that does carry the mandatory sentence? Answer yes or no." Mr. Sutton, "No. 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."

She goes on, Senator Feinstein, "Was there consultation by anyone with main Justice? No, ma'am." I mean all I can relate to is my own experiences as a prosecutor. If an assistant district attorney in my office had proceeded with this case and continued to stack up, if you will, indictments to leverage a plea and I was uninformed, they would have been discharged. They would have been discharged.

Mr. ROHRABACHER. It makes no sense. Anyway back to some other questions. Mr. Bonner, do either one of these agents have anything in their record? We just talked about how this really deserves a reprimand. That they did not want to go through all of the 8 hours of paperwork and bureaucratic forms about going through a shooting incident. So they would have deserved a reprimand. Are there any reprimands in their record in dealing with gun issues at all?

Mr. BONNER. No, there are not.

Mr. ROHRABACHER. So both of these guys—in terms of possible gun violations—these are not rogues. These are not people who are actually on the edge. These are actually very solid Border Patrol fellows who did not have any demerits, so to speak, as to bad activities in the past, is that correct?

Mr. BONNER. That is correct. Agent Ramos was a 10-year veteran. Agent Compean a 5-year veteran. Agent Ramos during his entire 10-year career in seizing well over 100 loads of narcotics, had only had one occasion to use his weapon before, and Agent Compean never.

Mr. ROHRABACHER. Yes. So these were not people who were prone to guns so they were trying to get these bad guys at all. Now, let me just note that U.S. Attorney Johnny Sutton on numerous occasions has used the word corrupt to describe these Border Patrol agents, and then defined corrupt in a way that nobody else uses the word corrupt. I mean this administration tends to use words that nobody else defines things that way. Is there any corruption in either one of their backgrounds?

Mr. BONNER. No, there is not. And I will be the first to admit that there are corrupt Border Patrol agents.

Mr. ROHRABACHER. Right. But not these guys.

Mr. BONNER. And from my perspective, the sooner we get rid of those bad apples the better but these were fine, upstanding officers who were simply doing their job.

Mr. ROHRABACHER. Right. So they were not corrupt, and also let me note that when we talk about their record and what kind of men these were and are, that Mr. Sutton has used his lawyerly logic to come out on television and radio shows throughout this country talking about a family altercation that I believe Mr. Ramos had.

Mr. BONNER. Correct.

Mr. ROHRABACHER. Many years ago that had nothing to do whatsoever with his job, is that correct?

Mr. BONNER. That is correct.

Mr. ROHRABACHER. Nothing to do whatsoever to his job. He had a family altercation. Now I do not know if anybody in this room—I will not ask anybody questions about whether anybody out there who is reading this or listening to this has ever had a family altercation that they are embarrassed about. I will not say whether I have had one that I am embarrassed about in my past. I do not know.

But the fact is we are all human beings, and Mr. Sutton has used basically a maneuver to try and numerous occasions to get that to the public. We are talking about a guy who got in this altercation with his wife, as if that makes him a bad human being. I think that is disgraceful and disgusting, and I think Mr. Sutton owes everyone involved in this an apology for that, and he can misuse the word corrupt all he wants.

We can pass our judgments on that but when he disclosed that information about his personal life and little problems that Ramos had with his wife years ago, that was absolutely unconscionable, and that is the type of thing we are dealing with here. We are dealing with people who say, they are not cow-towing to us. We are going to destroy them. We are going to smash them like bugs, and now they have got them in solitary confinement.

Let me just ask is it your opinion, Mr. Bonner, that the Mexican consul or the Mexican authorities do get involved in cases like this but it appears in this case they did not? And in fact, it appears from what we are saying is that the Mexican consul that they actually were cut out of the whole thing.

Mr. BONNER. It is not uncommon for the Government of Mexico to weigh in on matters such as this. What I find disturbing is the fact that our Government would pay any attention to the Government of Mexico when it weighs in on any of these matters. I mean it is one thing to request an investigation but far crosses the line when they are demanding prosecution of our law enforcement officers. I would be very surprised if the United States Department of State had ever written such a letter demanding the prosecution of a foreign law enforcement officer.

Mr. ROHRABACHER. Right. Well we have that. We know that happened in several other cases, and so far we do not have evidence of that in this case, and we are still looking and asking, and so that

has been a good thing for this hearing because we need to know if there is no evidence of that.

Mr. BONNER. Well as you recall, Congressman, there was no evidence of the second load, and there was a lot of denial, and then finally when some conscientious patriot supplied that information clandestinely then all of a sudden the story changed from the government. Oh, that second load. So yes, it would not surprise me.

Mr. ROHRABACHER. Well I would just guesstimate for everyone here and just put on the record that I would not be surprised if we do find evidence that there has been conversations between our President, Mr. Bush, our President, and leaders in Mexico in which there have been some sort of guarantees that there would be no gun play unless our people were shot at first.

That would not surprise me that that is really what is the source of this problem because it puts the Border Patrol agents right in the middle. It puts their lives in jeopardy, and I would not be surprised of that. I do not have evidence of that now but there is evidence that of course our President has made many agreements and understandings with Mexico and not telling us about them but trying to implement them, and this may be an implementation of a no gun use at the border policy that was not spoken to with Congress.

I mean the President signed what you call a total—not signed—but agreed to a totalization agreement with Mexico providing Mexican citizens over here illegally with Social Security benefits. Now whether or not you agree with that or not is irrelevant.

What is relevant is the legislative branch needs to be part of that discussion, and if there is going to be a policy on our border where Border Patrol agents cannot use their guns unless fired upon, we need to be part of that discussion, and certainly the Border Patrol agents need to be part of that discussion. And so did you want to jump in on this, sir? It looked like you had something you wanted to say right there.

Mr. BOTSFORD. No, not really. I was listening with all ears.

Mr. ROHRABACHER. The \$5 million lawsuit, has that been settled?

Mr. BOTSFORD. Congressman, I do not know. I know the claim was submitted by Aldrete-Davila's civil attorney, Walter Boyaki, on the date that I previously mentioned. I think it would be fascinating to know what happened to that claim that was submitted to Border Patrol, and I cannot find an actual lawsuit that was filed. So I presume but do not know. It is either still in the works to be paid or it has been paid.

Mr. ROHRABACHER. Okay. Mr. Chairman, I would suggest that we issue a request to the various agencies to find out whatever happened to that claim. I think it is significant. Mr. Chairman, I would like to finish by just thanking you today. This is usually the Bill and Dana show here where we come from various sides of the various political spectrums but as I have always suggested and known about our country is that as different as we may be on certain things, a real love of truth and justice is part of Americans who are active politically in our country because we are enjoying and celebrating democracy as we participate in things like that,

and that means that we have a love of truth and freedom and those higher ideals in our hearts.

I think that has been demonstrated by the chairman today, and I appreciate that, and we are just praying that Ramos and Compean, as they languish in prison in solitary confinement, I mean what a horror story and separated from their families with no health insurance and no source of income, men who were just trying to protect us and suffering this kind of fate is unconscionable.

We hope that something touches the President's heart. Something touches the President's heart. Well thank you very much, Mr. Chairman.

Mr. DELAHUNT. Thank you, Mr. Rohrabacher. And you know I find it interesting that there was testimony again before the Senate, the chief of the Border Patrol nationally made this observation:

"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. In just the first 4 days of last week, during the period of time between July 8 and July 11, there were a total of 11 assaults against our officers, two rockings, two shootings, one where an officer returned fire, one vehicular assault, and five assaults where our officers were physically injured."

Not to factor into the context of this reality, this sad reality, which is one of rampant violence, what the state of mind of a Border Patrol agent is, I cannot imagine finding myself knowing that reality, hearing those statistics, knowing of colleagues that were assaulted whose lives were put in jeopardy by rockings and by shootings and who were hurt on the job how I would go out and under those circumstances any reasonable agent would be foolish not to draw their holster if they felt threatened knowing that reality.

Again, you know my politics and that of the ranking member are polarized, but he has taken this up. I might disagree with some of his statements and conclusions but as I indicated in my opening statement, at least at this point in time just in terms of the harsh and excessive sentence that unfortunately is a byproduct of all mandatory sentences, not to commute is to compound the miscarriage of justice, and I would just echo and implore the President to become engaged in this issue, to have an independent review done in terms of the situation in which these men find themselves, and to proceed to commute the sentences to time served, and the sooner the better, and I think that would go a long way in terms of the American people's confidence in their justice system.

I alluded and as did Mr. Rohrabacher earlier to the disparity between the treatment of Scooter Libby and these two men. What message do we send to the American people? What message do we send to the rest of the world about American justice? So it is not just about Ramos and Compean. It is about what we stand for as a people. Our sense of fairness.

And gentlemen, thank you so much for your illuminating testimony here today, and I promise, Mr. Rohrabacher, that I will

speak to members on the Democrat side of the aisle about this case and give them the opinion that I have made publicly here today. Thank you. We are adjourned.

[Whereupon, at 6:27 p.m., the subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

WRITTEN RESPONSES FROM THE HONORABLE CHARLES S. SHAPIRO, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE, TO QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE DANA ROHRBACHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Question:

Are you aware of Mexican Consulate involvement in the location of potential witnesses in a trial who are illegal aliens?

Response:

We are not aware of specific Mexican diplomatic and consular intent to seek illegal alien witnesses in rendering consular assistance to Mexican citizens facing criminal charges in the United States.

Question:

Are you familiar with some of the tactics of the Mexican government like handing out maps on how to cross into the U.S. illegally or the distribution of handbooks on how to avoid federal immigration authorities?

Response:

We are aware that the Government of Mexico provides assistance to its citizens seeking to enter the United States. This assistance includes drinking water and advice concerning transit of dangerous desert environments. Previous Mexican governments had, at times, also advised their citizens on how to avoid U.S. authorities as they sought to enter the United States. The Calderon Administration has discontinued this practice and counsels its citizens to enter the United States legally by seeking a visa.

Question:

Does State assist/cooperate with Mexican authorities to help secure citizenship benefits for illegals?

Response:

The Department of State does not assist or cooperate with Mexican authorities to secure citizenship benefits for persons unlawfully in the United States. The Department of State engages in ongoing discussions with Mexican authorities on a broad range of topics, including immigration-related issues.

Question:

When U.S. attorneys decide to file civil rights charges/violations on behalf of an illegal alien, is the State Department consulted in anyway? Are background checks performed? Or cross checks on watch lists?

Response:

U.S. Attorneys do not consult routinely with the Department of State when they make decisions regarding potential prosecutions, nor do U.S. Attorneys routinely ask State to perform background checks or consult watch lists.

Question:

Is State consulted when a deal is brokered with illegals through the Mexican Consul? For example, immunity agreements or benefits for an illegal who decides to cooperate in a criminal trial. Is a State Dept. representative present during such negotiations?

Response:

The Department of State is not routinely consulted when U.S. prosecutors negotiate plea agreements and is not typically present or consulted with respect to such negotiations.

Question:

Would it be routine for the Mexican Consul to contact the State Department to inquire about the status of such cases? Or a case like Ramos and Compean?

Response:

It is not routine for Mexican, or other countries', consular officials to contact the State Department regarding potential agreements between U.S. prosecutors and that country's citizens. There was no contact between the State Department and Mexican consular officials regarding the Ramos and Compean case. However, it is routine for the Mexican government, like other governments, as part of its Vienna Convention on Consular Relations activities, to seek information on cases that involve either the wounding or death of Mexican citizens by U.S. law enforcement agents. The State Department's practice in such cases is to convey the request for information to the U.S. government agency with jurisdiction over the case.

Question:

Letters from the Mexican Consul are said to be routine in cases like these. How did the Mexican authorities become aware of Mr. Davila? Who notified them? Was it someone within our Consulate in Juarez? Is that standard procedure?

Response:

We have no information as to how the Mexican authorities became aware of Mr. Davila. Neither the U.S. Consulate General in Ciudad Juarez nor the Department of State had any role in making them aware of this matter. It would not be routine for the State Department or a post overseas to notify a foreign government of an incident between one of its citizens and U.S. law enforcement officials.

Question:

When a DHS agent wants to bring a Mexican national into a U.S. Consulate, does that require permission from the State Department?

Response:

Policies as to the admission of visitors to Department of State posts overseas are specific to the particular post and take account of the local security environment. Posts do not seek permission from Washington before admitting a visitor and do not routinely advise the Department of visitors.

Question:

What obligation, if any, does State or the U.S. Government have to notify Mexican authorities about a situation like one, where a Mexican national involved in criminal activity is identified?

Response:

The U.S. Government, including the Department of State, has no obligation to alert a foreign government when one of its citizens is identified by U.S. law enforcement officials as having been involved in criminal activity. However, if a Mexican national is arrested or detained in the United States, the United States is under an obligation to notify that national that his consulate may be contacted and notified of his arrest upon his request. This obligation applies to all federal, state, and local authorities under the Vienna Convention on Consular Relations.

Question:

Are you familiar with Mexican Consul Jorge Espejal? He's based in Eagle Pass, TX. Are you aware of the 17 letters he sent to various officials demanding prosecution of Deputy Sheriff Gilmer Hernandez for wounding two illegals who were hiding in an SUV that tried to run him over?

Response:

We are aware that Mr. Espejal is accredited as the Mexican Consul in Eagle Pass, Texas. We are not familiar with Mr. Espejal's communications with other Federal, State, or local agencies.

Question:

Were you aware that Mr. Espejal was also personally involved with U.S. Attorney Johnny Sutton's office during the prosecution of Border Patrol Agent Gary Brugman?

Were you aware that he assisted with locating and securing the illegals who were alleged victims in both the Hernandez and Brugman cases?

Response:

We have no knowledge of Mr. Espejal's contacts with Mr. Sutton's office, or of his activities in locating or securing any witnesses.

WRITTEN RESPONSES FROM PRINCIPAL DEPUTY ASSISTANT SECRETARY OF STATE GREGORY B. STARR TO QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE DANA ROHRBACHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Question:

What is the mission of the Diplomatic Security Service?

Response:

The Bureau of Diplomatic Security (DS) directly supports the U.S. Department of State's vision to create a more secure, democratic, and prosperous world for the benefit of the American people and the international community. To meet the challenge of safely advancing and protecting American interests and foreign policy, DS's global law enforcement mission protects the Secretary of State; secures American diplomatic missions and personnel overseas; protects select foreign dignitaries visiting the United States; protects domestic Department of State facilities and personnel; and conducts investigations to uphold the integrity of U.S. visa and passport travel documents.

Question:

Why were they requested in the Ramos and Compean case? By whom?

Response:

As the Ambassador or Principal Officer's primary advisor for law enforcement and security matters at post, RSO's are routinely requested to coordinate and provide assistance for U.S. local, state, and federal law enforcement agency investigations with an overseas nexus. RSO expertise in conducting investigations overseas and in working with their foreign law enforcement counterparts, make them an invaluable asset in facilitating this assistance.

The Regional Security Officer (RSO), assigned to the Consulate General in Ciudad Juarez, was contacted by the Department of Homeland Security's Office of the Inspector General (DHS-OIG), located in El Paso, Texas. DHS-OIG requested RSO assistance with an ongoing DHS-OIG investigation (Ramos-Compean case) into the alleged shooting of a Mexican national on the US-Mexican border by Customs and Border Protection (CBP) officers.

Question:

What role did the Regional Security Officer (RSO) play in the investigation? Was he involved with the "sweep" of the shooting location on American soil?

Response:

RSO Ciudad Juarez provided law enforcement liaison assistance to facilitate the DHS-OIG investigation. At the request of DHS-OIG, the RSO (through his Foreign Service National Investigator) assisted in locating Davila's family and inquired with local law enforcement contacts to determine if any reports on shooting victims had been received by the police or forwarded to them from area hospitals.

Additionally, at the request of DHS-OIG, RSO Ciudad Juarez was present during a visit to the incident site. RSO Ciudad Juarez's presence was requested to primarily provide assistance due to the incident site's close proximity to the Mexican border and the need to coordinate this law enforcement activity with Mexican local law enforcement authorities. The RSO's Foreign Service National Investigator (FSNI) was also present on the Mexican side of the border (across from the incident site) to coordinate this effort with the local Mexican police.

Question:

What is a FSNI (Foreign Service National Investigator)?

Response:

Foreign Service National Investigators (FSNIs) are embassy/post direct hire local nationals assigned to the Regional Security Office. Generally, FSNIs are retired or former host country law enforcement officers, who bring essential language skills,

knowledge of local customs and conditions, and a wide range of local law enforcement contacts to a wide range of RSO operations.

Question:

Was there any contact made between the FSNI in Juarez and the DHS-OIG investigator Christopher Sanchez? What did he do for Sanchez? Did he assist in the investigation of Ramos and Compean in anyway? Was the FSNI asked to "look into" Davila?

Response:

DHS-OIG Special Agent Christopher Sanchez provided a telephone number to the RSO and requested assistance in locating Davila's family. At the direction of the RSO, the FSNI was able to make telephonic contact with Davila's sister and arranged to meet her and her husband. Subsequent to this meeting, the FSNI was telephonically contacted by Davila. During this conversation, Davila indicated that Special Agent Sanchez had previously tried to contact him and requested that the FSNI assist with contacting Special Agent Sanchez. This information was provided to Special Agent Sanchez for his follow-up action.

Question:

Had this FSNI ever had any contact or knowledge of Davila prior to this instance? During his investigation in to Davila, did he discover if Davila's drug smuggling activities were known to the local authorities? Was he aware of Davila's association with the Juarez cartel? If so, was Mr. Sanchez notified?

Response:

The FSNI did not have any contact with or knowledge of Davila prior to this instance. As the FSNI was not conducting an investigation into Davila or his activities, he was not aware of any potential knowledge of Davila's activities by the local authorities nor was he aware of any alleged association with the Juarez cartel.

Question:

If DSS became aware of criminal activity in Mexico by a national who was allegedly cooperating with U.S. officials, would DSS be obligated to notify Mexican authorities?

Response:

As a matter of policy, DS is not obligated to provide information to foreign governments pertaining to the ongoing investigations by other U.S. law enforcement agencies.

Question:

Are there records of the communications between all DSS personnel involved in this case and DHS-OIG Agent Sanchez?

Response:

RSO Ciudad Juarez's contact with DHS-OIG was documented, as required by DS reporting requirements, in a "Quarterly Status Report" cable (Ciudad Juarez 05-004055) that was previously provided to the committee. As a matter of policy, RSOs are not required to maintain a written record of liaison activities that document the activities of another agency's investigators and/or investigation.

Question:

Did any DSS personnel have any contact with Mexican authorities or the Mexican Consul at any point during their involvement in this case?

Response:

Apart from the contact with local Mexican law enforcement referenced in QFR # 3, DS personnel did not have any contact with the Mexican Consul or any other Mexican authorities in reference to this case.

Question:

Was DSS involved in securing Davila or locating him in Juarez? [Was he] ever in the custody of DSS?

Response:

As indicated in QFR #5, the FSNI located and met with Davila's sister and her husband. Subsequent to this meeting, the FSNI was telephonically contacted by Davila, who requested assistance in contacting DHS-OIG Special Agent Christopher Sanchez. This information was forwarded to Special Agent Sanchez for follow-up action.

Davila voluntarily arrived at the U.S. Consulate to meet with DHS–OIG investigators. The RSO’s involvement in this process was limited to providing office space to DHS–OIG investigators interviewing Davila. At no time was Davila “in the custody of DSS” nor did the RSO participate in the interview.

Question:

Is a background check conducted before a Mexican national involved in criminal activity is given access to the U.S. Consulate?

Response:

Background checks are not required for visitors to the U.S. Consulate. In accordance with post procedures, all visitors enter through a security checkpoint and are carefully screened by security personnel prior to entry onto consulate grounds to ensure they pose no threat to our personnel on site.

Question:

Were your agents aware of Mr. Davila’s claim that threats to kill border agents had been made by his “friends” in retaliation against his shooting? If so, were any precautionary measures taken?

Response:

DS was not aware of any claims or threats to kill border agents by Mr. Davila or his “friends” in retaliation for the shooting.

Question:

While investigating the crime scene, did DSS agents secure the Mexican side of the crime scene, where Davila would have been picked up by a car?

Response:

RSO Ciudad Juarez only provided assistance to DHS–OIG investigators during the visit to the incident site on the US side of the border. As indicated in QFR #3, the FSNI was present on the Mexican side of the border (across from the incident site) to coordinate this effort with the local Mexican police.

Question:

Are you aware of any attempts by the Mexican government to locate the persons who picked up Davila in Mexico after the incident? Are you aware of any efforts by US authorities to locate these people?

Response:

DS is not aware of any attempts by the Mexican government or US authorities to locate those persons who picked up Davila in Mexico after the incident.

Question:

Are you aware of any attempts by the Mexican authorities to locate any potential eyewitnesses to the incident on the Mexican side of the border?

Response:

DS is not aware of any attempts by the Mexican authorities to locate any potential eyewitnesses to the incident on the Mexican side of the border.

