



NATIONAL BORDER PATROL COUNCIL

of the

American Federation of Government Employees

Affiliated with AFL-CIO



August 17, 2007

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

Dear Chairman Leahy,

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

Sincerely,

T.J. Bonner
President
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AFGE, AFL-CIO
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RESPONSES TO ADDITIONAL WRITTEN QUESTIONS – T.J. BONNER

HEARING TO EXAMINE THE PROSECUTION OF IGNACIO RAMOS AND JOSÉ COMPEAN

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

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

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

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

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

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

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

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

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

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

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

b. *If not, why not?*

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

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

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

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

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

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

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

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

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

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

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

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

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