



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 24, 2007

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

Dear Mr. Chairman:

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

Sincerely,

A handwritten signature in black ink, reading "Brian A. Benczkowski".

Brian A. Benczkowski
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Arlen Specter
Ranking Minority Member

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

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

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

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

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

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

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

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

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

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

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

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

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

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