

Testimony of

The Honorable Johnny Sutton

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STATEMENT OF JOHNNY SUTTON
UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF TEXAS
UNITED STATES DEPARTMENT OF JUSTICE
BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
CONCERNING "A HEARING TO EXAMINE THE PROSECUTION OF
IGNACIO RAMOS AND JOSE COMPEAN"
PRESENTED ON
JULY 17, 2007

Chairman Leahy, Senator Specter, and members of the Committee, thank you for the invitation to discuss the importance of enforcing the rule of law, even against those who are sworn to uphold the laws and the Constitution of the United States.

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

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

After a two-and-a-half week trial, at which they were represented by four experienced and capable attorneys, Jose Compean and Ignacio Ramos were found guilty by a jury of 11 counts of assault, violation of civil rights, use of a firearm during a crime of violence, and obstruction of justice. Since their convictions, it has been clear that some individuals do not understand the facts of the case, while others are merely concerned with using it to make a point about some other issue, such as illegal immigration. While these convictions are currently on appeal--meaning the case is still a pending matter--I would like to set the record straight by discussing the ample facts already in the public record, but I will be limited to discussing only information in the public record.

The facts of what occurred near Fabens, Texas, on February 17, 2005, can be found in the trial record, the transcript of which I have posted on the website of the U.S. Attorney's Office for the Western District of Texas. As in all trials, some of the facts were uncontested, others were hotly disputed. Not surprisingly, the defendants maintained, as they continue to maintain, that their actions were justified. I believe--as the jury concluded after hearing the testimony of agents at the scene, the drug smuggler who was shot, and the defendants themselves--that the agents shot at and struck an unarmed, fleeing drug smuggler; that they deliberately failed to report the shooting as they were required to do; that they destroyed evidence to cover up their actions; and that they did these things willfully and in violation of the laws they were sworn to uphold.

The facts are these: On that February afternoon, Border Patrol Agent Jose Compean observed a light blue van leaving the area near the U.S.-Mexico border where movement had been detected. He called out the activity on his radio and Border Patrol Agent Oscar Juarez began following the van. Aware that he was being followed, the driver of

the van, Osvaldo Aldrete Davila, changed course in Fabens and drove back toward the river and Mexico. At about that time, Border Patrol Agent Ignacio Ramos joined the pursuit and took the lead position behind Aldrete's van. The agents suspected the van contained a load of illegal drugs, and the flight and pursuit reached high speeds until the van got to a drainage canal and levee, which run parallel to the river. Aldrete abandoned the van, ran into the ditch, and began climbing up its south side, where Agent Compean confronted him brandishing a shotgun. Aldrete kept moving up toward Compean, holding up his empty hands. Witness testimony established that Aldrete did not have a gun or weapon in his hands. By then, Ramos and Agent Juarez were on foot on the north side of the canal. As Ramos moved into the canal to cross in pursuit, someone yelled, "Hit him," and Compean swung his shotgun to strike Aldrete in the head. Aldrete and Agent Juarez testified that Compean lost his footing and fell. Aldrete darted around Compean, ran out of the canal, up and over the levee and across the flat, open vega toward the river. Compean recovered, ran after Aldrete, drew his pistol, and fired numerous times at the fleeing Aldrete. He stopped once to change the magazine. Meanwhile, Ramos reached the south side of the canal, ran across the levee, drew his pistol, and fired once. At no time did either agent call routine warnings to other agents on the scene that Aldrete was armed or dangerous. Ramos's shot struck Aldrete in the buttocks. The bullet, which the defendants stipulated was a match to Ramos's gun, was later removed from Aldrete's leg. Aldrete fell to the ground near the river and waited for agents to arrest him. Although Compean admitted that he believed Ramos's shot had hit Aldrete, they did not pursue Aldrete. Instead, they holstered their weapons and walked back toward the levee and canal. When the agents never came, Aldrete made his way across the river. While walking back toward the canal with Ramos, Compean picked up some of their empty shell casings, and--according to his own testimony--threw them into the canal, thus destroying evidence of the shooting. At trial, Compean could not explain why he did this.

Another agent, Arturo Vasquez, testified that Compean later showed him nine empty casings, and calculated that he had left five more at the scene. Vasquez said he collected five more casings at the scene, threw them into the drainage ditch, and notified Compean by cell phone. Compean denied showing Vasquez the empty casings, but admitted he asked Vasquez to pick up the casings remaining at the scene. When supervisors arrived at the scene after the shooting, neither Compean nor Ramos reported they had fired their weapons, as they knew they were required to do. Shortly after the shooting, agents discovered that the van contained over 700 pounds of marijuana. In writing up the report of the pursuit and seizure, Compean omitted any reference to the shooting by himself and Ramos.

The significant fact disputed by defendants was whether Aldrete appeared to be armed after he eluded Compean and ran across the vega toward the river. Ramos testified that Aldrete turned back toward them as he ran and that he believed Aldrete had a gun in his left hand. Compean testified that after Aldrete got away from him and ran toward the river, Aldrete turned back toward them and pointed something black and shiny. Their testimony was not credible for several reasons. First, if it were true, there was no reason for Compean and Ramos to alter evidence at the scene by disposing of the casings and not report the shooting. A prompt investigation would have cleared them. Second, neither of them acted as if or said things at the time that indicated they believed Aldrete was armed. Neither agent shouted routine warnings to others that the suspect was armed. After the shooting, Compean acknowledged to two other agents that he shot at the driver, but he never said anything about Aldrete possessing a gun, seeing something shiny in Aldrete's hand, or that he or Ramos were ever in danger. Immediately following the shooting, Ramos encountered an agent near the abandoned van, but made no mention of the shooting or having been in fear for his life. It was not until a month later, after he was arrested, that Compean for the first time mentioned that he thought he saw something shiny in Aldrete's hand as he ran toward the river. Third, their belated claims that Aldrete possessed a weapon as he ran simply were not plausible given the other evidence. It was undisputed that Aldrete's hands were empty as he crossed the drainage canal. Compean was the last agent between him and the river. If Aldrete possessed a gun, the time for him to draw it was when he was confronted by Agent Compean, not after he had broken free and was nearly to Mexico in a full sprint. Once Aldrete got past Compean he had no need to brandish a firearm.

On those facts, my office had an obligation to prosecute Agents Compean and Ramos. I know that we demand much of Border Patrol agents. They have difficult jobs, they work in harsh conditions in isolated areas, and they encounter dangerous people, some of whom will not hesitate to cause them harm. I admire Border Patrol agents and as I have said many times in recent months, I believe they are American heroes. But the sad fact is, a small percentage of law enforcement agents--including some Border Patrol agents--cross the line. When Border Patrol agents go wrong, as I believe Compean and Ramos did, faithfulness to the rule of law requires us to bring them to justice.

The facts of this case stand on their own, and they make it clear that this prosecution was not about immigration policy or aggressive drug enforcement. My office has aggressively prosecuted criminal immigration violations throughout my term. Data from the Department of Justice indicates that the Western District of Texas is one of the busiest districts in the Nation, and has been for some time. Of the approximately 6,000 defendants my office prosecuted for felony offenses last fiscal year, about 35 percent were charged with drug offenses and almost 53 percent were charged with immigration violations. With Operation Streamline in our Del Rio Division--as well as the Border Patrol's Yuma Sector--we have one of the only "zero tolerance" programs for illegal entrants along the Southwest Border. We have prosecuted more than 20,000 defendants since November 2005 for misdemeanor entry without inspection in Del Rio. In support of federal law enforcement officers, since I took office in November 2001, I have prosecuted approximately 98 defendants for assaulting federal officers. Many of those include assaults on Border Patrol agents.

Much has been made of the fact that my office gave use immunity to Osvaldo Aldrete Davila, an illegal alien and drug smuggler. The fact is, because of the unlawful conduct of Compean and Ramos surrounding the seizure of Aldrete's load, and because they did not arrest him after they shot him, we did not have and could not obtain enough reliable, admissible evidence to prosecute him for his drug load. Without his assistance or cooperation, we also did not have enough evidence to prosecute Compean and Ramos for their crimes. We made the difficult decision to give him use immunity so that we could obtain the bullet from his leg and secure his testimony about the shooting. Since we would not be able to successfully prosecute him for the drug crime, I believe we were giving up very little; something we did not have and could not get: crucial evidence to prosecute him. Although we cannot now prosecute him for the events of February 17, 2005, I can assure you that if we develop sufficient evidence to prosecute him for offenses on other dates I intend to do so.

There has been much talk lately about a second load of marijuana, or the "October load." Aldrete's alleged involvement in a second load is the subject of an ongoing investigation. For reasons that should be obvious, I cannot discuss an ongoing investigation. I can say this: we presented to the trial judge and the defense the information we then possessed about the so-called October load. The judge evaluated the information and ruled it was not relevant to the issues in the trial of Compean and Ramos. Whether our advocacy and the judge's determination were sound will be decided by the Court of Appeals.

Some critics have claimed that all drug smugglers like Aldrete carry guns, and that my prosecution of Agents Compean and Ramos had a chilling effect on other Border Patrol agents, causing them to fear using their firearms. I believe both assertions are mistaken. From January 2004 through March 2005, there were 155 drug seizures at the Fabens Border Patrol Station, totaling over 43,000 pounds of marijuana. In none of those seizures was a gun found. Over the longer period between October 1, 2001, and February 15, 2006, the Fabens Border Patrol Station reported the seizure of only one firearm from a total of 496 drug seizures, totaling more than 131,000 pounds of marijuana. This is not to say Border Patrol agents' jobs are not difficult and dangerous, or that drug smugglers are never armed, but it is inaccurate and misleading to assert that all drug smugglers are armed. The fact is that drug mules in El Paso almost never carry guns.

I would like to respond directly to the unfounded and irresponsible allegations that I, as United States Attorney, or the prosecutors on my staff, are vindictive toward or that we persecute Border Patrol agents. During approximately the last six years, there were at least 14 reported shootings by Border Patrol agents in the El Paso Sector. In three of these shootings, the agents killed the suspects. In each of those shootings, the Border Patrol agent was cleared and the shooting ruled justified. None of these agents were prosecuted or even disciplined, because their actions were reasonable under the circumstances. If recent events in El Paso are any indication, Border Patrol agents have not stopped using their weapons. I am aware of at least two reported shootings by Border Patrol agents in El Paso within the last month. One of those shootings has already been cleared and one remains under review. The fact is, Border Patrol agents are thoroughly trained in the use of deadly force. By design, the law accords great deference to agents, recognizing that they must often make split-second, life-or-death decisions under great stress. As a general rule, if an agent has any reasonable basis for fearing for his immediate safety or the safety of another, use of deadly force is justified. However, agents having no fear of imminent harm who intentionally shoot at an unarmed, fleeing suspect, and then cover up the shooting, should be prosecuted. Requiring law enforcement officers to obey the law is not unreasonable and is not a deterrent to the use of deadly force when lives are at risk.

Some have argued that the mandatory prison sentences imposed on Compean and Ramos are unduly harsh. Reasonable people can disagree about punishment. Sentencing issues and the appropriate allocation of discretion in

sentencing decisions have been the subject of much litigation, legislation and Sentencing Guidelines amendments for the last 20-plus years. Charging decisions at the Department of Justice are made in accordance with the long-standing policy that we pursue the most serious, readily-provable offense or offenses that are supported by the facts of the case. In my district, the process begins when an agent or officer presents the facts to a line Assistant United States Attorney (AUSA), who evaluates whether there is sufficient, admissible evidence to make a prosecutable case. If there is sufficient evidence to prove beyond a reasonable doubt that the defendant committed a federal crime, then the line AUSA will consider whether it is appropriate to actually file a case. The line AUSA will decide if a federal interest needs to be vindicated and allocating resources on the prosecution is warranted and appropriate. Often the chief of the division will review the case and approve the indictment. This process is completely independent of the procedure for administrative punishment of Border Patrol agents; the Border Patrol makes its own decisions about whether to pursue administrative sanctions against its agents.

Compean and Ramos were charged with unlawfully using their firearms during a crime of violence, a violation of 18 U.S.C. section 924(c). While we have chosen not to prosecute this statute in some cases, for specific reasons, we have also charged it in a number of other cases involving crimes committed by law enforcement officers. For example, we charged a Crystal City, Texas, police officer with violating 924(c), because he jammed the barrel of his gun into the mouth of a handcuffed arrestee and caused significant injury to the mouth. We charged four San Antonio police officers with multiple violations of section 924(c) because they had their service weapons available to guard loads of what they believed to be cocaine. We charged a Balcones Heights, Texas, police officer with violating 924(c), based on his possession of his weapon when he raped a woman after removing her from her vehicle after a traffic stop. And these are just cases from my district.

A few more examples: In the Southern District of Mississippi, a deputy sheriff was charged with violating 924(c) after shooting an unarmed victim in the back when the individual stopped and raised his hands to surrender after a high-speed chase. In the Western District of New York, three Buffalo police detectives were charged and convicted of 924(c) violations after executing search warrants based on false or misattributed information, stealing property, and then inflicting bodily injury on the occupants. These charges were based on the fact that they unlawfully used and carried firearms in the commission of a crime. In the District of Puerto Rico, a police sergeant was charged after shooting at and wounding two motorcyclists who were speeding. In the Western District of Tennessee, four Memphis police officers were charged after using their guns to rob drug dealers of their drugs and money for personal gain. Juries appear to have weighed these charges carefully, convicting the defendants of the offense in some cases and acquitting in others. There seems little doubt, however, that Compean and Ramos used their firearms.

The Congress has been clear that it wants to reduce gun violence and that there should be strict punishment for defendants who commit crimes using firearms, and section 924(c) gives prosecutors a strong tool to accomplish that goal. In fact, the ten-year sentence for using a firearm during the commission of a crime of violence was set by the Congress, and under the statute, that sentence increases depending on the role of the firearm in the offense, with an increased penalty if the firearm is brandished and another if the firearm is discharged. The Congress did not create an exception in 924(c) for law enforcement officers who use a gun in the commission of a crime.

The prosecution of Compean and Ramos was about our commitment to the rule of law and about two former law enforcement officers who committed serious crimes. An honest reading of the facts of this case shows that Compean and Ramos deliberately shot at an unarmed man in the back without justification, destroyed evidence to cover it up, and lied about it. A jury heard the facts and voted to convict. Faithfulness to the rule of law required me to bring this case.

Additional information is included in the document "Setting the Record Straight" which has been posted on my office's website since April and is attached as an appendix to this testimony. Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.