

STATEMENT OF

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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

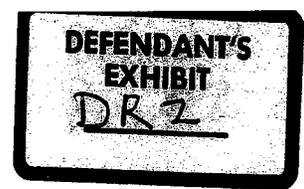
Ramos and Compean (respectively) are too severe.

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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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:

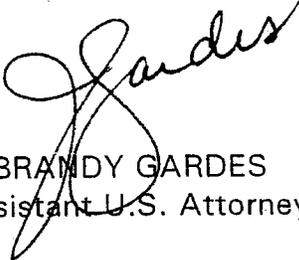
1. The Government agrees to provide you with all of the protection which would be provided to you under a formal court-ordered grant of immunity pursuant to the provisions of Title 18, United States Code, sections 6002 and 6003. In other words, no testimony or other information provided by you, or any 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