



Memorandum

March 13, 2007

SUBJECT: The Investigation, Arrest, and Trial of U.S. Border Patrol Agents Ignacio Ramos and Jose Compean: Background and Issues

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This memorandum summarizes the February 17, 2005, shooting of Osvaldo Aldrete-Davila (Aldrete-Davila) and the subsequent investigation, arrest, prosecution, and conviction of U.S. Border Patrol (USBP) agents Ignacio Ramos (Ramos) and Jose Compean (Compean). The descriptions provided are primarily from an investigation conducted by the Department of Homeland Security's (DHS) Office of Inspector General (OIG)¹ and press releases by the U.S. Attorney's Office for the Western District of Texas.² This case has received widespread coverage by the news media, and many sources have reported different accounts of the events of February 17, 2005 and of the subsequent trial, and have come to varying legal conclusions. All of this has created some controversy and uncertainty surrounding this case. This memorandum also discusses some of the issues that have recently gained attention and lists legislative responses from the 110th Congress. Issues relating to congressional pardons, as proposed in recent legislation, are not discussed in this memorandum.

Events of February 17, 2005

According to the DHS OIG report, around 1:00 p.m. on February 17, 2005, Aldrete-Davila attempted to drive a van loaded with 743 pounds of marijuana to a "stash house"

¹ DHS, OIG, *Report of Investigation of Ignacio Ramos & Jose Compean*, I05-CBP-ELP-07117 (Nov. 21, 2006) available at: [http://www.dhs.gov/xoig/assets/OIG_foia_RamosCompean.pdf] [hereinafter "OIG Report"].

² See, e.g., U.S. Dep't of Justice, U.S. Attorney for the Western District of Texas, *Myth vs. Reality – The Facts of Why the Government Prosecuted Agents Compean and Ramos* (Jan. 17, 2007) available at: [http://www.usdoj.gov/usao/twx/press_releases/2007/Compean_Ramos_factsheet1.pdf] [hereinafter "U.S. Attorney Press Release"].

located near Fabens, Texas. Aldrete-Davila noticed he was being followed by USBP agents, at which time he turned the van around and started driving back toward Mexico. After losing control of the vehicle, he jumped out and attempted to run back to Mexico. Refusing to stop at the commands of agent Ramos, Aldrete-Davila jumped into a ditch abutting a levee near the U.S.–Mexico border.

The report indicates that upon attempting to exit the large ditch, Aldrete-Davila was confronted by agent Compean who was waiting for him with a shotgun. During his testimony, Compean acknowledged that at that time Aldrete-Davila held his hands up, as if to surrender, with his palms open, and no weapon was in either hand, or evident on his person. Ramos also testified that when he saw Aldrete-Davila in the ditch, he had an opportunity to look at the suspect's hands and did not see any weapons. Aldrete-Davila then heard someone yell "hit him," and saw Compean swing his shotgun around in an attempt to hit him with the butt of his weapon.³ Compean, however, lost his footing and fell into the ditch, according to testimony. Aldrete-Davila exited the ditch and continued his run to Mexico.

Compean stated that he observed Aldrete-Davila look back at him as he continued to run away and observed something shiny in Aldrete-Davila's left hand. The U.S. Attorney's Office reports that Compean fired at least fourteen times and Ramos fired once at the fleeing suspect. According to Aldrete-Davila, the last gunshot knocked him to the ground, on the U.S. side of the border.⁴ Instead of pursuing Aldrete-Davila, Ramos and Compean holstered their weapons and turned away from the scene.⁵ When he was not pursued further, Aldrete-Davila crossed the border and approached a Mexican highway where he was picked up by a van. Following the shooting, Compean picked up at least nine casings and later asked another Border Patrol agent to look for five more casings that he had not picked up. The agent threw away the five casings he found. The U.S. Attorney's Office notes that at the time of the shooting, neither Compean nor Ramos knew that the van driven by Aldrete-Davila contained marijuana.

According to trial testimony, no supervisors were at the scene at the time of the shooting. When supervisors did arrive shortly after the shooting, Ramos mentioned the

³ Compean denied that he ever tried to hit Aldrete-Davila with the butt of his shotgun. Rather, he stated that he took the butt of his shotgun away from his shoulder and attempted to push the suspect back into the drainage ditch. OIG Report, *supra* note 1, at 12.

⁴ Some interest groups have raised concerns about the ballistics testing. For instance, it has been questioned why the Texas DPS conducted the examination rather than the FBI for a federal prosecution of federal officers. Jerome R. Corsi, *Ballistics Data Don't Support Charge against Border Agents*, WorldNetDaily.com (Jan. 28, 2007) available at: [http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=53976]. Furthermore, it has been argued that tests do not conclusively demonstrate that the bullet came from Ramos' firearm. *Id.*; see also National Border Patrol Council, *Rebuttal to U.S. Attorney's Office of the Western District of Texas*, available at: [http://www.nUSBPC.net/ramos_compean/rebuttal_to_sutton.pdf], at 2, 8. On the other hand, the U.S. Attorney's Office has argued that the testing demonstrates a match between the bullet extracted from Aldrete-Davila and Ramos' weapon and that Ramos stipulated and agreed before trial that the bullet came from his weapon.

⁵ Compean stated that he stopped shooting at Aldrete-Davila because he continued to run away and it appeared that he was going to cross into Mexico. OIG Report, *supra* note 1, at 12.

pursuit of Aldrete-Davila and that Compean fell to the ground as he tried to grab the suspect.⁶ Ramos did not mention the shooting, and said nothing about the suspect having a weapon. Compean denied that he had been injured by Aldrete-Davila and refused the supervisor's offer to file a "Report of Assault" on his behalf. The DHS OIG investigation found that Ramos and Compean did not inform any of the other USBP agents that they had observed Aldrete-Davila with a weapon or a shiny object in his hand.

Ramos and Compean were subsequently arrested for the events that occurred on February 17, 2005. The U.S. Attorney's Office for the Western District of Texas prosecuted the agents in federal court before U.S. District Judge Kathleen Cardone. A jury found Ramos and Compean guilty of violating several criminal laws,⁷ including 18 U.S.C. § 924(c), which carries a mandatory minimum sentence of ten years for the discharge of a firearm in relation to a crime of violence.⁸ Ramos and Compean were subsequently sentenced to 11 years and 1 day of incarceration and 12 years of incarceration, respectively.⁹ The agents have since

⁶ According to at least one news report, the DHS OIG alleged in a March 12, 2005 letter that all of the USBP agents on the scene, including two supervisors, were aware of the shooting when it occurred and failed to report it. See Sara A. Carter, *Two Reports Clash on Agents; New Study Also Fails to Back What House Members Were Told*, Inland Valley Daily Bulletin (Feb. 8, 2007), available at: [http://www.dailybulletin.com/search/ci_5181762] (last viewed Mar. 6, 2007). This statement contradicted the final DHS OIG report, which found that other agents on the scene were not aware shots had been fired. *Id.* See also OIG Report, *supra* note 1, at 32-33. DHS has not made the March 12, 2005 letter publicly available.

⁷ Ramos and Compean were found guilty of the following charges: (1) assault with a dangerous weapon (18 U.S.C. § 113(a)(3), and aiding and abetting an assault with a dangerous weapon; (2) assault resulting in serious bodily injury (18 U.S.C. § 113(a)(6)), and aiding and abetting an assault resulting in serious bodily injury; (3) discharge of a firearm in relation to a crime of violence (18 U.S.C. § 924(c)(1)(A)(iii)); (4) tampering with an official proceeding (18 U.S.C. § 1512(c)(2); and (5) deprivation of rights under the color of law (18 U.S.C. § 242).

⁸ Although 18 U.S.C. § 924(c) does not include an exemption for law enforcement officers, some have argued that, at least as a policy matter, the law should only apply to law enforcement officers only when they have committed heinous crimes (e.g., sexual assault or drug smuggling) and carry a firearm in the commission of those crimes. See Rep. Walter B. Jones, Press Release, *House Members Join Jones to Question Improper Charge Against U.S. Border Patrol Agents* (Oct. 13, 2006), available at: [<http://jones.house.gov/release.cfm?id=455>] (discussing letter sent by Rep. Jones and five other Congressmen to Attorney General Alberto Gonzalez, recommending that charges under 18 U.S.C. § 924(c) be dropped). Others, including U.S. Attorney Sutton, have argued that no exception should be made, as "Congress did not make an exception for law enforcement officers" when enacting 18 U.S.C. § 924(c). See U.S. Attorney Press Release, *supra* note 2, at 3.

⁹ Some have suggested that the guilty verdicts against Ramos and Compean were the result of jury misconduct. According to news reports, at least three jurors conceded their votes during jury deliberations, after statements by the foreman made them believe that the judge would not accept a hung jury. Jerry Seper, *Border Agents Seek New Trial*, WASH. TIMES, Nov. 6, 2006, at A3. One juror reportedly wrote in a sworn statement after the trial that she "did not think the defendants were guilty of the assaults and civil rights violations." Louie Gilot, *Jurors Say They Were Misled to Convict Agents*, El Paso Times & Inland Valley Daily Bulletin (Oct. 18, 2006), available at: [http://www.dailybulletin.com/news/ci_4508579]. Judge Cardone denied defendants' motion for a new trial, which was based, in part, on the alleged jury misconduct. With limited exception, in any inquiry relating to the validity of a verdict, federal courts may not consider the testimony of a juror relating to the his or the jury's deliberations. FED. R. OF EVIDENCE § 606(b). The Federal Rule of Evidence barring such consideration codifies long-standing judicial practice. See Martinez (continued...)

filed notices of appeal with the Fifth Circuit Court of Appeals. DHS's OIG began an internal investigation shortly after the shooting and released a redacted version of its final report to the public on February 7, 2007. The time line at the end of this memorandum summarizes a number of events that occurred during the arrest, investigation, prosecution, and conviction of Ramos and Compean.

Possible Issues

Border Patrol Operations. Some in Congress have become concerned with Border Patrol pursuit policies and whether staff shortages and lack of training contributed to the incident.¹⁰ In particular, questions have been raised about the level of oversight provided by USBP management and the number of supervisors that were on duty when the shootings occurred. Others are concerned that the conviction might have a negative impact on USBP morale and a chilling effect on the agency's law enforcement activities.¹¹ Another concern may be the conviction's impact on the hiring of agents in the future; the Administration has announced it will double the number USBP agents by the end of its tenure but in order to accomplish this it will need to hire an unprecedented 5,500 agents in two years.¹² In response to this criticism, the U.S. Attorney's Office has stated that "in order to maintain the rule of law, federal prosecutors cannot look the other way when law enforcement officers shoot unarmed suspects who are running away."¹³

Presidential Pardon or Commutation of Sentence. Some members of Congress have urged the President to pardon Ramos and Compean. Calls for the issuance of a presidential pardon reportedly intensified following reports that Ramos had been assaulted in prison.¹⁴ Others have argued that a presidential pardon or sentence commutation is unwarranted. President Bush stated in a television interview in January that he would take "a sober look" at the case to decide whether a pardon was warranted.¹⁵ However, the

⁹ (...continued)

v. Food City, Inc., 658 F.2d 369, 374 (5th Cir. 1981).

¹⁰ Chris Strohm, *Lawmaker Wants Justice to Probe Border-Shooting Charges*, CongressDailyAM (Feb. 8, 2007) available at:

[http://nationaljournal.com/cgi-bin/iffetch4?ENG+CONGRESS-_-POLL_TRACK-_-AD_SPOTLIGHT+7-cdindex+1186794-REVERSE+0+1+796+F+1+1+1+ramos].

¹¹ Jerry Seper, *Feinstein Questions Treatment of Border Agents*, WASH. TIMES, Feb. 14, 2007, at A10.

¹² The USBP was appropriated funding to hire an additional 2,500 agents in fiscal year (FY) 2007 and has requested funding for 3,000 more agents in FY2008.

¹³ See *supra* note 2; see also *Smith v. Cupp*, 430 F.3d 766, 775-76 (6th Cir. 2005) *citing* *Tennessee v. Garner*, 471 U.S. 1, 9 (1985) ("It is clearly established constitutional law that an officer cannot shoot a non-dangerous fleeing felon in the back of the head."). Under *Garner*, a police officer can use deadly force to prevent the escape of a fleeing non-violent felony suspect *only* when the suspect poses an immediate threat of serious harm to police officers or others. *Garner*, 471 U.S. at 11.

¹⁴ Cox News Service, *Pardon by Bush Sought; Calls to Forgive Two Ex-Border Patrol Agents Increase after One of Them Is Beaten in Prison*, KAN. CITY STAR, Feb. 10, 2007, at A6.

¹⁵ Rachel L. Swarns, *Bush Comments on Agents Who Shot Suspected Drug Dealer*, N.Y. TIMES, Jan. 20, 2007, at A12.

Department of Justice (DOJ) reportedly stated subsequently that Ramos and Compean were currently ineligible for consideration of a pardon.¹⁶

While the President's ability to grant pardons or reprieves to persons convicted of federal crimes is clear,¹⁷ the President often relies on recommendations made by the Office of the Pardon Attorney within the Department of Justice (DOJ). The Office of the Pardon Attorney is responsible for accepting and reviewing applications for executive clemency, as well as preparing recommendations regarding the disposition of such applications.¹⁸ DOJ regulations provide that a petition for pardon should not be filed "until the expiration of a waiting period of *at least five years* after the date of the release of the petitioner from confinement or, in case no prison sentence was imposed, until the expiration of a period of at least five years after the date of the conviction of the petitioner."¹⁹ No similar temporal restrictions are placed on consideration of petitions for the commutation of a criminal sentence. However, DOJ regulations generally bar consideration of petitions for commutation made by persons in the process of appealing their criminal convictions, "except upon a showing of exceptional circumstances."²⁰ It is important to note that DOJ regulations concerning pardons and sentence commutations are advisory in nature, and do not prohibit the Office of the Pardon Attorney from considering petitions that do not meet regulatory requirements.²¹ Further, these regulations do not circumscribe the President's plenary authority to grant pardons and reprieves, including to individuals who have not petitioned for such relief.²² For additional background on presidential pardoning power, see CRS Report RS20829; *An Overview of the Presidential Pardoning Power*, by T.J. Halstead.

Congressional Hearings. Some members of Congress have called for congressional hearings concerning the prosecution of Ramos and Compean. In February, thirty-eight members of Congress signed a letter to House Speaker Nancy Pelosi and the Chairmen of the House Judiciary, Homeland Security, and Oversight & Government Reform Committees, requesting congressional hearings relating to "all aspects" of the Ramos and Compean case. The letter argues that hearings are necessary because "[n]umerous and repeated attempts by Members of Congress to ascertain the facts of this case through inquiries with relevant federal agencies have been unsuccessful," and this failure to obtain information "threatens Congress's ability and inherent responsibility to provide oversight to these federal agencies."²³ Presently, the Senate Committee on the Judiciary is investigating

¹⁶ *Id.*

¹⁷ U.S. CONST. art. II, § 2, cl. 1.

¹⁸ 28 C.F.R. §§0.35-0.36.

¹⁹ 28 C.F.R. § 1.2.

²⁰ 28 C.F.R. § 1.3.

²¹ 28 C.F.R. §1.11.

²² *Id.*

²³ Letter by Representative Ted Poe, *et al.*, to House Speaker Nancy Pelosi and House Committee Chairmen John Conyers, Bennie Thompson, and Henry Waxman (Feb. 27, 2007), available at: [http://poe.house.gov/UploadedFiles/Oversight%20Hearings_Ramos&Compean.pdf].

the circumstances surrounding the prosecution and sentencing of Ramos and Compean, but has yet to hold hearings on the matter.²⁴

While no hearings have yet been held to specifically deal with the investigation and prosecution of Ramos and Compean, the subject has been raised in the context of other hearings, particularly as it relates to the OIG's investigation of the matter. Some in Congress have questioned the OIG's investigation, particularly because early memoranda and briefings from OIG staff have been reported to contradict the final OIG investigative report that was released to the public on February 7, 2007.²⁵ On February 5, 2007, DHS Inspector General Richard Skinner, reportedly admitted in testimony before the Homeland Security Appropriations Subcommittee that Members of Congress were given false information about the events of February 17, 2005, by high-ranking officials in DHS.²⁶ In subsequent testimony given before the Subcommittee, Inspector General Skinner stated that while certain statements given by OIG staff members were misleading or inaccurate, "at no time did any...[staff member] member knowingly and willingly lie to Congress about the investigation of Ramos and Compean or any other matter."²⁷

Legislation

H.R. 563 – Congressional Pardon for Border Patrol Agents Ramos and Compean Act. This bill would order the conviction and sentences of Ramos and Compean vacated. Further, it would order the defendants to be released from custody and prohibit any additional criminal prosecution against the defendants that may stem from events of February 17, 2005. H.R. 563 would also provide a sense of Congress that calls on DHS to review the rules of engagement presently utilized by the Border Patrol.

H. Con. Res. 37 – Expressing the sense of Congress with regard to pardoning Border Patrol agents Ramos and Compean. This resolution would provide a sense of Congress that calls on the President to "swiftly and unconditionally" pardon Ramos and Compean.

²⁴ Sen. Dianne Feinstein, Press Release, *Senator Feinstein Calls for Answers Regarding Prosecution and Imprisonment of Border Patrol Agents* (Feb. 9, 2007), available at: [<http://feinstein.senate.gov/07releases/r-border-patrol-ltr0209.htm>].

²⁵ DHS has reportedly refused to release documents substantiating these claims. Sara Carter, *Memo Casts Doubt on Agency's Assertions/ Homeland Security Won't Release Papers on Border Agents' Case*, DAILY BULLETIN, Jan. 29, 2007, available at: [http://www.dailybulletin.com/news/ci_5108915] (last visited Mar. 8, 2007).

²⁶ Michelle Mittelstadt, *Anger Grows in Congress over Border Agents' Case / Some in House Dismiss Homeland Official's Apology, Say Punish Staff for Misstatements*, HOUS. CHRON., Feb. 8, 2007, at A1.

²⁷ FDCH Cap. Transcripts, Rep. Henry A. Waxman Holds A Hearing On Homeland Security Contracts, 2007 WLNR 2547812 (Feb. 8, 2007). Inspector General Skinner went on to claim that, "Anyone who states that my staff knowingly lied, willingly lied is slandering them."

Sequence of Events

Date	Event
Feb. 17, 2005	Shooting of Aldrete-Davila occurs near Fabens, Texas.
Mar. 4, 2005	A DHS OIG investigation begins.
Mar. 16, 2005	The DHS OIG agents meet and interview Aldrete-Davila at the United States Consulate, Ciudad Juarez, Chihuahua, Mexico. DHS OIG agents provide Aldrete-Davila with a "Letter of Limited Use Immunity" from the U.S. Attorney's Office, Western District of Texas. Arrangements are made with DHS to obtain a limited Border Crossing Card for Aldrete-Davila to enter the United States for the purpose of being examined by medical doctors at Fort Bliss in El Paso, Texas. The doctors removed a 40-caliber Smith & Wesson bullet from Aldrete-Davila.
Mar. 17, 2005	DHS OIG agents submit the bullet extracted from Aldrete-Davila to the Texas Department of Public Safety (DPS), Crime Laboratory, for analysis.
Mar. 18, 2005	The Texas DPS informs the OIG that the bullet recovered from Aldrete-Davila's leg had been fired from a 40-caliber Beretta pistol that matched the firearm assigned to Ramos.
Mar. 18, 2005	U.S. Magistrate Judge Richard P. Mesa, Western District of Texas, signs a "Warrant for Arrest" for Ramos and Compean.
Mar. 18-19, 2005	Ramos and Compean are arrested at their residences and taken into custody.
Mar. 24, 2005	Judge Mesa sets bond for Compean and Ramos at \$15,000 and \$35,000 respectively. The agents are released from custody.
Mar. 25, 2005	Ramos and Compean are suspended without pay by the Border Patrol.
Apr. 13, 2005 - Jan. 25, 2006	A federal grand jury in the Western District of Texas returns true bills indicting Ramos and Compean of the following: <ol style="list-style-type: none"> 1) 18 U.S.C. §113(a)(1), assault with intent to murder; 2) 18 U.S.C. §113(a)(3), assault with a dangerous weapon; 3) 18 U.S.C. §113(a)(6), assault with serious bodily injury; 4) 18 U.S.C. §924(c)(1)(A)(iii), discharge of a firearm in relation to a crime of violence; 5) 18 U.S.C. §1512(c)(1), tampering with an official proceeding; and 6) 18 U.S.C. §242, deprivation of rights under color of law.
Feb. 21, 2006	The federal trial against Ramos and Compean begins in the U.S. District Court for the Western District of Texas in El Paso. The Honorable Kathleen Cardone, U.S. District Judge, presides over the trial.
Mar. 6, 2006	The trial ends.

Date	Event
Mar. 8, 2006	The jury ends deliberations and finds Ramos and Compean guilty of: 1) assault with a dangerous weapon (18 U.S.C. §113(a)(3), and aiding and abetting; 2) assault with serious bodily injury (18 U.S.C. §113(a)(6) , and aiding and abetting; 3) discharge of a firearm in commission of a crime of violence (18 U.S.C. §924(c)(1)(A)(iii); 4) tampering with an official proceeding (18 U.S.C. §1512(c)(1)); and 5) deprivation of rights under color of law (18 U.S.C. § 242).
Sept. 26, 2006	DHS OIG employees brief four Members of Congress regarding the investigation and prosecution of Ramos and Compean.
Oct. 19, 2006	Judge Cardone sentences Ramos to 11 years and 1 day of incarceration and sentences Compean to 12 years of incarceration.
Oct. 20-23, 2006	Ramos and Compean each file notice of appeal.
Oct. 26, 2006	DHS forwards letters of proposed removal (termination) to Ramos and Compean.
Nov. 21, 2006	The DHS OIG investigation is completed.
Jan. 16, 2007	Judge Cardone denies Ramos and Compean's motion to stay out on bond while they appeal their case.
Jan. 17, 2007	Ramos and Compean surrender to the United States Marshal Service. Ramos is sent to Yazoo City Federal Penitentiary in Mississippi and Compean is sent to Elkton Federal Correctional Institution in Ohio.
Feb. 3, 2007	Ramos is assaulted in prison.
Feb. 7, 2007	A redacted version of the OIG's final "Report of Investigation" is released to public. In addition to the criminal statutes that Ramos and Compean violated, the OIG found that Ramos violated the USBP's Pursuit Policy, Firearms Policy, Deadly Force Policy, and Reporting Allegations of Misconduct Policy. The OIG also found that Compean violated the USBP's Firearms Policy, Deadly Force Policy, and Use of Non-Deadly Force Policy.