

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

UNITED STATES OF AMERICA	No. EP:05-CR-856-KC
v.	El Paso, Texas
IGNACIO RAMOS, ET AL.	March 3, 2006

JURY TRIAL

BEFORE THE HONORABLE KATHLEEN CARDONE

UNITED STATES DISTRICT JUDGE

VOLUME XIV OF XVIII

APPEARANCES:

For the Government: Debra P. Kanof
 Jose Luis Gonzalez
 Assistant United States Attorneys
 700 East San Antonio, Suite 200
 El Paso, Texas 79901

For the Defendant Ramos:

Mary Stillinger
 4911 Alameda Avenue
 El Paso, Texas 79905

Stephen G. Peters
 303 Texas Avenue, Suite 800
 El Paso, Texas 79901

1 APPEARANCES:

2 For the Defendant Compean:

3 Maria B. Ramirez
4 1119 East San Antonio
5 El Paso, Texas 79901

6 Chris Antcliff
7 Stanton & Antcliff
8 521 Texas Avenue
9 El Paso, Texas 79901

10 Proceedings recorded by stenotype. Transcript produced by
11 computer-aided transcription.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEALED HEARING OMITTED BY COURT ORDER

1 Go ahead.

2 BY MR. GONZALEZ:

3 Q. Mr.-- -- I mean, I'm sorry -- Agent Compean, yesterday, I
4 think you indicated to us that you attended, I think, training
5 for six months. Is that correct, sir?

6 A. Approximately, at the academy.

7 Q. At the academy. Okay. And where is -- where is the
8 academy?

9 A. Charleston, South Carolina.

10 Q. And what kinds of things did you learn during --

11 MR. GONZALEZ: I'm sorry. Can -- can you hear me?

12 BY MR. GONZALEZ:

13 Q. And what types of things are you taught at the academy?

14 A. Firearms, driver -- driver's training, immigration law,
15 naturalization law, physical techniques, PT.

16 Q. Okay. And briefly, on this firearms training, what kinds
17 of things were you taught, sir?

18 A. Loading, unloading the magazine -- well, loading magazines,
19 firing the weapon, shooting at the -- at the target.

20 Q. Okay. So you-all have target practice and things of that
21 nature?

22 A. Yes.

23 Q. And how often do you-all do that?

24 A. It's almost on a daily basis.

25 Q. Okay. For the six months you're there. Is that correct,

- 1 sir?
- 2 A. Approximately, maybe five.
- 3 Q. Okay. Maybe a little less than six months -- five months?
- 4 A. Yes.
- 5 Q. All right. And you -- you're also -- okay.
- 6 You're taught on handguns, correct?
- 7 A. Yes.
- 8 Q. What other type of weapons are you taught to use?
- 9 A. A shotgun and an M-4.
- 10 Q. I'm sorry, what, sir?
- 11 A. M-4.
- 12 Q. And what is an M-4, for the benefit of the jury?
- 13 A. It's a smaller version, I guess, of an M-16.
- 14 Q. It's like a rifle or --
- 15 A. A rifle.
- 16 Q. All right. And shotguns, M-4s. What other things are
- 17 you-all taught to use to defend yourselves?
- 18 A. Weapons?
- 19 Q. Yes, sir.
- 20 A. I believe that's all. That's all we're taught to shoot.
- 21 Q. Okay. What about batons? Is that something separate, or
- 22 different?
- 23 A. That's part of physical techniques, PT.
- 24 Q. Okay. Explain to us what physical tr- -- I'm sorry,
- 25 physical training? Is that what you called it?

- 1 A. I believe it's physical techniques.
- 2 Q. Physical techniques?
- 3 A. PT.
- 4 Q. All right. Thank you.
- 5 Explain to us what that means, physical techniques.
- 6 What are you taught?
- 7 A. How to arrest suspects, handcuffing, do handcuffing
- 8 techniques.
- 9 Q. Okay. So -- I'm sorry, go ahead.
- 10 A. Baton training.
- 11 Q. Okay. And when you say you're taught how to arrest, what
- 12 kinds of exercises do you go through?
- 13 A. We go through different scenarios.
- 14 Q. If you could, give us a few examples, please.
- 15 A. Just on confronting a suspect, both compliant and
- 16 noncompliant.
- 17 Q. Okay. And would you explain to us the difference?
- 18 A. Compliant is when they obey all your commands.
- 19 Noncompliant is when they do not.
- 20 Q. All right. And then let's talk about the baton for a
- 21 little bit. You said you were -- the baton training is part of
- 22 the physical techniques training?
- 23 A. Yes.
- 24 Q. Explain to us what kind of training you get with batons.
- 25 A. The different positions, or the different areas of the body

1 where -- where we could strike an individual.

2 Q. And what are some -- what are some examples of where you
3 can strike an individual?

4 A. I believe it's on the thigh.

5 Q. Okay.

6 A. Behind the legs. I believe the arms are for -- more for
7 defensive.

8 Q. What do you mean, the arms?

9 A. On the hands or on the arm area.

10 Q. So you're -- you're not taught to strike someone on the
11 hands, just the back of the leg and front of the leg? Is that
12 what you --

13 A. I believe so. I'm not really -- I don't remember all of
14 it, but those are -- those are a couple.

15 Q. And so you're taught to train (sic) batons in certain
16 situations, and different weapons in others. Is that correct?
17 Is that fair to say?

18 A. Yes.

19 Q. Okay. And that depends on what, sir?

20 A. On what's going on.

21 Q. What do you mean?

22 A. With the -- with the suspect.

23 Q. Okay. So if the person's not complying, then you can
24 escalate the level of force that you can use to defend
25 yourself, correct?

1 A. Correct.

2 Q. Okay. And locally -- well, let me bring you back to the
3 Fabens Border Patrol station.

4 Can anyone and everyone use the baton?

5 A. If -- I believe if you're certified at the academy.

6 Q. I'm sorry, certified?

7 A. If you're certified to carry it.

8 Q. Okay. And does everyone get certified at the academy?

9 A. I believe now they do. I don't know if they used to, but I
10 believe so.

11 Q. And, sir, did you get certified back then in the use of a
12 baton?

13 A. Yes, I did.

14 Q. And you maintained that certification?

15 A. Yes.

16 Q. Thank you.

17 And do you get, I guess, refresher training on --
18 first of all, on firearms?

19 A. Every three months.

20 Q. Every three months. And tell us about that. How does that
21 work, sir?

22 A. We go up and -- and shoot. We qualify with the -- the
23 handgun, the M-4, the shotgun.

24 Q. When you qualify and shoot with -- approximately how many
25 times, each time you go out there?

1 A. We shoot once -- well, for score. We don't have any -- any
2 practice. We just go up there and we shoot.

3 Q. I'm sorry. When I meant shoot, I mean how many rounds do
4 you use to shoot?

5 A. I believe it's -- I'm not sure what the -- the amount is.
6 There's a set -- there's a set amount, but I -- I don't know.

7 Q. Is it like 70, 60? It's a pretty high number, isn't it?

8 A. Somewhere around there.

9 Q. About 70 or so?

10 A. Yes.

11 Q. And I -- is that correct?

12 A. I think. I'm not really sure.

13 Q. Okay. Fair enough. And then -- so you train on the --
14 that's the fire- -- that's your handgun, correct?

15 A. Yes.

16 Q. That's this -- this weapon. And you go up and train on
17 this. And you shoot this 60 or 70 times every time you go out
18 there?

19 A. Yes.

20 Q. Okay. Now, what about the shotgun? How often -- do you
21 also train at the same time, or is that separate?

22 A. Yes. We fire it, as well.

23 Q. At the same -- on the same day that you're qualifying on
24 the handgun, you also qualify on the shotgun?

25 A. Yes.

1 Q. Okay. And you have to maintain a certain proficiency,
2 correct, to be able to use these weapons?

3 A. Yes.

4 Q. And you maintain these proficiencies, correct?

5 A. Just barely, but yes.

6 Q. But you did, right?

7 A. (No verbal response.)

8 Q. Okay. And you do that every three months?

9 A. Approximately.

10 Q. And so, during the course that you've been with Border
11 Patrol, is it fair to say that you qualified on these weapons
12 approximately how many times, sir?

13 A. Maybe 15.

14 Q. 15. Okay. Now, what about the baton? Do you get
15 refresher training on that, sir?

16 A. I believe it's yearly.

17 Q. And you've done that for the -- and you said you've been
18 with the Border Patrol about five, six years?

19 A. Five years, sir.

20 Q. Five years. And the five years you got the training on the
21 baton, correct?

22 A. Yes, sir.

23 Q. Now, let -- let me go back a little bit.

24 When you received training on firearms, was that all
25 you do out there, or do additional things happen?

- 1 A. We have classroom training.
- 2 Q. Okay. And how long does the classroom training last?
- 3 A. It depends.
- 4 Q. Like from what to what, sir?
- 5 A. Maybe an hour --
- 6 Q. And what type of topics -- I'm sorry.
- 7 A. An hour or two.
- 8 Q. Okay. And so it could be as long as two hours and as short
- 9 as one hour?
- 10 A. I believe so.
- 11 Q. And is it classroom instruction, or how does that work?
- 12 A. Well, sometimes we watch, maybe, videos on different
- 13 scenarios, or things that have happened to -- to officers.
- 14 Q. Okay. And is that when you -- do you-all discuss policy
- 15 there, as well, like firearms policy, things of that nature?
- 16 A. Yes.
- 17 Q. What other kinds of policies have you-all discussed?
- 18 A. There, I believe we may have also done driver -- well, the
- 19 pursuit policy.
- 20 Q. Okay. And how -- well, on the pursuit policy, how often do
- 21 you-all go -- go through the pursuit policy and the -- I'm
- 22 sorry -- the firearms policy?
- 23 A. I'm -- I'm not sure about the pursuit policy. The
- 24 firearms, we -- we go through it whenever we qualify.
- 25 Q. Okay. And the firearms policy being what, sir?

- 1 A. Excuse me?
- 2 Q. You say you go through the firearms policy every time you
3 qualify.
- 4 A. Right.
- 5 Q. Okay. And what is the firearms policy?
- 6 A. It's the manual, I guess, or...
- 7 Q. And, in there, it tells you about any time there's a
8 reportable shooting you have to report it within an hour, and
9 all those things, correct?
- 10 A. Correct.
- 11 Q. So every time you qualify you go through that -- those set
12 of directions and instructions?
- 13 A. Yes.
- 14 Q. And so you've heard it at least 15 times, is it fair to
15 say --
- 16 A. Yeah.
- 17 Q. -- that you have to report a shooting within one hour,
18 correct?
- 19 A. Yes.
- 20 Q. All right. Thank you.
- 21 Now, let me direct your attention back to -- to your
22 testimony yesterday. You mentioned something about -- I think
23 it was -- correct me -- water spots or -- do you know what I'm
24 talking about?
- 25 A. Yes, I do.

1 Q. Okay. What was it? You said water spots and what else?

2 A. And it looks like what appeared to be drag marks on the --
3 on the dirt road, whenever some -- they -- it looked like
4 something heavy was being dragged across that road.

5 Q. Let's talk about water spots first, please.

6 What did you mean, "water spots"?

7 A. I -- I guess when -- the best way to describe it is when
8 you get out of the -- the shower, and you've got water --

9 Q. Dripping off of you?

10 A. -- dripping off of you.

11 Q. Okay. And so you were telling the jury yesterday that you
12 saw some water spots. Is that correct?

13 A. Yes.

14 Q. Okay. And where did you see the water spots?

15 A. On the north side of the drainage ditch, on -- on the road.

16 Q. And is this in that 76 area?

17 A. Yes.

18 Q. Near -- or near the 76 area?

19 A. Yes.

20 MR. GONZALEZ: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 BY MR. GONZALEZ:

23 Q. Agent Compean, I'm handing you two exhibits, one that's
24 been marked as Government's Exhibit 101. Do you recognize
25 what's shown in that photograph?

1 A. Yes, I do.

2 Q. Okay. And would you tell us what that is, sir?

3 A. That's the 76 road, where the -- the van was.

4 Q. And I made a little cutout here of stuff that didn't
5 pertain.

6 But the photograph, is it an accurate depiction of
7 what the scene looked like -- or what it looks like, and
8 especially back on February 17, 2005?

9 A. The road does.

10 Q. What's different, sir? The vegetation or -- or what?

11 A. I -- I really don't remember, but this is the road.

12 Q. This is the 76 area.

13 And let me show you Government's Exhibit 101A for
14 identification purposes. Is that essentially the same
15 photograph without all the commentary?

16 A. Yes.

17 Q. And Government's Exhibit Number 101, is that correct, that
18 it indicates where Fabens, Texas, is located?

19 A. Yes.

20 Q. And the arrow that shows 76 road, what does that mean, if
21 anything?

22 A. That's the dirt road that leads from the ditch to Island
23 Road.

24 Q. Okay. And then San Elizario, Texas, is that correct, that
25 it doesn't actually -- is it actually to the left of the

1 photograph?

2 A. Yes.

3 Q. Now, that -- and here (indicating), there's a yellow dotted
4 line that talks about a drag road. What is that, sir?

5 A. That's a road that parallels the ditch.

6 Q. And is that where you saw these water marks, or where?

7 A. Yes.

8 Q. Okay. And then, right below that, there's a blue dotted
9 line. It says, Sierra Delta. Is that correct?

10 A. Yes.

11 Q. And that's the same ditch that we've been talking about for
12 these past two weeks, correct?

13 A. Correct.

14 Q. But a different location?

15 A. Right.

16 Q. Thank you.

17 MR. GONZALEZ: Your Honor, at this time I'll tender
18 Government's 101 and 101A to Defense Counsel for inspection and
19 objection.

20 THE COURT: All right. Any objection?

21 MR. ANTCLIFF: No objection, Your Honor.

22 MR. PETERS: No objection.

23 THE COURT: All right. 101 and 101A are admitted.

24 BY MR. GONZALEZ:

25 Q. And, Agent Compean, the 76 area -- and we've talked so much

1 about it, I want everyone to know what we're talking about.

2 This is approximately how far away from where we --
3 from where you ended up on Jess Harris Road -- on the levee on
4 Jess Harris Road?

5 A. I'm not really sure. I'd say maybe three miles.

6 Q. It's three miles away?

7 A. I really don't know.

8 Q. Okay. And can you see that, sir?

9 A. Yes.

10 Q. Do you need the other picture to help you?

11 A. No, that's fine.

12 Q. All right. And when -- on February 17th, you told us
13 yesterday you were approximately in what area?

14 Would you like -- here, let me hand you the --

15 MR. GONZALEZ: May I approach the witness, Your Honor?

16 THE COURT: Yes, you may.

17 BY MR. GONZALEZ:

18 Q. I'm going to hand you the pointer, sir, so that you can
19 tell us where you were that afternoon when -- when you -- when
20 you made that call.

21 A. Which call?

22 Q. Okay. Well, you tell us. I think you called -- you get on
23 the radio and say, about 1:11, approximately, that there is a
24 blue van leaving -- it's traveling quickly.

25 Do you know what I'm talking about?

1 A. Yes.

2 Q. Okay. Where are you, approximately, in relation to the 76
3 area, when you make that call?

4 A. Further west. It's not on here.

5 Q. It's not on there? How far -- is that, like, a mile away?
6 Is that what you said yesterday?

7 A. Probably. I -- I really couldn't --

8 Q. Okay.

9 A. -- couldn't guess. But it's -- it's further off to the --
10 to the left.

11 Q. But this is where the sensors were being hit. That's where
12 they were activated, which -- is that fair to say -- on
13 Government's Exhibit 101?

14 A. Yes.

15 Q. Okay. And that's what you were reacting to, correct?

16 A. Yes.

17 Q. And that's the -- what you were calling out to your
18 agents -- fellow agents?

19 A. Yes.

20 Q. Thank you.

21 And this is the approximate area where you saw the
22 water spots. Is that correct?

23 A. Approximately.

24 Q. Okay. And was there a lot of water, a little bit of water?
25 Do you recall?

- 1 A. In the ditch, I -- I don't remember.
- 2 Q. I'm sorry. Not in the ditch, but the ones that you spotted
- 3 on the road?
- 4 A. There was more coming out of the ditch onto the -- there
- 5 was -- there was enough.
- 6 Q. Okay.
- 7 A. There was enough for me to see it.
- 8 Q. Because, when you heard the sensor activation, you went to
- 9 that location and you looked. And was that why you went there?
- 10 A. Yes.
- 11 Q. To see what, sir?
- 12 A. I went to check on the sensor.
- 13 Q. Okay. And you saw the water marks. And I think you
- 14 indicated that you also saw drag marks?
- 15 A. Yes.
- 16 Q. What does that mean? Explain to them what a drag mark is.
- 17 A. What -- a lot of times what they do, because those bags, or
- 18 bundles, whatever it is, are -- are heavy, they kind of drag
- 19 them from the -- out of the ditch and onto whatever vehicle
- 20 is -- is going to be down there to -- to pick up the --
- 21 Q. The load?
- 22 A. -- the load.
- 23 Q. Okay. So, in this situation, they bring the load, they go
- 24 through the water. Somehow the bundles or people get wet as
- 25 they're being carried across. Is that what you're saying?

- 1 A. Yes.
- 2 Q. And they climb out, and that's why you saw these water
3 marks, as well as the drag marks, correct?
- 4 A. Yes.
- 5 Q. Now -- and who taught you this, you know, as far as the --
6 I guess it's just kind of like reading sign. Is that what that
7 means?
- 8 A. Yes.
- 9 Q. Okay. And is that taught at the Border Patrol academy?
- 10 A. No.
- 11 Q. Okay. And that's -- where did you learn that, sir?
- 12 A. From working out in the field for -- for those five years.
- 13 Q. Okay. And so it's very helpful to you. When you see that
14 type of evidence on the ground, that helps you know what
15 happened and what's going on, correct?
- 16 A. Yes.
- 17 Q. And so if the water marks aren't there, and if the drag
18 marks aren't there, you don't know what's going on?
- 19 A. No.
- 20 Q. I mean, that helps you, correct?
- 21 A. Yes.
- 22 Q. Okay. Just like casings would have helped this jury know
23 what happened. And those aren't there, either, correct?
- 24 A. Correct.
- 25 Q. Okay. Now, yesterday we were -- I think when -- right

1 before we broke, we were talking about -- you get on the radio.

2 You call out. There's --

3 MR. GONZALEZ: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 BY MR. GONZALEZ:

6 Q. Let me give you Government's Exhibit 92, so you can follow
7 along with me. Okay?

8 So this starts on the repeater at 1311. Do you see
9 that, sir?

10 A. Yes.

11 Q. And that's about 1:11. That's when you call out the blue
12 van leaving area 76, going pretty quick, correct?

13 A. Correct.

14 Q. And I think I asked you yesterday whether you appeared
15 anymore in this transcript. And do you know whether you do?

16 A. When I called out a 10-23.

17 Q. Okay. And where is that, sir? What page?

18 A. Page 2.

19 Q. Page 2? Okay.

20 It says, Compean, 10-23, rim rock. Is that correct?

21 A. Yes.

22 Q. All right. And then further down we have some -- some --
23 it says, Vasquez, at 1315:07. Do you see that?

24 A. Yes.

25 Q. You see it, 1315:07. It says, Vasquez: Is it dark blue,

- 1 Joe, the van?
- 2 Is that correct?
- 3 A. Yes.
- 4 Q. Who's he talking to?
- 5 A. Oh, it could have been me or -- myself or Agent Mendoza.
- 6 Q. Okay. But then -- but you are the one who called it out,
- 7 so it's probably you. Isn't that fair to say?
- 8 A. Yes.
- 9 Q. Okay. But then you don't appear on this transcript,
- 10 because after that you had switched to local?
- 11 A. I believe so.
- 12 Q. Okay. And then further down we see, at about 1317:34, it
- 13 says, Juarez. Do you see that? And it states, Is it an older
- 14 model van or new model?
- 15 A. Yes.
- 16 Q. And he's directing that question to you, as well, correct?
- 17 A. I believe so.
- 18 Q. And -- but you're not using that same channel that he's
- 19 using. You're on local traffic, correct?
- 20 A. Right.
- 21 Q. So you're not -- okay. So people are communicating with
- 22 you, from this transcript, but you're not being recorded --
- 23 A. Right.
- 24 Q. -- because you're using a different -- it's on local, or
- 25 direct?

1 A. Right.

2 Q. And since you didn't use the repeater channel, that
3 evidence is gone, as well, any evidence of what you said. Is
4 that true?

5 A. It's not on here.

6 Q. Okay. Well, is it recorded somewhere, so we can show the
7 jury?

8 A. Not that I know of.

9 Q. Okay. And you say you start on the repeater and you got
10 off the repeater for what reason, sir?

11 A. To communicate more quickly with the other agents.

12 Q. And I think you -- you were here when Agent Ramos was
13 testifying. And did -- I think his testimony was that there
14 was no description of the driver given over the radio. Do you
15 disagree with that?

16 A. I didn't hear it.

17 Q. You didn't hear it. And there was no description -- or
18 there was no mention of how many people were in van at that
19 time. Is that correct?

20 A. I didn't hear that, either.

21 Q. Okay. But you -- you were having a lot of communication
22 with Agent Ramos during this time period, correct?

23 A. Not specifically with him. I was listening. I was more
24 listening.

25 Q. Okay. And you were talking to the other agents, and

1 you-all are orienting yourselves, correct?

2 A. Yes.

3 Q. Okay. And then -- and there is nothing on the radio about
4 the license plate, anything like that, correct?

5 A. Right. I didn't see the license plate.

6 Q. And you agree that -- you know, that it probably would have
7 been a better idea to have been on the repeater and, you know,
8 have documented all this information. Is that a better
9 practice?

10 A. I -- I don't usually use it.

11 Q. Okay. But no one has told you not to. You just don't do
12 it. That's your personal practice?

13 A. Right.

14 Q. Now, you know that there's a chase, pursuit, going on in
15 Fabens, or do you?

16 A. No, I do not.

17 Q. Okay. What do you know, sir, is going on in Fabens?

18 A. I know they're looking for the van.

19 Q. Okay. And, at some point, you realize the van has been
20 located?

21 A. Yes, sir.

22 Q. And at about what time is that, according to the
23 transcript?

24 A. It looks like maybe 1318, 1:18.

25 Q. 1:18. So approximately within six, seven minutes of your

- 1 initial callout, the van is located?
- 2 A. Yes.
- 3 Q. And where are you when you hear that they've got the van?
- 4 A. At that time, I believe I was already at that -- on that
- 5 road, on -- on the levee, on the 76.
- 6 Q. Did you get off the -- I'm sorry. I guess -- where were
- 7 you? Which road were you using?
- 8 A. I was on the levee.
- 9 Q. Okay. And then you got off the levee to get on the 76, to
- 10 go check for drag marks and the water marks and all those
- 11 things?
- 12 A. No. You could see it from the levee. I walked down to the
- 13 edge of the -- of the ditch.
- 14 Q. Oh. So the marks were on the Amer- -- on the north side of
- 15 the ditch or the south side?
- 16 A. On the north side.
- 17 Q. Okay. And so you could see the drag marks and the water
- 18 from where you were on the north side of the ditch -- or the
- 19 south side?
- 20 A. Yes.
- 21 Q. You're on the south side, right?
- 22 A. Correct.
- 23 Q. So it's pretty obvious that something has happened there,
- 24 right?
- 25 A. Right.

1 Q. And so then you get back in your car, and you're monitoring
2 the radio traffic, right?

3 A. Right.

4 Q. And six, seven minutes lapse. What are you doing for those
5 six, seven minutes?

6 A. I was listening to the -- to the radio communications.

7 Q. And are you traveling? Are you moving anywhere?

8 A. Not at first. I stayed there.

9 Q. How long would you estimate that you stayed there?

10 A. I really couldn't even estimate. I was -- I was looking on
11 the -- on the south side, watching those two -- two people go
12 back over the -- over the levee.

13 Q. Okay. Let's talk about that briefly. Where did that
14 occur, these two people that you saw?

15 A. When I approached the area, they were climbing out of the
16 river.

17 Q. Okay. And so do you think maybe those are the ones that
18 dropped off the dope, or what do you think happened?

19 A. I didn't know until later.

20 Q. Okay. I mean, what did you think at that time?

21 A. I thought maybe they had maybe dropped some people off. A
22 lot of the -- they could have dropped them off.

23 Q. To escort them to where the -- okay. Dropped them off for
24 what reason, in your experience?

25 A. Maybe the guides, the smugglers.

- 1 Q. To do what, sir?
- 2 A. To drop them off, to help them cross.
- 3 Q. And to show them where the van is and tell them -- is that
- 4 what you're saying?
- 5 A. Yes.
- 6 Q. Okay. So you think that there's people who have escorted
- 7 someone to where the van is?
- 8 A. Yes.
- 9 Q. And so these two people are crossing where, when you see
- 10 them?
- 11 A. They're climbing -- they're almost south of the -- they're
- 12 on the river going back south.
- 13 Q. And, of course, you're concerned -- you know, these people
- 14 could be dangerous, correct?
- 15 A. I wasn't sure. I was -- I was looking at them.
- 16 Q. But the -- I understand that. But assuming that, you know,
- 17 these are, in fact, the people who brought over the smuggler,
- 18 is it fair to say that you think, Well, these people might be
- 19 dangerous?
- 20 A. I wasn't sure.
- 21 Q. Okay. You weren't sure. But did you have a concern about
- 22 them or not?
- 23 A. I waited in my truck until I was -- I saw them going over
- 24 the -- the levee. And I checked to see if there was nobody
- 25 else --

1 Q. Okay. And you didn't --

2 A. -- near the area.

3 Q. I'm sorry.

4 And you didn't report this to anyone, or report it, or
5 anything like that, correct?

6 A. I told them, It's going to be a 10-46, after I saw the
7 marks.

8 Q. I understand that. No. My question to you, sir, was: Did
9 you tell anyone, Oh, I saw those two males, they looked
10 suspicious, they were probably escorting a smuggler, anything
11 like that?

12 A. I don't remember.

13 Q. Okay. And that's not in that -- what you're holding, the
14 transcript, is it?

15 A. No.

16 Q. Okay. And there's no evidence of that today, is there,
17 that you know of?

18 A. That I know of, no, sir.

19 Q. All right. Now, you are familiar with the Fabens area.
20 You've been there for six years?

21 A. Yes.

22 MR. GONZALEZ: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MR. GONZALEZ:

25 Q. I'm handing you, first of all, Government's Exhibit Number

1 46, that's been admitted into evidence. Do you recognize
2 what's shown in that photograph, sir?

3 A. Yes, sir, I do.

4 Q. Okay. And what is it, just for the record?

5 A. It looks like the Fabens Road just south of the lights.

6 Q. That's pretty close to the downtown area?

7 A. I believe so.

8 Q. All right. A block, two blocks away? What would you --

9 A. Maybe a block and a half.

10 Q. Okay. And the speed limit there is pretty high, isn't it?

11 A. Yes.

12 Q. It's 45?

13 A. Yes.

14 Q. Okay. Now, let me show you Government's Exhibit Number 48.

15 Do you recognize -- I'm sorry. Let me go back a little bit.

16 You've traveled this road many times, the one with the
17 speed limit of 45 miles an hour?

18 A. Yes.

19 Q. And Government's Exhibit Number 48 depicts another speed
20 limit, right?

21 A. Yes.

22 Q. And what speed limit is that?

23 A. 55.

24 Q. Now, where is this speed limit posted, approximately?

25 A. I couldn't say.

1 Q. Well, is it fair to say -- well, you see some pecan
2 orchards, or -- there's a lot of orchards out there, right?

3 A. Yes.

4 Q. But is it fair to say that the further away you get from
5 town, the speed limit increases?

6 A. I believe so.

7 Q. And so if you're downtown, or doing the speed limit, you're
8 going at least 45 miles an hour right outside the outskirts,
9 correct?

10 MR. ANTCLIFF: Judge, I'm going to object, first, to
11 relevance. My client wasn't there on that day in town doing
12 anything.

13 And, second, I think it's outside the scope, because I
14 never questioned him about being in town, because he wasn't
15 there.

16 THE COURT: All right. Where are we going,
17 Mr. Gonzalez?

18 MR. GONZALEZ: The speeding that he subsequently saw,
19 Your Honor, and how these people would have gained that speed.

20 MR. ANTCLIFF: He wasn't in town, Judge, or anywhere
21 close.

22 MR. GONZALEZ: But he is familiar with that location,
23 Your Honor. He can tell us what he knows about that location.

24 MR. ANTCLIFF: I don't think he can, Your Honor.

25 THE COURT: I'll -- I'll -- I -- I'll sustain the

1 objection.

2 MR. GONZALEZ: All right.

3 BY MR. GONZALEZ:

4 Q. Let's get to -- at some point you do see Agent Ramos, is
5 that correct, his vehicle? Or what do you see first?

6 A. I saw the van.

7 MR. GONZALEZ: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 BY MR. GONZALEZ:

10 Q. I'm showing you Government's Exhibit Number 7. Do you
11 recognize what's shown in that photograph?

12 A. Jess Harris Road.

13 Q. Okay. And -- and the view is fac- -- it's showing a north
14 view?

15 A. Yes.

16 Q. Okay. And 6D is a similar picture, except that you get to
17 see more of the gravel road that's on the north side -- I mean
18 the south side of the levee. Is that correct?

19 A. Yes.

20 Q. And is that an accurate depiction, as well?

21 A. Yes.

22 Q. And Government's Exhibit 6C, what does that show, sir?
23 Where is that taken from?

24 A. It looks like from the -- from the levee, the south side of
25 the levee.

1 Q. All right. And so all these three photographs show
2 different things, correct?

3 A. Yes.

4 Q. And these accurately depict what Jess Harris looked like on
5 or about February 17, 2005. Is that true?

6 A. Yes.

7 MR. GONZALEZ: Your Honor, at this time I'll tender
8 Government's 6C, 6D, and 7 to Defense Counsel for inspection
9 and objection, if any.

10 THE COURT: Any objection?

11 MR. ANTCLIFF: I have no objection, Your Honor.

12 MR. PETERS: No objection.

13 THE COURT: 6C, 6D, and 7 will be admitted.

14 MR. GONZALEZ: Thank you, Your Honor.

15 May I approach the witness?

16 THE COURT: You may.

17 BY MR. GONZALEZ:

18 Q. Now, the jury, as well as everyone else, has heard a lot of
19 testimony about this dirt road. Is that correct?

20 A. Yes.

21 Q. Now, let me first direct your attention to Government's
22 Exhibit 6- -- I'm sorry -- Government's Exhibit Number 6.

23 That's similar to Government's Exhibits 6D and 6C and
24 7, except that you're right on the edge of the lip of the
25 drainage ditch. Is that correct?

1 A. The ditch is -- it starts right over here (indicating), but
2 it's about right.

3 Q. Okay. And that's the way the area looked on or about
4 February 17, 2005?

5 A. It looks like it. I'm not really sure.

6 Q. Okay. Now, let me direct your attention to Government's
7 Exhibit 6A.

8 Now, do you see a street sign there?

9 A. Yes, sir. It's Wingo Reserve Road.

10 Q. And is it right past that road -- well, let me direct your
11 attention to 6B. I think it shows it a little bit better.

12 Does it show you where Wingo Reserve Road ends and
13 Jess Harris Road begins and where the dirt road begins?

14 A. Yes.

15 Q. And that's a true and accurate depiction of what the scene
16 looks like, correct?

17 A. Yes.

18 Q. And finally -- well --

19 MR. GONZALEZ: Your Honor, at this time the Government
20 would offer into evidence Government's Exhibits 6A, 6B, and 6,
21 and tender them to Defense Counsel for inspection and
22 objection, if any.

23 THE COURT: Any objections?

24 MR. PETERS: Just a second, Judge.

25 MR. ANTCLIFF: I have no objection.

1 MR. PETERS: No objection.

2 THE COURT: Government's Exhibits 6, 6A and 6B will be
3 admitted.

4 MR. GONZALEZ: Thank you.

5 BY MR. GONZALEZ:

6 Q. At some point you, Agent Compean -- you realize that Agent
7 Ramos is coming back, correct?

8 A. Yes.

9 Q. And do you hear it or do you see him first? How does that
10 happen?

11 A. I heard him.

12 Q. And how -- and approximately, if you can tell us, what time
13 was that, sir?

14 A. I'm not really sure.

15 Q. Okay. Well, is it anywhere on the transcript? Do you want
16 to look at it and see if that will maybe help you pinpoint the
17 time?

18 A. I'm not really sure. Maybe 1:20.

19 Q. So at about 1:20?

20 A. Maybe. I don't know.

21 Q. You don't know. But you think it might be 1:20?

22 A. It may be.

23 Q. All right. And so you hear that he's coming back south,
24 correct?

25 A. Yes.

- 1 Q. And, at that point, do you know if the van is ahead of him?
- 2 Or what do you know?
- 3 A. All I heard was, We are going back south.
- 4 Q. Okay. And, at that point in time, when you hear that
- 5 they're coming back south, what do you do, sir?
- 6 A. I'm still driving on the levee, eastbound.
- 7 Q. Heading towards the Jess Harris area? Is that fair to say?
- 8 A. Yes.
- 9 Q. All right. And do you arrive to that -- to the -- I
- 10 guess -- levee road, that overlooks Jess Harris? Did you get
- 11 there before you see him, or what happens?
- 12 A. I believe, as I was pulling up, I looked up, and I -- and I
- 13 was able to see the -- the dust trail.
- 14 Q. Okay. And could -- what vehicles, if any, could you see?
- 15 A. Just the van.
- 16 Q. You saw the van. And it was -- from your vantage point,
- 17 was it traveling pretty fast?
- 18 A. A little bit.
- 19 Q. Okay. Because it's pretty unsafe to drive at any excessive
- 20 speed on that -- on this road. Is that correct?
- 21 A. Once you hit that, there's a -- a bridge up there.
- 22 Q. Okay. This is (indicating) -- what I'm pointing to, that's
- 23 Wingo Reserve Road. That's the sign that says Wingo Reserve
- 24 Road. Is that correct?
- 25 A. Yes.

1 Q. That's in Government's Exhibit 6B. And is that where the
2 paved road ends?

3 A. Yes.

4 Q. Right here, where I'm indicating (indicating)?

5 A. (No verbal response.)

6 Q. And past that, is that where the dirt road, I guess,
7 begins?

8 A. Yes.

9 Q. Let me show you Government's Exhibit 6A. And I think this
10 is a close-up of Wingo Reserve Road, and then the dirt road
11 after the paved road. Is that correct?

12 A. Yes.

13 Q. And then, as I'm pointing with my pen (indicating), going
14 north, is that -- where I'm holding my pen right now
15 (indicating), I think it's, like, the ditch area. Is that
16 approximately in the area that you were, sir?

17 A. I can't really tell.

18 Q. Let me --

19 MR. GONZALEZ: May I approach the witness?

20 THE COURT: You may.

21 BY MR. GONZALEZ:

22 Q. You are looking at 6A, correct?

23 A. Yes.

24 Q. All right. Up here (indicating), I'm pointing to where the
25 dirt road continues, and there's, like, a line. Is that

1 approximately where you were?

2 A. Yes.

3 Q. Okay. Thank you.

4 Sir, what would you approximate the distance from the
5 Wingo Reserve Road, or where Jess Harris becomes dirt road, to
6 the end of the road where it meets the ditch?

7 A. It's less than half a mile, maybe a quarter mile. I -- I
8 really don't know.

9 Q. Okay. And I think you testified that this is where you see
10 the cloud of dust, or how did you characterize it?

11 A. Yes.

12 Q. As a cloud of dust?

13 A. Yes.

14 Q. Okay. And you see the truck -- the van, I'm sorry.

15 A. Yes, I do.

16 Q. And it's heading in your direction?

17 A. Yes.

18 Q. And what did -- okay. It's heading in your direction. And
19 are you still in your truck, or -- when you see this van
20 coming?

21 A. I was still driving. I was -- I was driving up to that, to
22 the end of the road.

23 Q. Okay. And where is your shotgun as you're driving?

24 A. It's on my gun rack.

25 Q. Okay. And explain to us what that is, sir.

- 1 A. It's a -- it's a lock -- it's basically locked in a -- next
2 to the driver's -- the driver's side --
- 3 Q. And that's because, of course, you're on the levee road.
- 4 A. -- next to the seat.
- 5 Q. I'm sorry?
- 6 A. Next to the seat.
- 7 Q. Because it's very bumpy, and you want that locked -- you
8 want the shotgun to remain in its place, correct?
- 9 A. Yes.
- 10 Q. Okay. And is that shotgun pointing up or down, or how do
11 you-all carry that?
- 12 A. It's pointing up.
- 13 Q. Okay. And on that day do you recall, did you have your
14 baton with you?
- 15 A. Yes.
- 16 Q. Do you carry that all the time?
- 17 A. Yes.
- 18 Q. And that's part of your dress uniform?
- 19 A. Not dress uniform, but it's part of the uniform.
- 20 Q. Part of the uniform.
- 21 What other types of things do you carry on you when
22 you're in full uniform?
- 23 A. Keys.
- 24 Q. A lot of keys, a little keys?
- 25 A. A few, for the gates.

- 1 Q. What else, sir?
- 2 A. Handcuffs.
- 3 Q. Okay.
- 4 A. The magazines for the pistol.
- 5 Q. But there's no requirement as to how many magazines you can
- 6 carry, is there?
- 7 A. I don't believe so.
- 8 Q. How many do you carry, typically?
- 9 A. I believe it's two.
- 10 Q. Two magazines?
- 11 A. Yes.
- 12 Q. For the pistol?
- 13 A. Right.
- 14 Q. And there's -- of course there's a shotgun, correct?
- 15 A. Yes.
- 16 Q. How many shotgun gauge -- I guess it's called that. What's
- 17 it called?
- 18 A. Shells.
- 19 Q. Shells. I'm sorry. Thank you.
- 20 How many shells do you carry?
- 21 A. I believe it holds four.
- 22 Q. What holds four, the shotgun?
- 23 A. The shotgun.
- 24 Q. But what about on your person?
- 25 A. I don't carry anything more.

- 1 Q. Okay. What else do you carry on you? The baton, right?
- 2 A. Yes.
- 3 Q. And so this is a pretty thick belt that carries all these
- 4 things?
- 5 A. Yes.
- 6 Q. Pretty heavy belt, would you agree?
- 7 A. Not really.
- 8 Q. No?
- 9 A. No.
- 10 Q. Okay. And what about footwear? Do you-all have a standard
- 11 issue type of shoes, or how --
- 12 A. Boots.
- 13 Q. How does that work?
- 14 A. Boots.
- 15 Q. And so you were wearing boots?
- 16 A. Yes.
- 17 Q. And are those heavy?
- 18 A. No.
- 19 Q. So you don't wear sneakers or tennis shoes or anything like
- 20 that, do you?
- 21 A. No.
- 22 Q. They won't allow you to do that, correct?
- 23 A. I don't know. I don't.
- 24 Q. All right. So then this is a lot of extra gear and weight
- 25 on you. Is that fair to say?

1 A. Yes.

2 Q. It adds about ten pounds to you. Would you -- is that fair
3 to say?

4 A. Maybe.

5 Q. With the boots, the belt, and all these weapons?

6 A. It might. I don't know.

7 Q. Well, the --

8 MR. GONZALEZ: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 BY MR. GONZALEZ:

11 Q. I'm showing you --

12 MR. GONZALEZ: This has been admitted, hasn't it?

13 THE COURT: What's it marked? What number?

14 MR. GONZALEZ: That's why -- I don't see a marking on
15 it.

16 THE COURT: Because I don't know -- well, hold on.

17 Let me go through them. I'll see. I think the rifle was, but
18 I'm not --

19 THE CLERK: I believe it's 39.

20 THE COURT: Hold on. Let me make sure.

21 Yes, I -- if it's 39, I show 39 was admitted, and it
22 is the Beretta assigned to Defendant Ramos.

23 MR. GONZALEZ: May I go ahead and mark this? Because
24 I don't have any exhibit number on it.

25 THE COURT: Okay. That would be fine.

1 MR. GONZALEZ: I'm sorry, it's what, 39?

2 THE COURT: If -- yes, if that's -- yes.

3 THE CLERK: 39A.

4 MR. GONZALEZ: 39A. I have the clip as 39A.

5 THE COURT: I show the magazine is 39B and that the
6 Beretta is 39A.

7 MR. GONZALEZ: I see what happened. We -- it's got
8 two.

9 THE COURT: Gotcha.

10 MR. GONZALEZ: 39A is the Beretta, and 39B is the
11 clip.

12 BY MR. GONZALEZ:

13 Q. And would you hold this for me, sir?

14 How much would that weigh?

15 A. A pound, maybe.

16 Q. So that's also --

17 A. I don't know.

18 Q. -- weighing you down, correct?

19 A. Yes.

20 Q. And this -- what's this, sir?

21 A. The magazine.

22 Q. Okay. And, of course, this would have -- how many rounds
23 does it normally contain?

24 A. I really don't remember anymore. I believe it's 11. I
25 don't know. I can't remember.

1 Q. And, sir, how much do you weigh?

2 A. About 180.

3 Q. And that's what you weighed back in March -- I'm sorry,
4 February?

5 A. No. I weighed a lot less.

6 Q. You weighed less in February?

7 A. Yes.

8 Q. When did you weigh -- okay. When did you weigh 180, then?

9 A. Just recently. I've gained a lot of weight.

10 Q. All right.

11 MR. GONZALEZ: May I approach the witness, Your Honor?

12 THE COURT: Yes, you may.

13 BY MR. GONZALEZ:

14 Q. Agent Compean, I'm showing you what's been marked as
15 Government's Exhibit Number 100 for identification purposes.
16 What does that picture -- that photograph show?

17 A. It's a picture of me.

18 Q. Okay. And this was taken of you back on -- was it March
19 18th, 19th, when you were arrested on this case?

20 A. Yes, sir, right around -- around that time.

21 Q. So you had gained some weight between February 17th, 2005,
22 until your arrest? Or is this not a pretty accurate reflection
23 of what you looked like back then?

24 A. It's pretty close.

25 Q. Okay. So you weighed 180 pounds back then. And another

1 ten pounds on you, with all the stuff that you have to carry as
2 part of your duties?

3 A. Approximately.

4 Q. So that brings you to about 190 pounds. Is that fair to
5 say?

6 A. Yes.

7 Q. And how tall are you, sir?

8 A. 5-4.

9 Q. Thank you.

10 MR. GONZALEZ: Your Honor, at this time we'll tender
11 Government's Exhibit Number 100 to Defense Counsel for
12 objection.

13 THE COURT: Any objections?

14 MR. ANTCLIFF: Yes, Your Honor. Can we approach?

15 THE COURT: Sure.

16 (Bench conference:)

17 THE COURT: You don't even have to tell me.

18 MR. ANTCLIFF: I don't?

19 THE COURT: Well, no, you can.

20 MR. ANTCLIFF: For the record, look at how fat he was,
21 Judge.

22 THE COURT: Okay. Where are we going?

23 MR. GONZALEZ: What I'm trying to establish,
24 Your Honor, he's told the jury that, you know, he's going on
25 this chase, chasing this other person, who's six-foot tall, 160

1 pounds. And he wants them to believe -- him, who's 190 pounds,
2 was able to tackle this man. That's where I'm going. This is
3 what he looked like back then, Your Honor.

4 MR. ANTCLIFF: Yeah, except it's taken at the jail at
5 1:00 or 3:00 in the morning.

6 MR. GONZALEZ: Well, I can clarify it's not one of his
7 best pictures. I'll be glad to.

8 MR. PETERS: Judge, this is prejudicial.

9 MR. GONZALEZ: No.

10 MR. ANTCLIFF: Certainly, it's very prejudicial.

11 MS. KANOF: We've observed him lose weight, not gain
12 weight, from when he was first arrested.

13 MR. ANTCLIFF: Well, you can ask him about it. We
14 don't need a picture from the jail.

15 MR. GONZALEZ: I just want the jury to see what he
16 looked like at that time, because the story is so incredible.
17 And if we want to cut it out and whatever --

18 MR. ANTCLIFF: Judge, those pictures are so
19 prejudicial. I think that I'm objecting to them on that basis
20 alone. I don't think this testimony is relevant to anything
21 right now.

22 THE COURT: This is the first time I -- I kind of have
23 to think this one over -- let me, while I have it up here.

24 We have sentencings at 1:00. Is -- my thought was to
25 break at 12:15, which is 15 minutes more. So if you're still

1 on cross with him, I'll take this under advisement, and you can
2 resume this line of questioning.

3 MR. GONZALEZ: Thank you.

4 MR. ANTCLIFF: Thank you.

5 (End of bench conference; open court.)

6 THE COURT: The Court is going to reserve ruling on
7 Government's Exhibit 100.

8 You may proceed.

9 BY MR. GONZALEZ:

10 Q. So you're in the -- you're on the levee, correct?

11 A. Yes.

12 Q. And I guess you've got your truck on or off, or what's
13 going on?

14 A. The truck was on.

15 Q. Okay. And you see this cloud of dust heading your way,
16 correct?

17 A. Yes.

18 Q. And that concerns you, right?

19 A. Yes.

20 Q. And you're in fear, correct?

21 A. In fear of what?

22 Q. Well, I don't know. Are you in fear, sir?

23 A. No.

24 Q. You're not in fear?

25 A. No.

1 Q. And --

2 A. I was concerned, but not in fear.

3 Q. Okay. Correct. And then you get out of your -- is it --
4 what type of vehicle were you driving that day?

5 A. I believe it was a pickup truck.

6 Q. Okay. You get out of your pickup truck, right?

7 A. Yes.

8 Q. You get down. Okay. But before you get down, you reach
9 over -- I'm sorry. You say you're not in fear, but you're
10 concerned. Is that your words?

11 A. Yes.

12 Q. Okay. You're not fearful. But before you get down, you
13 reach over for your shotgun, right?

14 A. Right.

15 Q. But you did have your baton with you, and you did also have
16 your handgun, correct?

17 A. Correct.

18 Q. And where do you keep your handgun? Do you -- on your belt
19 or on your ankle? Where do you keep it, sir?

20 A. On the belt.

21 Q. And you have those weapons with you. But, even though you
22 weren't afraid, you decided to take your shotgun with you?

23 A. Yes.

24 Q. You take the shotgun.

25 MR. GONZALEZ: And may I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 BY MR. GONZALEZ:

4 Q. You take the shotgun, unlock it. How long does that -- I
5 guess it's pretty quick?

6 A. Yes.

7 Q. A few seconds, or what would you say?

8 A. About two or three seconds.

9 Q. Two to three seconds. So you're thinking, I better get my
10 shotgun?

11 A. Yes.

12 Q. All right.

13 MR. ANTCLIFF: Judge, I can't hear him. I'm sorry.

14 THE COURT: All right. Who can't you hear, either
15 one?

16 MR. ANTCLIFF: My client.

17 THE COURT: All right.

18 You need to speak into the microphone.

19 MR. GONZALEZ: Well, I'll stand over here, so he
20 can --

21 THE COURT: All right.

22 BY MR. GONZALEZ:

23 Q. All right. So then you decide -- you're thinking for two
24 or three seconds. I better take my shotgun. Is that what you
25 just said, so that your attorney could hear?

- 1 A. No.
- 2 Q. I'm sorry. Okay. Tell us what you just said.
- 3 A. I -- I just hit the button and unlocked the -- the shotgun.
- 4 Q. Oh, I'm sorry. You said it took you two to three seconds
- 5 to get it released. Is that what you said?
- 6 A. Maybe, maybe less. I -- I really don't know. I just
- 7 pushed the button, and it unlocks.
- 8 Q. So then you have to get the shotgun, correct?
- 9 A. Yes.
- 10 Q. And get out of the truck?
- 11 A. Yes.
- 12 Q. When you get out of the truck, what are you doing with the
- 13 shotgun? Show the jury, and please don't talk, so that we
- 14 don't have to worry about what's being recorded, and show them
- 15 how you're holding the shotgun.
- 16 A. Back here (indicating).
- 17 Q. Just to one side?
- 18 A. Well, the gun rack is up here (indicating). But once I
- 19 released it, I grabbed it, and I come down.
- 20 Q. I'm sorry. You climb out. And please speak up, so that
- 21 everything is taken down.
- 22 You climb out, and you do what, sir?
- 23 A. I started walking to the end of the ditch.
- 24 Q. And, now, let's talk about that. From the levee to the end
- 25 of the ditch, do you know the distance?

1 A. No, I do not.

2 Q. May I have a moment, Your Honor?

3 THE COURT: You may.

4 BY MR. GONZALEZ:

5 Q. Agent Compean, let me show you Government's Exhibit 32.

6 There's some measurements that were taken out there. And it

7 tells us that from the levee road -- that's where you were

8 standing with the shotgun, correct -- to the -- I guess to the

9 end of the -- I guess that's that slope. Would you agree?

10 A. Yes.

11 Q. And right after that is the actual ditch?

12 A. Yes.

13 Q. All right. So from point C to point D, 73 feet. And would

14 you agree with that, or do you disagree?

15 A. It doesn't seem that far. But if that's what it says

16 there...

17 Q. Okay. Thank you.

18 So you take your shotgun, right?

19 A. Yes.

20 Q. And you walk 73 feet, at least?

21 A. Yes.

22 Q. All right. And you're doing what with the shotgun? Am I

23 holding it wrong?

24 A. Yes.

25 Q. Okay. How should I be holding it? Like that (indicating)?

- 1 Face forward?
- 2 A. The other way.
- 3 Q. Like this (indicating)?
- 4 A. Yes.
- 5 Q. All right. And so you're holding it, and this is called
- 6 the port arms stance?
- 7 A. Yes.
- 8 Q. And you're holding your shotgun in this manner
- 9 (indicating), correct?
- 10 A. Yes.
- 11 Q. And you walk. Do you walk straight, or how do you do that,
- 12 sir, to the lip of the ditch?
- 13 A. I don't remember.
- 14 Q. Okay. Or do you walk to the lip of the ditch?
- 15 A. Towards the ditch, yes.
- 16 Q. Okay. And as you're walking towards the ditch, you see
- 17 what on the other side, sir?
- 18 A. I saw the van.
- 19 Q. Okay. And the van, is it fair to say, is still barreling
- 20 towards you?
- 21 A. About -- well, yes.
- 22 Q. It's coming fast, right?
- 23 A. It has slowed down a little bit.
- 24 Q. It had slowed down a little bit? It slowed because --
- 25 (Shotgun falls over.)

- 1 BY MR. GONZALEZ:
- 2 Q. This is not loaded, correct? Is it?
- 3 A. I don't know.
- 4 Q. Okay. So you're walking around with this shotgun, of
5 course a lot better than I am, correct?
- 6 A. Yes.
- 7 Q. Okay. You get to -- you see this cloud of dust and this
8 van barreling in your direction. Can you even see the other
9 vehicles that are in pursuit?
- 10 A. No.
- 11 Q. Because I think -- I think it was your testimony, at some
12 point, that you saw the emergency headlights of, I think Agent
13 Ramos' vehicle, turned on?
- 14 A. No, sir.
- 15 Q. That was not your testimony? I'm sorry.
- 16 A. No, sir.
- 17 Q. Whose, if any, lights did you see turned on?
- 18 A. I didn't see any vehicles. All I saw was the van.
- 19 Q. I'm sorry. I thought you had said yesterday that you saw
20 Agent Ramos' lights turned on, on that area on the Jess Harris
21 Road. That's incorrect?
- 22 A. I didn't -- I don't believe so. I don't believe I said
23 that.
- 24 Q. I'm sorry?
- 25 A. I don't believe I said that.

1 Q. Okay. Fair enough.

2 So you see the van barreling towards you. You can see
3 nothing behind it because of the cloud of dust?

4 A. Yes.

5 Q. And then where are you, as the van is approaching the
6 ditch, the end of the road?

7 A. I was almost to the end of the -- to the end of the ditch.

8 Q. Okay.

9 A. To the edge.

10 Q. And as the van -- right? It's coming right -- as -- it's
11 coming right at you, in your direction, right?

12 A. Yes.

13 Q. And you're thinking what? This van is going to do what?

14 A. I thought he was going to keep going.

15 Q. You thought the van was going to go over the ditch, right?

16 A. Yes.

17 Q. Well, it probably would have just gone in the ditch, but
18 you thought it was going to come straight through, correct?

19 A. Yes.

20 Q. And as the van is coming towards you, do you look at the
21 driver?

22 A. Yes.

23 Q. And what you do see, sir?

24 A. I saw him looking at me.

25 Q. Okay. And he's --

1 MR. GONZALEZ: May I approach the witness, Your Honor?

2 THE COURT: You may.

3 BY MR. GONZALEZ:

4 Q. Let me show you Government's Exhibit Number 32. Point C,
5 is that like the end of the slope, where the drainage -- where
6 the lip of the ditch begins, more or less?

7 A. Uh --

8 Q. Well, you tell me. You look at it and...

9 A. It might be.

10 Q. Okay. And so from point C to point B, that's -- C to B is
11 43 feet, correct?

12 A. Yes.

13 Q. And then from point B to point A, which is the canal road,
14 that's an additional 15 feet?

15 A. Yes.

16 Q. Okay. So you're -- you're not any closer than 58 feet away
17 from him, correct?

18 A. Correct.

19 Q. And so that's -- is that further than the distance of this
20 courtroom?

21 A. I don't know.

22 Q. Okay. Okay. Well, let's assume it is. And I think
23 this -- so you're saying the van driver is back there, and
24 you're standing on the lip of the road, and you see his eyes?

25 A. It seemed -- it seemed a lot closer when I saw him.

- 1 Q. I realize that, because the van is coming right at you,
2 right?
- 3 A. Yes.
- 4 Q. Okay. And -- but I think you testified you see his eyes.
5 A. Yes.
- 6 Q. And what else do you notice?
7 A. Just him.
- 8 Q. Okay. No one else in the van?
9 A. No one else.
- 10 Q. Okay. You see his eyes, and what's he doing?
11 A. He's looking right at me.
- 12 Q. Okay. And then what happens? And the van hasn't slowed
13 down, other than the initial slowdown. It's still racing at
14 you, right?
- 15 A. I wouldn't say racing, but he was still coming. It didn't
16 look like he was slowing down.
- 17 Q. And you thought the van was going to jump the ditch or fall
18 in the ditch or something, right?
19 A. Yes.
- 20 Q. Okay. And then he opens the door, the driver?
21 A. Yes.
- 22 Q. And you're looking in his eyes?
23 A. I was looking at him.
- 24 Q. Okay. And he looked --
25 A. Not in his eyes, but I was looking at him.

1 Q. Okay. At his face. Is that fair to say?

2 A. Yes.

3 Q. You're looking at his face. What's he doing?

4 A. He was -- he was opening the door.

5 Q. Okay. And are you still looking at his face, or did he
6 turn to open the door?

7 A. He -- well, he didn't -- he didn't turn to look at the --
8 at the door, but he was -- he was opening it. I was standing
9 off to the side.

10 MR. GONZALEZ: May I approach the witness, Your Honor?

11 THE COURT: You may.

12 BY MR. GONZALEZ:

13 Q. Agent Compean, I'm showing you what's been marked for
14 identification purposes as Government's Exhibit 6E. Do you
15 recognize what's shown in that photograph?

16 A. It looks like Jess Harris.

17 Q. Okay. Where it meets the ditch, correct?

18 A. Yes.

19 Q. And would it also have that area where the van was racing
20 towards you?

21 A. Yes.

22 Q. Okay. And I think yesterday you testified that the driver
23 jumped out of the van. Is that correct?

24 A. Yes.

25 Q. And that area where the jumper -- I mean, I'm sorry --

1 where the driver jumped out, is that shown in Government's
2 Exhibit 6E?

3 A. Yes.

4 Q. And why don't you indicate to me where that area would be?
5 Just point it out to me, please.

6 A. It looked like maybe right around this area (indicating), I
7 would say.

8 Q. Thank you. All right.

9 MR. GONZALEZ: Your Honor, at this time we would offer
10 Government's Exhibit 6E into evidence and tender it to Defense
11 Counsel for objection -- inspection and objection, if any.

12 THE COURT: Any objections?

13 MR. PETERS: No objection.

14 MR. ANTCLIFF: No objection.

15 THE COURT: 6E will be admitted.

16 MR. GONZALEZ: And, Your Honor, would this be a good
17 time to break for the Court?

18 THE COURT: Yes, if you're -- if you're ready. If
19 this is a good place to stop.

20 All right. Ladies and gentlemen of the jury, we are
21 going to go ahead and recess for lunch. I have some matters I
22 have to take up. I'm going to ask you to be back in the jury
23 room at 1:45, so that we can try to start right at 2:00. All
24 right?

25 So, at this time, the Court stands in recess until

1 1:45.

2 (Open court, parties present, jury not present.)

3 THE COURT: And I need Exhibit 100.

4 MR. GONZALEZ: Yes, Your Honor.

5 You may be seated.

6 Did you need to approach?

7 MR. ANTCLIFF: I don't have to approach. I can tell
8 you here.

9 THE COURT: That's fine. However --

10 MR. ANTCLIFF: For the record, I wanted it clear,
11 Judge, what I was arguing was a 403 objection, that the Court
12 needs to do a balancing test. And that's prej- -- that's too
13 prejudicial.

14 THE COURT: I understand. That's why I took it under
15 advisement.

16 And so you know, Mr. Antcliff, I believe Judge Garney
17 needs you.

18 MR. ANTCLIFF: I know that.

19 THE COURT: Okay. I didn't know if you knew.

20 Okay. Anything further before we recess?

21 MR. GONZALEZ: No, Your Honor.

22 THE COURT: All right. As you know, I have
23 sentencings at 1:00. If you guys will all be back at 1:45, we
24 will start as close to 2:00 as we can.

25 All right. Court stands in recess until 1:45.

1 (Recess; open court, parties present, jury not
2 present.)

3 THE COURT: You may be seated.

4 Before we bring the jury back in, when we had recessed
5 for lunch, the Court had under advisement Government's Exhibit
6 100. It will be -- the -- anything further before I rule on
7 that one?

8 MR. GONZALEZ: No, Your Honor.

9 MR. ANTCLIFF: No.

10 THE COURT: Okay. Anything -- I guess it's really not
11 your objection, but I just wanted to make sure.

12 MS. STILLINGER: No.

13 THE COURT: All right. It will be the Court's ruling
14 on Government Exhibit 1 (sic) that I will sustain in part and
15 overrule in part. I will require, Mr. Gonzalez, that the lower
16 portion depicting the three views be cut off and only the upper
17 portion may be used.

18 And let me tell you why I ruled this way, and you can
19 certainly put anything you'd like to on the record.

20 The Court, in examining it through the recess, I took
21 into consideration that the -- there's nothing about this
22 picture that defines it as a mugshot, number one, although it
23 certainly looks like a mugshot. But it's -- there's nothing
24 that defines it as a mugshot.

25 But the other part of -- and that's one of the reasons

1 I'm removing the lower portion of it, because that makes it
2 more evident.

3 The second reason is because Mr. Compean, in his
4 testimony, has opened the door. He -- he has indicated --
5 there's been some conversation and some testimony about his
6 physical appearance today versus his physical appearance on
7 that date, and this is the best evidence of that. And so --

8 MR. ANTCLIFF: Sure. I understand, Judge. Can I take
9 a look at the picture?

10 THE COURT: Sure.

11 MR. ANTCLIFF: Because I may well -- I mean, if you're
12 going to let any in, I may well want it all in. I don't know.

13 THE COURT: Okay. Well, the Court's ruling is the top
14 portion would be the only portion that would be relevant.

15 MR. ANTCLIFF: Judge, in my -- that's the worst one.
16 And so -- in my estimation.

17 THE COURT: Well, which one do you prefer? I mean, I
18 don't care, if you have a preference.

19 MR. ANTCLIFF: If you're going to let it in, let it
20 in. I'll live with the bottom three, as well. I mean, they
21 kind of -- that one, by far, is the worst looking one, for
22 purposes of a mugshot.

23 THE COURT: Well, it's just that you don't normally
24 take pictures of people on their side, but...

25 MR. ANTCLIFF: Everybody knows he was arrested. I

1 mean, that's in the record.

2 THE COURT: Well, then, I guess you're withdrawing
3 your objection?

4 MR. ANTCLIFF: I am.

5 THE COURT: All right. Then Government's Exhibit 100
6 will be admitted.

7 MR. ANTCLIFF: Okay.

8 THE COURT: All right. Then are we ready to proceed?

9 MR. GONZALEZ: We are, Your Honor.

10 THE COURT: All right. Then you can bring in the
11 jury.

12 (Recess; open court, parties and jury present.)

13 THE COURT: You may be seated.

14 Ladies and gentlemen, we're back on the record.

15 And, Mr. Gonzalez, you may resume.

16 But before we do, let me just advise you the Court's
17 ruling on the Government's Exhibit 100. It's my understanding
18 that Defense has withdrawn their objection, and Government's
19 Exhibit 100 will be admitted.

20 MR. ANTCLIFF: That's true, Your Honor.

21 THE COURT: All right. Go ahead.

22 MR. GONZALEZ: May I proceed, Your Honor?

23 THE COURT: You may.

24 MR. GONZALEZ: May I approach the witness?

25 THE COURT: You may.

1 BY MR. GONZALEZ:

2 Q. Agent Compean, I'm showing you what's been introduced into
3 evidence as Government's Exhibit 100. Once again, please tell
4 us what's in that photograph.

5 A. That's my picture.

6 Q. And this picture was taken of you the date that you were
7 arrested, correct?

8 A. Yes.

9 Q. And it was late at night. So, of course, it's not a great
10 picture, correct?

11 A. Correct.

12 Q. 1:00 in morning, or something like that?

13 A. It was past that.

14 Q. Okay.

15 A. About 2:00.

16 Q. Now that you've had a chance to look at your photograph,
17 how much did you weigh back in February and March?

18 A. I really don't know.

19 Q. So if your booking slip said 180 pounds, would that be
20 correct? I think you had said that before, as well. Is
21 that...

22 A. I believe so. I -- I haven't weighed myself lately. I
23 don't know.

24 Q. Okay. Now, I think where we left off before lunch was, the
25 van's coming at you, right?

- 1 A. Yes.
- 2 Q. Right at you. And you're on the edge of the -- the lip of
3 the ditch?
- 4 A. Yes.
- 5 Q. Okay. And you have the shotgun and -- I'll try not to hold
6 it too much. You have the shotgun, right?
- 7 A. Right.
- 8 Q. And what are you doing with it?
- 9 A. I'm walking down towards the -- towards the end of the
10 ditch.
- 11 Q. Okay. And you say you see the face of the driver of the
12 van?
- 13 A. Yes.
- 14 Q. Okay. Did you just make eye contact or something?
- 15 A. Yes.
- 16 Q. Okay. And then he turns away from you, right?
- 17 A. He looked to the right, yes, sir.
- 18 Q. To the right, to open his door?
- 19 A. Or to the left, sorry.
- 20 Q. To the left. You're right.
- 21 He opens the door, he turns -- or what does he do?
- 22 A. That's when he turned, and he climbed out.
- 23 Q. Okay. Well, you said the van's moving at a fairly good
24 rate of speed, 30 miles an hour?
- 25 A. It may have started slowing down by then. I -- he was --

1 when I saw him open the door, he looked off to the side, and --
2 and that's when he climbed out of there.

3 Q. Okay. Because yesterday I distinctly remember you
4 testifying that he jumped out of the van.

5 A. Yes, sir.

6 Q. So he did jump out of the van?

7 A. Yes, sir.

8 Q. Because you also testified that when he jumped out of the
9 van he was approximately 10 to 15 feet from the edge of the
10 ditch. Is that correct?

11 A. I'm not sure about the distance. I think I showed you on
12 the picture. It sounds about right.

13 MR. GONZALEZ: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 MR. GONZALEZ: And, Your Honor, is Government's
16 Exhibit 6E in evidence?

17 THE COURT: 6E? I do not show that it's been
18 admitted.

19 MR. GONZALEZ: At this time we'll offer Government's
20 Exhibit 6E.

21 THE COURT: It is admitted? All right. Mr. Martinez
22 does show that it's been admitted.

23 MR. ANTCLIFF: I think it was.

24 MR. GONZALEZ: May I approach the witness, Your Honor?

25 THE COURT: You may.

1 BY MR. GONZALEZ:

2 Q. You saw this photograph before lunch?

3 A. Yes.

4 Q. Okay. Now -- and, in this photograph, I think you
5 previously indicated to me where you saw the driver jump out of
6 the van, correct?

7 A. Yes, sir.

8 Q. And you said it was how far from the edge of the lip of the
9 ditch?

10 A. It was right about -- right about -- I guess it's about 15,
11 20 feet, maybe.

12 Q. Okay. Let's see how this works. Now we can see what's
13 going on.

14 A. I have it.

15 Q. Would you point to the area where you saw the driver of the
16 van jump out of the moving vehicle?

17 A. Right about in this area here (indicating).

18 Q. And this van had been traveling 20 -- I mean, 30, 40 miles
19 an hour right before that point?

20 A. About 30, maybe.

21 Q. 30 miles an hour. And it really hadn't slowed down very
22 much, had it, at that point, sir?

23 A. No.

24 Q. Okay. So it's 30 -- going 30 miles an hour. And there's
25 about, what, 10, 15 feet from the edge of the ditch when the

- 1 driver bails out?
- 2 A. I believe so, yes.
- 3 Q. Okay. And it's your testimony yesterday that, when he
4 jumps out, he not only jumps out, but he raises his hand to
5 surrender, is that correct, like what I'm indicating
6 (indicating)?
- 7 A. He put his hands up, once he was over -- it's not on here,
8 but further down, right on the edge of the ditch, before he --
9 he climbed it.
- 10 Q. So he opens the door, jumps out?
- 11 A. And started running --
- 12 Q. And he goes --
- 13 A. -- towards the ditch.
- 14 Q. So he jumps out, starts running, and the van is still going
15 30 miles an hour 10 to 15 feet away from the edge of the ditch,
16 right?
- 17 A. It must have been. By then, I was looking at him. I -- I
18 kept -- I took my eye off of the van.
- 19 Q. And yet the van, with 10 to 15 feet of distance, manages to
20 stop. That's what you saw, correct?
- 21 A. Yes, sir. Down here -- there used to be, before the van
22 came down here, there was a little -- almost -- not a ramp, but
23 there was a -- there was dirt -- a little bit of dirt up here.
- 24 Q. So the little bit of extra dirt that's now missing held the
25 van in place and prevented it from going into the ditch. Is

- 1 that what you're telling us?
- 2 A. It may have.
- 3 Q. Okay. And, in any event, the driver jumps out of this
- 4 moving van, right?
- 5 A. Yes.
- 6 Q. Does he fall as he's running out?
- 7 A. No, sir, he did not.
- 8 Q. Nothing. Doesn't even stumble or anything? He just jumps
- 9 out, and he's fully standing, fully erect?
- 10 A. Yes, sir.
- 11 Q. Okay. And then he does what, sir?
- 12 A. He continued -- I don't know if it was the momentum or --
- 13 he continued running --
- 14 Q. He continues running.
- 15 A. -- back to this side (indicating).
- 16 Q. Okay. The when he gets to the edge of the ditch, he does
- 17 what?
- 18 A. By then, I had already yelled at him to stop. I said,
- 19 Stop, put your hands up.
- 20 He looked at me, and then he stopped for a second and
- 21 looked at me, and put his hands up.
- 22 Q. He's on the edge of the road, he's running. And the
- 23 momentum doesn't push him over the ditch?
- 24 A. No, sir.
- 25 Q. And he manages to get to the edge of the ditch and raise

1 his hands?

2 A. Yes, sir. He stopped, and he raised his hands.

3 Q. And, at that point, you've got your shotgun pointed at him.

4 Is that correct?

5 A. Yes, sir.

6 Q. Okay. And where is Agent Ramos at that point in time, do
7 you know?

8 A. He -- nobody was still there. I heard vehicles. I could
9 hear them, but I never saw anybody yet.

10 Q. You heard more than one vehicle, or do you know?

11 A. Well, I -- I don't know. I heard a vehicle.

12 Q. Later on, many vehicles arrived. Is that true?

13 A. Yes.

14 MR. GONZALEZ: May I approach the witness?

15 THE COURT: You may.

16 BY MR. GONZALEZ:

17 Q. I'm showing you Government's Exhibits 9 and 15. Do you
18 recognize what's shown in those photographs?

19 A. Yes, sir.

20 Q. And what is that, sir? Let's talk about Government's
21 Exhibit 9 first.

22 A. This is the van.

23 Q. Okay. And let me direct your attention to the rear tires
24 of the van, to the right rear tire.

25 And you were trained in -- what did you call it, sign?

1 A. Yes.

2 Q. Detecting sign, or what's it called?

3 A. Sign cutting.

4 Q. Sign cutting? Okay.

5 And could you see what's behind that tire?

6 A. Tire tracks.

7 Q. Okay. Does it look to you like maybe that vehicle was
8 braking?

9 A. It may have. From this, I can't really -- I couldn't tell
10 you.

11 Q. Well, look at number -- Government's Exhibit 15. I think
12 it's a different angle. Do you have a better view of the tire
13 tracks from there?

14 A. Yes, sir, I do.

15 Q. Let me -- let's tell the jury what you're talking about.
16 Let's see how well it shows.

17 We'll try Government's Exhibit Number 15.

18 Okay. Do you see the tire tracks?

19 A. Yes.

20 Q. And, actually, do you see them on both sides?

21 A. Yes.

22 Q. But more on the right than on the left. Is that accurate?

23 A. Yes.

24 Q. Okay. And in your experience, you leave those marks behind
25 when you're braking, or if you're just driving?

1 A. It could be from him braking, if he had braked.

2 Q. Okay. So if he's braking, he should have his foot on the
3 brake, correct? And it would be kind of hard to jump and brake
4 and not fall down. Would you agree?

5 A. When -- when he climbed out -- when he jumped out, the van
6 was still moving, sir.

7 Q. Okay. Now, let me show you Government's Exhibit 9. It
8 also shows that same tire track, correct?

9 A. Yes.

10 Q. And in your experience, because you know how to cut sign,
11 you would agree that's consistent with him trying to brake?

12 A. It may have. We don't really -- at least I don't know
13 about tire tracks, but it -- it -- it's possible.

14 Q. And we don't know what he was really trying to do, because
15 this scene was not preserved on February 17 for that purpose,
16 because nobody knew that we needed to do this. Is that
17 correct?

18 A. Yes.

19 Q. And so, had we known, this all could have been preserved,
20 and perhaps we could have figured out how fast he was going, or
21 braking, or whatever. Is that -- do you agree with that, sir?

22 A. Yes, sir.

23 Q. And, because you failed to tell anyone about what occurred
24 that day, this evidence was destroyed forever, other than this
25 photograph. Do you agree, sir?

- 1 A. Yes, sir.
- 2 Q. Thank you.
- 3 And -- I'm sorry. You get out of the van. You have
- 4 your shotgun. Do you still have your baton with you?
- 5 A. Yes, sir.
- 6 Q. In addition to your baton, did you have -- I guess what do
- 7 you call it, O/C spray?
- 8 A. I don't believe I was on that day, sir.
- 9 Q. And what is O/C spray?
- 10 A. It's a pepper spray.
- 11 Q. A pepper spray. And you carry that sometimes with you?
- 12 A. Yes, sir.
- 13 Q. But on that day you did not have it?
- 14 A. I don't believe I did. I don't remember.
- 15 Q. All right. Okay. The driver is at the edge of the lip --
- 16 the driver's at the edge of the ditch with his hands up. And
- 17 how long does he keep them up before -- well, first of all, did
- 18 he have them the way I'm holding them (indicating), to the side
- 19 of my head, either hand?
- 20 A. Yes, sir.
- 21 Q. Okay. And part of your training is to look at people's
- 22 hands, correct?
- 23 A. Correct.
- 24 Q. What did he have in his hand, if anything, at that time?
- 25 A. Nothing.

1 Q. And you are absolutely sure about that, aren't you?

2 A. Yes, sir.

3 Q. Okay. He's at the edge, standing there looking at you, and
4 you're looking at him, right?

5 A. Yes, sir.

6 Q. And he's probably a little bit further away than you and I
7 are at this point in time. Is that correct?

8 A. A little bit, yes.

9 Q. Because I believe -- let's see. The --

10 MR. GONZALEZ: Approach the witness?

11 THE COURT: Yes, you may.

12 BY MR. GONZALEZ:

13 Q. The -- let me point you to points B and C. Is that where
14 the irrigation ditch is, the drainage ditch?

15 A. Yes.

16 Q. And you would agree that between B and C it's approximately
17 43 feet?

18 A. Yes.

19 Q. So you and I are a lot closer than that?

20 A. Yes, sir.

21 Q. All right. So he's about 43 feet away, standing there with
22 his hands up. And what did you yell to him?

23 A. I said -- I -- well, when he was running towards the ditch,
24 I had already yelled out for him to stop and to put his hands
25 up.

1 Q. And in what language did you say that, sir?

2 A. In Spanish.

3 Q. You're fluent in Spanish, aren't you?

4 A. Yes, sir.

5 Q. And you said what to him, in Spanish?

6 A. I said, (speaking Spanish).

7 Q. And he (speaking Spanish).

8 A. Yes, sir, he did.

9 Q. And then what, sir?

10 A. And then he looked at me. He stopped, and then he looked
11 at me. I don't know if he looked back or not, but he -- once
12 he saw me, he started climbing back down. He put his hands
13 down at his side and starting climbing down into the ditch.

14 MR. GONZALEZ: May I approach the witness, Your Honor?

15 THE COURT: Yes, you may.

16 BY MR. GONZALEZ:

17 Q. Let me, first of all, show you Government's 51B. Do you
18 recognize what's shown in that photograph, sir?

19 A. Yes, sir.

20 Q. Okay. And that's the drainage ditch where you-all had the
21 confrontation?

22 A. Yes, sir.

23 Q. Now, let me show you Government's Exhibit 51C. And I'm
24 going to ask you to look at this diagram, follow the arrows,
25 and see if you agree with what it depicts. If you don't, then

- 1 we won't talk about it anymore.
- 2 A. When -- when he climbed into the ditch, he was a little bit
- 3 further to the --
- 4 Q. To the left or to the right?
- 5 A. -- to the left, further down.
- 6 Q. To the left of the black arrow?
- 7 A. Yes.
- 8 Q. Okay. And then which direction did he move on this
- 9 photograph? Did he move to the right?
- 10 A. I believe he went straight across, at first.
- 11 Q. Straight across, and then what?
- 12 A. And then I was standing directly across from him.
- 13 Q. Yes, sir.
- 14 A. And then he went back to the left, the way it is -- it's
- 15 here in the photo.
- 16 Q. Okay. And then what?
- 17 A. I came across. And I was still directly across from him.
- 18 Q. So where it says 1, that was, in fact, your first position?
- 19 A. I was --
- 20 Q. Here is the legend up here, sir.
- 21 A. I was a little bit over to the left, maybe.
- 22 Q. Okay. And then where it says Number 2 --
- 23 A. Yes.
- 24 Q. -- is that where you ended up, where you-all had your
- 25 confrontation?

1 A. Yes, sir.

2 Q. Okay. So this really is not entirely accurate, the way you
3 recall it?

4 A. It's -- it's close.

5 Q. Close enough?

6 MR. GONZALEZ: May I approach the --

7 THE COURT: Sure.

8 MR. GONZALEZ: Your Honor, at this time we'll offer
9 Government's Exhibit 51C into evidence, and I'll tender it to
10 Defense Counsel.

11 THE COURT: Objections to 51C?

12 51B?

13 MR. ANTCLIFF: No, C.

14 MR. GONZALEZ: 51C.

15 THE COURT: 51C I don't show admitted.

16 MR. ANTCLIFF: Okay.

17 THE COURT: 51A is admitted.

18 MR. ANTCLIFF: Judge, based on his testimony, I'm
19 asking the Government to mark what -- the actual markings on
20 this document are not quite what my client has testified to.
21 And so if he's -- the Government's willing to adjust that, then
22 I don't have any objection.

23 THE COURT: All right.

24 MR. GONZALEZ: I will have the witness make the
25 adjustments, Your Honor.

1 THE COURT: All right.

2 MR. PETERS: And that's our position, as well,
3 Your Honor.

4 THE COURT: All right. Well, let's have him make
5 those changes, and then I will admit it, once the changes have
6 been made.

7 BY MR. GONZALEZ:

8 Q. Agent Compean, please go ahead and make the changes to
9 Government's 51C, anything that you think is incorrect.

10 If you want to move 1 -- why don't you make another
11 circle where 1 should be, which is your first position, and
12 place Number 1 there.

13 A. (Witness complies.)

14 Q. And why don't you go ahead and put your initials there, so
15 we know who did that.

16 A. (Witness complies.)

17 Q. So that's your first position, correct?

18 A. Yes, sir.

19 Q. Now -- and your second position is where?

20 A. Right about here (indicating).

21 Q. The Number 2, as shown on Government's 51C is accurate?

22 A. I believe so.

23 Q. Now, before that -- did you have some other corrections, I
24 believe?

25 Okay. You just drew a little black dot over where it

1 says, drainage ditch. What do you want that to reflect?

2 A. This is where he was -- the approximate -- where I think
3 he --

4 Q. Okay. So that's where the driver's standing?

5 A. I believe so. Maybe it could be a little bit further out.

6 Q. Is that what you want that dot to represent?

7 A. Yes, sir.

8 Q. Why don't you go ahead and write over that, Position of
9 driver.

10 A. (Witness complies.)

11 Q. All right. And then you see the path of travel. Do you
12 agree with that path or not?

13 A. No, sir.

14 Q. Why don't you make a straight line the way you recall it?

15 A. (Witness complies.)

16 Q. All right. That's when you're looking at one another?

17 A. Well, yes, sir.

18 Q. Okay. But then he moves away. Show us what his path of
19 travel was.

20 From over here, where it says, Position of driver,
21 where did he move to? Did he move to the right? That's what
22 I'm getting at, sir.

23 A. Oh, okay. Well, he climbed down through here (indicating).

24 I was already up here (indicating). He took a step over this
25 way (indicating), I guess here (indicating), and then he went

1 back this way (indicating).

2 Q. Okay. So, essentially, the dotted line is -- your
3 disagreement with the dotted line is that it all occurred more
4 to the left than it did to the right?

5 A. Yes, sir.

6 Q. Okay. And the straight lines that are on this photograph
7 are the way you recall it?

8 A. Yes, sir.

9 Q. Thank you.

10 THE COURT: Do you wish to look at it again before I
11 admit it?

12 MR. ANTCLIFF: I don't have any objection, Your Honor.

13 MR. PETERS: No objection.

14 THE COURT: Government's Exhibit 51C will be admitted.

15 BY MR. GONZALEZ:

16 Q. So, Agent Compean, let me first direct your attention to
17 this area. Is that where you saw the driver standing, where
18 I'm pointing (indicating), where it says, Position of driver?

19 A. I believe so, yes.

20 Q. And then over here (indicating) it says, JAC. Is that Jose
21 Alonso Compean?

22 A. Yes, sir.

23 Q. That's where you were standing as you're looking across the
24 ditch from him, right?

25 A. Yes, sir.

1 Q. And that's where you see him raising his hands?

2 A. Yes, sir.

3 Q. And then, from this position, he gets -- goes into the
4 water, jumps across. Is that what you meant by this line?

5 A. Well, no. He climbed down, and he kind of went at a little
6 bit of an angle towards -- towards where I had that other line,
7 the line on the --

8 Q. This line (indicating) or that line (indicating)?

9 A. Right, that one (indicating). That one there.

10 Q. So once he gets to your side, then he -- he starts from
11 this point (indicating), and then he moves across?

12 A. Yes, sir.

13 Q. All right. And then your confrontation with him -- your
14 initial confrontation with him occurs at point 2. Is that
15 true?

16 A. Yes, sir.

17 Q. All right. Thank you.

18 Now, when he's 15 feet away -- oh, I'm sorry. He's at
19 the edge of the -- the lip of the ditch, and he does what?
20 What's his next move? After he raises his hands, does he lower
21 them?

22 A. He put them down at his sides.

23 Q. Okay. Does he reach for anything?

24 A. No, sir.

25 Q. And what does he do next?

- 1 A. He climbed into the ditch.
- 2 Q. Okay. When he climbs into the ditch, what do you do?
- 3 A. I still had the shotgun pointed at him. I continued to
- 4 yell at him to stop and to put his hands up.
- 5 Q. You're tracking him the entire time. Is that correct?
- 6 A. Yes, sir.
- 7 Q. And when he's down there, what's he doing? He's not
- 8 putting -- he's not being responsive to your commands, is he?
- 9 A. Correct.
- 10 Q. And what do you -- what are you yelling at that point?
- 11 A. The same thing. Stop, put your hands up.
- 12 Q. In Spanish?
- 13 A. In Spanish.
- 14 Q. (Speaking Spanish).
- 15 A. Yes, sir.
- 16 Q. And he doesn't do it?
- 17 A. Correct.
- 18 Q. Then is it at this point that Agent Ramos arrives?
- 19 A. I didn't see if it was Agent Ramos. I assumed it was,
- 20 because I heard -- I heard the first -- I heard him as being
- 21 the first vehicle.
- 22 Q. Well, you knew he was behind the driver, or did you know
- 23 that?
- 24 A. Well, from the radio traffic, I -- I figured that somebody
- 25 was close.

- 1 Q. Okay. Well, I mean, did you-all have a lot of local
2 traffic and communications?
- 3 A. Yes, sir.
- 4 Q. And so that's why you knew it was going to be Agent Ramos
5 right behind the driver, correct?
- 6 A. Yes.
- 7 Q. And that's who, in fact, it turned out to be?
- 8 A. Yes, sir.
- 9 Q. Okay. And then when do you see Agent Ramos for the first
10 time?
- 11 A. I didn't see him until I believe the driver was near the
12 edge of the water.
- 13 Q. On which side, sir? The north side or the --
- 14 A. He was still on the north side. He hadn't crossed the --
15 across the -- gone across the water yet.
- 16 Q. And so you see Agent Ramos at the edge of the lip of the
17 ditch, or where do you see him?
- 18 A. I saw somebody approaching. I -- I could -- I didn't see
19 their face. I was focused on the -- on the driver. I saw
20 maybe up until -- up to their waist.
- 21 Q. And when you're focused on the driver, you're still looking
22 at his hands, right?
- 23 A. Yes, sir.
- 24 Q. Because that's part of your training, correct?
- 25 A. Yes.

- 1 Q. And has he reached for anything?
- 2 A. Not yet.
- 3 Q. Not yet.
- 4 Then Ramos comes to the edge of the ditch, and what
- 5 does -- or some officer, and you weren't sure who it was?
- 6 A. Correct.
- 7 Q. Some Border Patrol officer is there at the ditch, and you
- 8 now know that you have reinforcement?
- 9 A. Yes, sir.
- 10 Q. And do you happen to see him pointing down?
- 11 A. I didn't see anybody.
- 12 Q. Okay.
- 13 A. Well, I didn't see that.
- 14 Q. And is Agent Ramos, like, right over the area where the
- 15 driver is? Or where is Agent Ramos, in proximity to the person
- 16 who's in the ditch?
- 17 A. He -- when I first saw him, he was still approaching. He
- 18 was running towards -- towards the ditch.
- 19 Q. And when he gets to the ditch, is he pretty much over him?
- 20 A. Standing on the -- on the edge.
- 21 Q. Okay. On the edge, pretty much on top of him, over him?
- 22 A. A little bit off to, maybe, the left.
- 23 Q. Okay. Almost within touching distance?
- 24 A. No.
- 25 Q. No? Because -- let's see. That ditch is, what, pretty

- 1 deep, isn't it?
- 2 A. Yes, sir.
- 3 Q. About, what, 11 feet, at least?
- 4 A. I believe so.
- 5 Q. Okay. Agent, you're watching the driver. He's still on
6 the north side. Agent Ramos shows up -- or an officer that we
7 later learn to be Agent Ramos. Do you agree that it's him?
- 8 A. Yes.
- 9 Q. Okay. He shows up. And then what happens? Does Agent
10 Ramos, or whoever it is, start issuing commands?
- 11 A. I don't remember. I remember I was still yelling at him
12 to -- to stop and to put his hands up.
- 13 Q. And when that command, (speaking Spanish), is not working,
14 do you change the command?
- 15 A. No, sir.
- 16 Q. And you heard the driver say that he heard someone yell to
17 him, Parate, Mexicano, de mierda, which is, Stop, you Mexican
18 shit. Was that -- did that come from you?
- 19 A. No, sir.
- 20 Q. Okay. But you're saying -- are you saying that that was
21 never said?
- 22 A. Yes, sir.
- 23 Q. No one said it?
- 24 A. I never heard it.
- 25 Q. Okay. So then the driver's at the bottom of the ditch,

1 right, at this point?

2 A. Yes.

3 Q. And what happens next?

4 A. He then -- I saw him look back. I don't know if maybe
5 that's when he saw the -- I don't know it was just Agent Ramos
6 or other agents, but I saw him look back.

7 Then he turned around and looked in -- at the water,
8 and he went right through.

9 Q. Okay. When you say he went right through, describe that
10 for us.

11 A. Well, he went down and crossed the -- the ditch, the water.

12 Q. He waded into it?

13 A. Yes. Yes, sir.

14 Q. It's not very deep, but you kind of sink, because it's soft
15 down there?

16 A. Yes, sir.

17 Q. It's murky and nasty and all that?

18 A. Yes, sir.

19 Q. And so what are you thinking at that point in time?

20 A. He's not going to stop.

21 Q. Okay. And so what are you doing in -- getting ready for
22 that?

23 A. Yes, sir.

24 Q. You're getting ready for him not stopping, right?

25 A. Yes, sir.

1 Q. And where did you think he wanted to go?

2 A. Back south.

3 Q. And you realized the entire time what the driver wanted to
4 do is get back south, get back to Mexico. That's what you
5 thought. Is that correct?

6 A. Yes.

7 Q. And that never changed, in your mind, what his intent was,
8 as far as getting back to Mexico?

9 A. No.

10 Q. So then he jumps across the water, the bottom of the ditch.
11 He gets now to the south side of the ditch, correct?

12 A. Yes, sir.

13 Q. And you're still pointing at him?

14 A. Yes, sir.

15 Q. And then what happens?

16 A. And then I believe that's when I had heard someone yell,
17 Hit him.

18 Q. So someone did yell, Hit him, hit him?

19 A. Yes, sir.

20 Q. Why would anyone yell it? Do you have any idea?

21 A. No, sir.

22 Q. Okay. And --

23 MR. GONZALEZ: May I approach the witness, Your Honor?

24 THE COURT: Sure.

25 MR. GONZALEZ: I'm taking the box.

- 1 BY MR. GONZALEZ:
- 2 Q. Now, Agent Compean, turn around, please, so they can hear
- 3 you, and I'll stand over here.
- 4 You're at the edge of the ditch, right?
- 5 A. Yes, sir.
- 6 Q. The driver is now heading towards you?
- 7 A. Yes, sir.
- 8 Q. Okay. And he's not responding to your commands, correct?
- 9 A. Correct.
- 10 Q. He's climbing up. Is he using one hand, both hands, any
- 11 hands?
- 12 A. He's got his hands at his sides.
- 13 Q. So he's not using his hands?
- 14 A. I don't believe he was.
- 15 Q. So he just climbs up without using his hands?
- 16 A. I think so, yes, sir.
- 17 Q. That's the way he testified, do you recall that, that he
- 18 didn't use his hands to climb up?
- 19 A. No, sir, I don't remember.
- 20 Q. All right. So then he's climbing up. You're up there.
- 21 And you were initially -- why don't you hold this box and show
- 22 us how you're holding the shotgun? Or you want to use the
- 23 shotgun?
- 24 A. Yes.
- 25 Q. Just don't point it over there. Point it at me.

1 Okay. You're at the top, correct?

2 A. Yes, sir.

3 Q. And I'm the driver. Let's pretend I'm the driver. I'm
4 coming up, and you're holding your shotgun how, like you are
5 right now?

6 A. No, sir. I'm pointing it at him.

7 Q. Okay. Point it at me. Go ahead.

8 A. No, I'll point it off to the side.

9 Q. Okay. Thank you.

10 All right. You're pointing it. And what's he doing
11 with his hands?

12 A. He still had his hands at his sides, and he started walking
13 towards me.

14 Q. Walking towards you, running?

15 A. Running, trying to get up.

16 Q. Running, trying to get up with no hands, and -- kind of
17 slow, kind of fast? How could you characterize it?

18 A. I guess medium. He was -- he was still moving.

19 Q. Okay. And he's coming to you. And then -- let's pretend
20 I'm him. I'm coming to you. How close does he get to you?

21 A. I -- I don't want to point it at you.

22 Q. Okay. I appreciate that. Go ahead.

23 A. Okay. Can you repeat the question?

24 Q. How close does he get to you before you change the position
25 of the shotgun, the way you're holding it?

- 1 A. Maybe about right here (indicating).
- 2 Q. So we're --
- 3 A. He was still further -- further down in the ditch.
- 4 Q. Fair enough. Yeah, because, of course, he's further down.
- 5 How far down would you say he was?
- 6 A. Maybe seven or eight feet.
- 7 Q. Seven or eight feet. He's coming up, you're holding the
- 8 shotgun. He continues coming up, right?
- 9 A. Yes.
- 10 Q. What do you do at that point?
- 11 A. He got a little bit closer. I saw him look down at the
- 12 shotgun. He looked up at me. And, to me, it looked like he
- 13 was going to go for the shotgun.
- 14 Q. Okay. And I think yesterday -- did you testify that, at
- 15 some point, he raised his hands a second time?
- 16 A. Yes, sir.
- 17 Q. Was it there that he raised his hands the second time, or
- 18 when?
- 19 A. When he raised them up, it looked like he was going to
- 20 lunge at me.
- 21 Q. So you thought he --
- 22 A. That's how he did it.
- 23 Q. I'm sorry.
- 24 A. I just said that he was -- it looked like he was lunging at
- 25 me.

- 1 Q. Okay. He's below you, and he's going to lunge at you?
- 2 A. Yes.
- 3 Q. Okay. All right.
- 4 A. Well, he was going to come up at me.
- 5 Q. Okay. And if he's coming up at you, you could have taken a
- 6 step back, couldn't you?
- 7 A. Yes, sir, but I did not want to.
- 8 Q. Why was that?
- 9 A. Because, at the edge of the ditch -- I didn't want him to
- 10 climb out, because at the top of the ditch, I had the
- 11 advantage. I wanted to keep that advantage on him at all
- 12 times.
- 13 Q. Because it's always important that the person with the
- 14 advantage is the person on the top. Is that correct?
- 15 A. Yes.
- 16 Q. And you wanted to stay on the top?
- 17 A. Yes.
- 18 Q. Okay. So he's coming at you. His hands are up. You heard
- 19 his testimony. He said his hands are up when he approached
- 20 you. Do you agree with that, sir?
- 21 A. No, sir.
- 22 Q. Okay. Where were his hands?
- 23 A. His hands were still at his sides.
- 24 Q. Like this (indicating)?
- 25 A. Yes, sir.

- 1 Q. Okay. He gets close to you, and you say he wants to lunge
2 at you, or what?
- 3 A. It looked like he was -- he brought his hands up towards
4 me.
- 5 Q. Okay. At this point, he brings his hands up?
- 6 A. Not straight up. It was -- he was bringing them up towards
7 me.
- 8 Q. Okay. He brings them towards you. And of course we're at
9 a ditch, so he's reaching up towards you?
- 10 A. Yes, sir.
- 11 Q. What do you do?
- 12 A. That's when I was -- I was standing there at the edge. I
13 had already moved the weapon away from him. I tried to take a
14 step forward and push him back down.
- 15 Q. And how close is he now?
- 16 A. He was maybe about four to five feet. He was a little bit
17 closer.
- 18 Q. As close as I am now?
- 19 A. Approximately.
- 20 Q. Okay. So you do what? And can you do it slowly, please?
- 21 A. I try -- well, I took a step forward to try and --
- 22 Q. You take a step forward with your left foot?
- 23 A. My -- I believe it was my right.
- 24 Q. Oh, your right foot?
- 25 A. This one (indicating).

- 1 Q. Okay.
- 2 A. I guess that's my right.
- 3 Q. Okay. So you take a step down with your right foot?
- 4 A. Yes.
- 5 Q. And he's reaching for your shotgun?
- 6 A. He was -- as he was doing that (indicating), I brought
- 7 it -- and that's when he went to put his hands up.
- 8 Q. Because he's reaching --
- 9 A. -- when I was coming down this way (indicating).
- 10 Q. Okay. If you -- let's just slow down. Okay?
- 11 He reaches forward, and he's -- you're on top of him.
- 12 He's close enough to grab the gun, is he not?
- 13 A. He was not. He was still -- I did it to where he was still
- 14 too far away from me.
- 15 Q. So you did take a strike?
- 16 A. No, sir.
- 17 Q. Okay. Well, show us how you pushed him off.
- 18 A. I went -- I was holding it like this (indicating), and I
- 19 took a step forward, and I went like this (indicating) --
- 20 Q. Okay. So this --
- 21 A. -- towards the bottom.
- 22 Q. Okay. So your strike -- your striking motion, from right
- 23 to left, is a push?
- 24 A. Yes. I went down like this (indicating).
- 25 Q. Okay. Would you agree that, before you get to this point,

- 1 you're moving it at an angle?
- 2 A. I was moving -- I was bringing it forward, yes.
- 3 Q. Because you didn't go -- let me have this, please.
- 4 You didn't go like this, did you (indicating),
- 5 straight?
- 6 A. No. No.
- 7 Q. Okay. And so you went from one side to the other. Is that
- 8 correct?
- 9 A. I brought it straight -- straight a- -- straight across.
- 10 Q. Straight across. And he's below you. So if he's below
- 11 you, how did you have to make that motion? Show the jury.
- 12 A. I brought it down like this (indicating).
- 13 Q. Okay. Right to left?
- 14 A. I brought it straight across.
- 15 Q. Straight across. And he's this close to you, and you're
- 16 not afraid he's going to grab this trigger?
- 17 A. No, sir.
- 18 Q. He was really quick, wasn't he?
- 19 A. No, sir, I didn't think he was.
- 20 Q. Oh, you don't think he was quick at all?
- 21 A. No, sir.
- 22 Q. In fact, I guess that's why you have him flying out of the
- 23 van, because that's how you get him limping later. Is that
- 24 your explanation as to why he's moving out -- he's jumping out
- 25 of a flying van?

1 MR. ANTCLIFF: I'll object to argumentative.

2 THE COURT: All right. I'll sustain.

3 BY MR. GONZALEZ:

4 Q. So you strike/push the shotgun in the direction of his
5 face?

6 A. Yes, sir.

7 Q. Okay. And what happens next?

8 A. I lost my -- my footing, when I brought my right foot
9 forward, and I slipped.

10 Q. Because it is a very slippery area. That sand is pretty
11 loose in that area, correct, on the ditch?

12 A. In some spots, yes.

13 Q. Okay. And the spot that you were standing, that's exactly
14 what occurred, isn't it, sir?

15 A. Yes.

16 MR. GONZALEZ: May I approach the witness, Your Honor?

17 THE COURT: You may.

18 BY MR. GONZALEZ:

19 Q. Let me show you what's been marked Government's Exhibit 103
20 for identification purposes. That's not you in that
21 photograph, correct?

22 A. Correct.

23 Q. Okay. But does that show the area where you were standing
24 on or about March -- I'm sorry -- February 17, 2005?

25 A. I believe I was a little bit to the left, but yes.

1 Q. That's the general area?

2 A. Yes.

3 Q. And let me show you Government's Exhibit Number 104. Is
4 that the area that was traveled by the driver of the van on
5 February 17th, 2005?

6 A. He was a little bit to the right, but yes.

7 Q. Now, let me show you Government's Exhibit Number 102. Do
8 you recognize that photograph?

9 A. Yes, sir.

10 Q. And is the person in that photograph depicting the area
11 where the driver was standing?

12 A. No, sir.

13 Q. Okay. What does that photograph try to tell us?

14 A. It's just showing the -- I guess the depth of the -- of the
15 ditch.

16 Q. So the person that's in this photograph is standing in the
17 water?

18 A. No, sir. I was standing -- I'm not really sure exactly
19 where I was. I was a little bit north of the water.

20 Q. Okay. But is that the general area? Look across the --

21 A. Yes, it's the general area.

22 Q. Where the driver was standing, correct?

23 A. Yes, sir.

24 MR. GONZALEZ: At this time we would offer
25 Government's Exhibits 103, 104, and 102, and tender them to

1 Defense Counsel.

2 THE COURT: Any objections?

3 MR. ANTCLIFF: I don't have any objection.

4 MR. PETERS: Well, Your Honor, I don't object to 102
5 or 104.

6 But the witness said that the individual -- I think
7 it's Agent Sanchez -- standing in the picture 103 is not in the
8 same spot as he was, and we would object to that.

9 If the -- the scene is in a lot of exhibits. The only
10 thing different about this is the location of the individual
11 that's standing there. And if it's not accurate, then I object
12 to the exhibit.

13 THE COURT: All right. Well, I thought he said that
14 it was like --

15 MR. GONZALEZ: I'll have them -- I'll go over that
16 exhibit with him again, Your Honor, and I'll try to clarify it.

17 THE COURT: All right. So 104 and 102 are admitted.
18 103 is not admitted at this time.

19 MR. GONZALEZ: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 BY MR. GONZALEZ:

22 Q. Agent Compean, here is 103 again. Look at the place where
23 Agent Sanchez is standing. Is that the area where you were
24 standing?

25 A. I believe it was a little bit to the left.

1 Q. Do you want to go ahead and make an X, and show us where
2 you were stand- -- well, first of all, do you see where he is
3 standing on the edge of the ditch?

4 A. Yes.

5 Q. Okay. Is that correct? You were that close to the edge of
6 the ditch?

7 A. Approximately, yes, sir.

8 Q. And I'm going to go ahead and mark it. You tell me where
9 to stop. Here (indicating)?

10 A. A little bit further. Right about there (indicating).

11 Q. So these two dots I've designated, they're your feet?

12 A. No, sir. I was a little bit higher.

13 Q. Okay. All right. Which foot was higher? One of his feet
14 is higher. Is that correct?

15 A. Yes, sir.

16 Q. And you had your foot higher, as he does?

17 A. It's about like that (indicating).

18 Q. Okay. And this is Agent Compean. Is that correct, sir?

19 A. Yes.

20 MR. GONZALEZ: I will tender it to Defense Counsel for
21 any objections.

22 MR. ANTCLIFF: I didn't have one the first time.

23 THE COURT: All right.

24 Mr. Peters?

25 MR. PETERS: I have no further objections.

1 THE COURT: All right. Then 104 will be -- I'm
2 sorry -- 103 will be admitted.

3 BY MR. GONZALEZ:

4 Q. And so then -- are you holding the same position that Agent
5 Sanchez shows in Government's Exhibit 103, essentially, with
6 your right foot lower?

7 A. I -- I believe I was standing right where his left foot is.
8 I was at about the same, I guess, height.

9 Q. Okay. But you're holding your feet the same, in other
10 words, supporting yourself on the ditch with your left foot,
11 and your right foot is lower, or it slips lower?

12 A. It slipped a little bit lower.

13 Q. And that's where you're standing when the driver of the van
14 comes up, correct?

15 A. Yes, sir.

16 Q. And the driver of the van came up from this general area
17 (indicating) right immediately beneath you?

18 A. Right about there, yes, sir.

19 Q. And so -- and once again, you didn't -- why didn't you move
20 back, to make sure you wouldn't fall in or slip?

21 A. Because I didn't want to -- I didn't want to give him the
22 opportunity to climb out.

23 Q. And -- I'm sorry. Government's Exhibit Number 102, that's
24 you in the ditch?

25 A. I can't see myself on this, sir.

1 Q. I'm sorry.

2 A. Yes.

3 Q. Is that you?

4 And what are you showing us with that photograph?

5 A. I believe, in that one, I was standing just above the
6 water.

7 Q. Right above the water?

8 A. Yes, sir.

9 Q. So is that where the driver would have been, had he been
10 coming up the way you just testified, approximately?

11 A. Approximately. It wasn't exactly, but yes, sir.

12 Q. Okay. So the driver was that far below you when you see
13 him come up. Is that correct?

14 A. Yes, sir.

15 Q. Thank you.

16 So you take a strike/push at him, correct?

17 A. Not from that distance.

18 Q. Okay. He gets closer to you?

19 A. Yes, sir.

20 Q. And then, that's when you strike/push?

21 A. Yes, sir.

22 Q. Okay. What happens?

23 A. I lost my footing.

24 Q. Okay. What do you mean, you lost your footing?

25 A. I stepped down, I took that step forward, and my foot went

- 1 on the other side of the slope on the ditch.
- 2 Q. Because it is very slippery there, correct?
- 3 A. Yes, sir.
- 4 Q. And how far did you go do down?
- 5 A. I just dropped down to one knee. My left knee stayed right
- 6 about maybe the edge, or maybe a little -- right along the
- 7 side.
- 8 Q. And what do you do with your shotgun at that point?
- 9 A. I still had it in my hand.
- 10 Q. I mean -- okay. You're dropping down because you lost your
- 11 balance because of your pushing/striking motion?
- 12 A. Yes.
- 13 Q. And he does what?
- 14 A. He went around --
- 15 Q. And how --
- 16 A. -- around me.
- 17 Q. I'm sorry. How close was he to you, when he goes around
- 18 you?
- 19 A. I really don't know.
- 20 Q. Because I think I was, like, two or three feet from you.
- 21 A. About -- maybe about -- about -- about that distance, yes,
- 22 sir.
- 23 Q. Okay. So as you're slipping down, he's going up?
- 24 A. He went around.
- 25 Q. And he didn't --

1 A. He took a step first to the -- a step to the side.

2 Q. And he didn't push you down or kick you down as he's going
3 around you?

4 A. No, sir.

5 Q. And he knows that you've lost your balance, doesn't he?

6 A. Yes, sir.

7 Q. Okay. And he does nothing to you at that point in time?

8 A. Correct.

9 Q. And he had ample opportunity to push you down, had he so
10 wanted?

11 MR. ANTCLIFF: Object, calls for speculation, Judge.

12 THE COURT: I'll overrule.

13 A. No, sir.

14 BY MR. GONZALEZ:

15 Q. He didn't have enough time to push you down?

16 A. No, sir. He went around me, didn't come at me.

17 Q. Yeah, but he could have -- what I'm asking: Had he wanted
18 to come at you, he was close enough to you to have pushed you
19 down or to come at you. Do you agree?

20 A. He may have.

21 Q. Okay. So then what's -- he's still just trying to get away
22 from you?

23 A. Yes, sir.

24 Q. And you have no doubt about that at all, do you?

25 A. Correct.

1 Q. And as he's coming around you, going around you, any
2 weapons in his hands?

3 A. No, sir.

4 Q. He goes around you, sir. You're slipping, and you've got,
5 I guess, one knee on the levee lip and the other one is sliding
6 down, the other foot?

7 A. Then I didn't -- my other foot wasn't sliding down. I -- I
8 dropped down --

9 Q. You dropped down?

10 A. -- right at the edge. Yes, sir.

11 Q. And you're pretty vulnerable at this point in time, are you
12 not?

13 A. Yes, sir.

14 Q. Okay. And Agent Ramos is across the ditch. Does he
15 witness all this, do you know?

16 A. I don't know, sir.

17 Q. Okay. Do you see Agent Ramos?

18 A. No, sir. I was looking at the -- at the driver.

19 Q. Of course. Do you see Agent Juarez?

20 A. No, sir. I didn't see anyone.

21 Q. And do you know whether Agent Juarez has arrived at this
22 point?

23 A. I -- I believe he had, but I -- I really -- from listening,
24 I -- I believe he had. But, other than that, I didn't see him.

25 Q. And Agent Juarez is not coming to your rescue, is that what

- 1 you're telling us, at that point in time?
- 2 A. Yes, sir.
- 3 Q. Okay. So then the driver goes around you. What do you do?
- 4 A. I looked up at him, and I saw him going -- running up
5 sideways. And then he started coming up north on -- on the --
6 on -- onto the levee.
- 7 Q. Okay. I'm sorry. Could you repeat that?
- 8 A. He went around the side. He went around me --
- 9 Q. Okay.
- 10 A. -- and then he started coming out of the ditch.
- 11 Q. He went around your left side?
- 12 A. Yes, sir.
- 13 Q. And he's within, what, two, three feet from you?
- 14 A. No, sir. It was -- it was farther away.
- 15 Q. It was further away. How far away, sir?
- 16 A. At least maybe ten feet.
- 17 Q. Well --
- 18 A. Eight to ten feet. He wasn't -- he wasn't within arm's
19 reach. He was further away.
- 20 Q. I'm sorry. I thought you told us earlier that, you know,
21 you're striking/pushing at him, because he's within two to
22 three feet of you.
- 23 A. Yes, sir.
- 24 Q. Is that correct?
- 25 A. Yes.

- 1 Q. Did I hear you right?
- 2 A. Yes.
- 3 Q. And now you're saying that he's what? I'm not following
- 4 you.
- 5 A. He slipped -- well, when I slipped, instead of -- he ran
- 6 sideways, and then he came up. He -- he made -- he made more
- 7 distance between us. He ran off to the right --
- 8 Q. You're --
- 9 A. -- then, when he climbed up.
- 10 Q. You're slipping, and then he runs to the right. Is that
- 11 what you're saying?
- 12 A. Yes, sir. He went around me, to my left.
- 13 Q. So he runs, what, five, ten feet?
- 14 A. I don't know. He -- he was -- he wasn't close enough for
- 15 me to reach him, to --
- 16 Q. Okay.
- 17 A. -- to grab him.
- 18 Q. Okay. And then he goes up at some point?
- 19 A. Yes, sir.
- 20 Q. And he's still not coming at you, right?
- 21 A. No, sir.
- 22 Q. Then he does what?
- 23 A. He's -- that's when he was climbing out of the -- he was
- 24 running north -- or south, towards the river.
- 25 Q. I understand. All right. So he's running south. And you

1 look back. Is that correct?

2 A. No, sir. I was looking at him. And when I saw him
3 starting to come out of the ditch, that's when I -- I got up.
4 I started -- I started coming up.

5 Q. And you would agree that, at that point in time, you're not
6 in any fear of any imminent boldly harm or injury or anything
7 like that?

8 A. Not at that time, I was not.

9 Q. And you're not in fear of your life, and you hadn't been,
10 up to that point. Is that correct?

11 A. I -- I disagree.

12 Q. Oh, you had been in fear of your life, sir?

13 A. Yes. I -- I felt threatened. He wasn't obeying my
14 commands, yes, sir.

15 Q. But my question to you was: Were you in fear of your life?

16 A. Yes, sir.

17 Q. Okay. He goes -- he continues running. He wants to get
18 back to Mexico, right?

19 A. Yes, sir.

20 Q. And you see this?

21 A. Yes, sir.

22 Q. And -- okay. What do you do? He's running away, and
23 you're watching him run. And how is he running?

24 A. He was going across the -- across the ditch.

25 Q. And, as far as you can tell, is he -- he's running as fast

- 1 as he can?
- 2 A. I -- I really couldn't say.
- 3 Q. But it's clear, in your mind, that he's running?
- 4 A. Yes.
- 5 Q. He's not walking, he's not waiting for you; he's running?
- 6 A. Yes, sir.
- 7 Q. Continues running, then what?
- 8 A. When he started coming -- or started running south towards
- 9 the river, that's when I was getting up, and I threw down my
- 10 shotgun.
- 11 Q. Okay. How far had he gotten, would you guess, before you
- 12 were able to get out of the -- you know, the ditch, where you
- 13 had slipped?
- 14 A. He was -- I believe he was just about to get to the edge of
- 15 the -- to the ditch -- to the edge of the ditch on the south
- 16 side. He was -- he was starting to climb out.
- 17 Q. Okay. He was starting to climb out, and what are you
- 18 doing?
- 19 A. And I was getting up.
- 20 Q. Okay. And he's -- now, you're telling us he's about ten
- 21 feet away from you, climbing out?
- 22 A. Five to ten.
- 23 Q. But he's climbing out?
- 24 A. Yes, sir.
- 25 Q. And he gets out, and he keeps running south?

- 1 A. Yes, sir.
- 2 Q. What do you do?
- 3 A. I -- when -- after I got up, I threw down my shotgun, and I
- 4 ran after him.
- 5 Q. Where did you throw your gun down?
- 6 A. Right along the edge of -- the edge of the -- between
- 7 the -- well, right along the edge of the ditch.
- 8 Q. Okay. And would you agree with me that he had a head start
- 9 on you?
- 10 A. About a -- maybe a second, yes, sir.
- 11 Q. Okay. And you told us earlier that, back then, you weighed
- 12 180 pounds, and then about ten pounds of weight on you. Is
- 13 that true?
- 14 A. Yes, sir, I believe so.
- 15 Q. Okay. And you saw the driver of the van. He's pretty
- 16 thin, correct?
- 17 A. Yes, sir.
- 18 Q. Pretty tall?
- 19 A. Yes, sir.
- 20 Q. And he moved pretty quickly, did he not?
- 21 A. I -- I -- I don't believe he was, but...
- 22 Q. Didn't he weigh about 160 pounds, would you guess?
- 23 A. I -- I wouldn't know.
- 24 Q. Okay. And yet he's got a couple second lead on you, at
- 25 least?

1 A. At least a second. I don't think it could have been more
2 than that.

3 Q. Because you recovered in less than a second?

4 A. I wouldn't say less than a second, but he was still running
5 across, before he came out.

6 Q. Okay.

7 A. He didn't run straight north -- or straight south.

8 Q. And then he's running south, and you're thinking what?

9 A. I can still catch him.

10 Q. All right. And given all of the weight that you were
11 carrying, you -- you were able to catch up to him?

12 A. Yes, sir.

13 Q. Where did you catch up to him?

14 A. I just -- I believe it was on the south -- the south edge
15 of the -- of the levee.

16 MR. GONZALEZ: May I approach the witness, Your Honor?

17 THE COURT: You may.

18 BY MR. GONZALEZ:

19 Q. Let me show to you what's been marked for identification
20 purposes as Government's 106 and 106A. Does -- do either of
21 these photographs have the areas where you chased him?

22 A. Yes, sir.

23 Q. Okay. Which one? Do both of them or one of them?

24 A. I would say probably this one (indicating).

25 Q. When you say "this one," you're referring to Government's

1 Exhibit 106. Is that correct?

2 A. Yes, sir.

3 Q. What about Government's 106A? Does that show the area
4 where you caught up to him, as well?

5 A. Yes, sir.

6 Q. But it's a different angle, and it's an actual close-up.
7 Is that true?

8 A. Yes, sir.

9 MR. GONZALEZ: Now, at this time, we would offer
10 Government's Exhibits 106 and 106A into evidence.

11 THE COURT: Any objection?

12 MR. ANTCLIFF: No, objection.

13 MR. PETERS: No objection, Your Honor.

14 THE COURT: They'll be admitted, Government's Exhibits
15 106 and 106A.

16 MR. GONZALEZ: Approach the witness, Your Honor?

17 THE COURT: You may.

18 BY MR. GONZALEZ:

19 Q. So, Agent Compean, it's your testimony that both you and
20 the driver are running away from the ditch area, correct?

21 A. Yes, sir.

22 Q. And he runs in which direction, would you show me?

23 A. When -- well, when?

24 THE COURT: You don't want to put that up on the
25 chart?

1 MR. GONZALEZ: Yes, Your Honor.

2 BY MR. GONZALEZ:

3 Q. Which one would be better to show the jury where he ran?

4 This is the close-up of the --

5 A. I think this one (indicating).

6 Q. 106A? All right.

7 First of all, Agent Compean, show us where you-all

8 have the -- that -- when you're striking/slipping into the

9 ditch, where did that occur on the photograph?

10 A. I believe it was maybe in this area (indicating).

11 Q. Now, the driver of the van gets around you and runs in what

12 direction?

13 A. He came this way (indicating), and then he came up.

14 Q. Okay. And then he's running south?

15 A. Yes, sir.

16 Q. Okay. And then what do you do, sir?

17 A. I came up this way (indicating). I was -- I was right

18 around here (indicating). I came up this way (indicating), at

19 an angle.

20 Q. And where is it that you catch up to him?

21 A. I believe it was maybe right in this area here

22 (indicating).

23 Q. On the south side of the levee road?

24 A. Yes, sir.

25 Q. Okay. And let me see. That would be approximately --

1 MR. GONZALEZ: May I approach the witness, Your Honor?

2 THE COURT: You may.

3 BY MR. GONZALEZ:

4 Q. Let me see if my math is correct.

5 From where you're chasing him, you're chasing him from
6 point C to point D. Is that correct?

7 A. About halfway.

8 Q. Because this is the levee road, where it says, River levee
9 road, D, E (indicating)?

10 A. Right.

11 Q. And you're -- I think you just indicated that you caught
12 him on the south side of the river levee road, point E?

13 A. Right about there (indicating), yes, sir.

14 Q. Okay. And so from point C to point D is approximately
15 73 feet. Is that correct?

16 A. Yes, sir.

17 Q. And D to E is 17. So you two are running for 100 feet
18 before you catch up to him?

19 A. I believe so, yes. Yes, sir.

20 Q. And you catch up to him, I believe, around this area
21 (indicating). Is that correct?

22 A. Yes, sir.

23 Q. All right. And what happens there?

24 A. I -- I grabbed him by the -- the back of his shirt. I -- I
25 don't remember if it was -- if it was the collar.

- 1 Q. The collar of his shirt?
- 2 A. Or the -- well, the back area of the top of his shirt.
- 3 Q. The top of his shirt?
- 4 A. Yes, sir.
- 5 Q. How do you do that, being that you're that much further
6 away and that much shorter?
- 7 A. Well, it was at his back. I mean, it was -- it was the
8 back, back over here (indicating).
- 9 Q. Because the driver is at least six-foot tall. Would you
10 agree?
- 11 A. Close, yes, sir.
- 12 Q. You do agree?
- 13 A. Yes, sir.
- 14 Q. And you managed to somehow reach up on the top of his --
15 the neck, the collar area?
- 16 A. It was near the collar.
- 17 Q. Okay. And when you're pulling on him, what happens?
- 18 A. He wasn't slowing down.
- 19 Q. I'm sorry?
- 20 A. He wasn't slowing down. I grabbed him, and I pulled him a
21 little -- pulled him towards me, and that's when I -- I reached
22 over and --
- 23 Q. So again, the jumping out of the van hadn't slowed him
24 down?
- 25 A. Not at that point, no, sir.

1 Q. Okay. You're pulling with one hand, two hands, how many
2 hands?

3 A. At first I grabbed on with one hand, and then I was able to
4 reach over with my other hand.

5 Q. And you had both hands in, what, his neck area?

6 A. I had one maybe around his -- his back, maybe his side.

7 Q. Okay. Well, let me approach you, and you show me where you
8 grabbed him.

9 A. The first time, when I reached for him, I had him right
10 here (indicating).

11 Q. Okay. And the second hand?

12 A. The second hand was right in this area here (indicating).

13 Q. All right. Thank you.

14 So the first hand is up in the shoulder and neck area,
15 and the second hand is by his waist, or my love handle area.
16 Is that right?

17 A. A little bit higher, yes, sir.

18 Q. A little bit higher?

19 A. Yes, sir.

20 Q. Okay. You have -- grabbing him by the -- this -- one hand
21 higher, the other one lower?

22 A. Yes, sir.

23 Q. And he does what, sir?

24 A. He continued.

25 Q. And he's dragging you along, or what's going on?

1 A. I jumped on -- I guess I just jumped. I was trying to
2 tackle him. I had a -- I had ahold of him.

3 MR. GONZALEZ: May I approach the witness, Your Honor?

4 THE COURT: Yes, you may.

5 BY MR. GONZALEZ:

6 Q. First of all, Agent Compean, let me show you Government's
7 Exhibits 30 and 31. Do you recognize these two photographs as
8 the area that you've just testified about?

9 A. Yes, sir.

10 Q. Namely, that's where the -- the path of travel by the
11 driver of the van and yourself?

12 A. Yes, sir, it looks like it.

13 Q. And you see, at the bottom of each of these exhibits, a
14 topography map?

15 A. Yes, sir.

16 Q. Okay. So, let me see. These two exhibits are already in
17 evidence.

18 Now, let me direct your attention to Government's
19 Exhibit 108. Is Government's Exhibit 108 essentially a
20 blown-up area of Government's Exhibit -- the lower portion of
21 Government's Exhibit Number 30?

22 Do you want to compare these?

23 A. Yes, sir, it is.

24 MR. GONZALEZ: Your Honor, at this time we would offer
25 Government's Exhibit 108 into evidence and tender it to Defense

1 Counsel.

2 THE COURT: Any objections?

3 MR. ANTCLIFF: I don't have any objection.

4 MR. PETERS: No objection.

5 THE COURT: Government's Exhibit 108 will be admitted.

6 BY MR. GONZALEZ:

7 Q. All right. Let's see. Do you have the pointer up there?

8 A. Yes, sir.

9 Q. Okay. So the left -- what I'm pointing my finger at
10 (indicating), where it says 11 feet, that's the ditch, correct?

11 A. Yes.

12 Q. And then you have your altercation where it says 31
13 degrees, right in that area where I'm pointing (indicating)?

14 A. Yes, sir.

15 Q. Okay. And that's where you're trying to strike him and
16 pushing him away, right?

17 A. Yes, sir.

18 Q. And then he runs across these 53 feet?

19 A. Yes, sir.

20 Q. Goes up the slope of the levee road?

21 A. Yes, sir.

22 Q. That's a fairly -- that's a pretty good slope. Do you
23 agree it's at least a 24-degree slope?

24 A. Yes, sir.

25 Q. And you're chasing after him, and you're wearing your work

- 1 boots, right?
- 2 A. Yes, sir.
- 3 Q. And did you happen to notice what kind of shoe he's
- 4 wearing, by any chance?
- 5 A. No, sir.
- 6 Q. Okay. And he runs across, correct, the flat area of the
- 7 levee road?
- 8 A. Yes, sir.
- 9 Q. And where I'm holding my finger, I'm pointing my finger to
- 10 the south edge of the levee road (indicating). Is that where
- 11 you catch up to him?
- 12 A. Right about there, yes, sir.
- 13 Q. Okay. And so now he's going down, correct? Now, he's
- 14 going down the slope?
- 15 A. Yes, sir.
- 16 Q. The south slope of the levee?
- 17 A. Yes.
- 18 Q. And right around this area (indicating), and it's another
- 19 24 degrees down, you're hanging onto him, or reaching out to
- 20 him?
- 21 A. But I was already closer to him than that.
- 22 Q. Closer to this area, sir, the --
- 23 A. To him. To him.
- 24 Q. I understand. But I want to -- I guess what I'm wondering
- 25 is, where is it that you-all made -- you make contact?

- 1 A. Right here, the edge (indicating).
- 2 Q. Okay. And so right near the edge, that's when you grab
- 3 him, right?
- 4 A. Yes, sir.
- 5 Q. And he continues running?
- 6 A. Yes, sir.
- 7 Q. He's now going south -- I mean -- south, and he's going
- 8 down. Isn't that correct?
- 9 A. Yes, sir.
- 10 Q. And this area where I'm pointing at (indicating), the south
- 11 slope of the levee road, just like the north slope, it's pretty
- 12 slippery. There's a lot of sand and rocks there. Is that
- 13 true?
- 14 A. Yes, sir.
- 15 Q. And so he's running down, and you're grabbing him?
- 16 A. Yes, sir.
- 17 Q. Then what happens?
- 18 A. That's when we both -- we both fell down. We -- we went
- 19 down.
- 20 Q. You go tumbling down?
- 21 A. Yes, sir.
- 22 Q. And do you go down to the -- how far do you tumble?
- 23 A. I really don't remember. We just -- I remember we
- 24 stopped -- we stopped moving.
- 25 Q. Well, you had pretty good momentum. Is that correct?

- 1 A. Yes, sir.
- 2 Q. He's run- -- well, how fast were you running, sir?
- 3 A. I don't know, sir.
- 4 Q. Well, were you running as fast as you possibly could?
- 5 A. Yes, sir.
- 6 Q. And that's the way you caught up to him, right?
- 7 A. Yes, sir.
- 8 Q. And then you've got all this momentum going, and you grab
- 9 him, and that's what causes both of you to fall, right?
- 10 A. Yes, sir.
- 11 Q. Okay. You've got him on the ground now, correct?
- 12 A. Yes, sir.
- 13 Q. What happens next?
- 14 A. I had him by the -- by his ankle. And I was hanging on --
- 15 I was hanging on, hoping -- or waiting for the other agents
- 16 to -- to come across to -- to help me out.
- 17 Q. So you had him by the shirt and the collar, and -- correct?
- 18 And you lose your grip somehow?
- 19 A. Yes, sir.
- 20 Q. Okay. In the tumbling and the falling?
- 21 A. Yes, sir.
- 22 Q. And you're rolling over one another, or what's going on?
- 23 A. I really don't remember. I remember, when we stopped, I --
- 24 all I could grab was his -- was his ankle.
- 25 Q. And that area is pretty rocky. And you would agree with

1 me, if you slipped and were wrestling and fighting there, you
2 would sustain some pretty good cuts and scratches on your body,
3 on your clothing. Do you agree?
4 A. It could have happened, yes, sir.
5 Q. Especially with the momentum that you had going?
6 A. Yes, sir.
7 Q. And, in fact, your clothing wasn't torn at all that
8 afternoon, was it?
9 A. I don't believe so.
10 Q. Okay. So then you're at the bottom wrestling. Is that
11 true?
12 A. Yes, sir.
13 Q. And somehow you've lost your grip, and you're grabbing him
14 from an ankle, or what are you telling us?
15 A. Yes, sir.
16 Q. And, by this point, you're on flat ground?
17 A. Yes, sir.
18 Q. You're holding him -- do you remember if it was the left or
19 right ankle?
20 A. I believe it was the right.
21 Q. Okay. And what's he doing, dragging you, pulling you?
22 What's he doing?
23 A. He was trying to kick free, trying to break free.
24 Q. Kick your hand away from his other ankle, or what's he
25 doing?

1 A. Yes, sir. And he was trying to -- he was trying to kick
2 with his left, and he was trying to break his -- break free
3 with his -- trying to get free, trying to get loose.

4 Q. And what's he trying to do, in your mind, at that point in
5 time?

6 A. He's trying to get back south.

7 Q. He's -- just wants to go back home, as far as you can tell?

8 A. Yes, sir.

9 Q. Okay. And so you had him by the ankle, and he kicks your
10 hands away, or what does he do?

11 A. He was trying to, yes, sir.

12 Q. And, I'm sorry. When you're holding him by the ankle, does
13 he start to get up?

14 A. He was starting to, yes, sir.

15 Q. Okay. And you're still on the ground?

16 A. Yes, sir.

17 Q. And is that where you're saying he reaches down and gets
18 dirt, or what does he do?

19 A. He -- he bent -- he was trying to -- as he was trying to
20 get himself -- come up off the ground, that's when he pushed --
21 he kicked the dirt back with his hand.

22 Q. Well, demonstrate that -- okay. You're holding him by the
23 foot. Let's say I'm him. Am I on the ground?

24 A. He was on the ground.

25 Q. I'm on the ground, and you're holding me by one ankle. Is

- 1 that correct?
- 2 A. Yes, sir.
- 3 Q. And then he -- which hand? Would it be the left, right, do
4 you recall?
- 5 A. The left.
- 6 Q. He uses the left hand and, what, pushes some dirt in your
7 face?
- 8 A. Yes, sir.
- 9 Q. Okay. And was he pushing dirt in your face, or is he just
10 trying to get up and get away?
- 11 A. It looked -- to me, it looked like he was -- he pushed his
12 hand down, and it looked like he picked up some sand and gravel
13 and was going to throw it back.
- 14 Q. Okay. So he gets a handful of sand and gravel?
- 15 A. Yes, sir.
- 16 Q. And he manages to raise himself up?
- 17 A. Yes, sir, after -- after he threw it.
- 18 Q. After he throws it at you -- you're holding on for dear
19 life. You're holding onto his foot, right?
- 20 A. Yes, sir.
- 21 Q. And then he throws sand in your face with his left hand?
- 22 A. Yes, sir.
- 23 Q. Okay. Who's on top, now?
- 24 A. On top where?
- 25 Q. Who has got the superior position? Who's got the

- 1 advantage?
- 2 A. I believe he still did. Well, he did, there.
- 3 Q. I mean, he had -- well, I mean, you told us, I believe,
- 4 earlier, that you wanted to be higher, and -- because that's
- 5 the point of advantage. Do you agree, sir?
- 6 A. Yes, sir.
- 7 Q. Now he's got the advantage, according to what you're
- 8 telling us?
- 9 A. Yes, sir.
- 10 Q. What does he do?
- 11 A. He continued running south.
- 12 Q. He's standing over you, essentially, and he's blinded you,
- 13 according to what you're telling us, right?
- 14 A. I -- I let go of him. When he threw the dirt, I let go of
- 15 his -- of his ankle.
- 16 Q. And where is your gun?
- 17 A. It's on my side -- on my side -- on my belt.
- 18 Q. And he's standing over you. Does he bend over and reach
- 19 for your gun?
- 20 A. No, sir. I put my hands -- both my hands on my weapon.
- 21 Q. And so did you think that's why he didn't reach for it?
- 22 A. I don't know.
- 23 Q. But he doesn't reach for your weapon?
- 24 A. No, sir, not -- not there.
- 25 Q. And you're on the floor, and you're exposed?

- 1 A. Yes, sir.
- 2 Q. Okay. And he doesn't pull any weapon out of his clothing,
3 does he?
- 4 A. I didn't see anything there.
- 5 Q. And if he wanted to kill you, you agree he could have shot
6 you right there and then?
- 7 A. I don't know, sir.
- 8 Q. He had opportunity, if that was the intent. Do you agree?
- 9 A. He may have, yes, sir.
- 10 Q. But, nonetheless, he gets up. You've got a lot of -- a
11 handful of dirt in your eyes?
- 12 A. No, sir. I was able to -- I turned my -- I turned my face
13 away. I got a little bit, but not -- not -- not a lot. I did
14 get some in my face, yes.
- 15 Q. Well, I mean, did it get in your eyes, either eye?
- 16 A. No, sir.
- 17 Q. Is that maybe why you didn't report it, because you were
18 never injured?
- 19 A. I just never did, sir.
- 20 Q. Because the dirt never went in your eyes, did it?
- 21 A. It -- it did not, sir.
- 22 Q. Okay. But yet, you go and tell other people, such as some
23 of the other agents on the scene, that -- who did you tell that
24 he threw dirt in your eyes?
- 25 A. I believe it was Agent Yrigoyen.

- 1 Q. Okay. And that dirt never touched your eyes, did it?
- 2 A. It went -- he threw it at my eyes, yes, sir.
- 3 Q. But it didn't hit your eyes, did it?
- 4 A. It didn't go inside.
- 5 Q. Because you were quick enough to turn away, right?
- 6 A. I wouldn't say quick enough, but it -- I didn't get any in
- 7 my eyes.
- 8 Q. Throwing dirt in your eyes, you're looking away so it
- 9 doesn't hit your eyes, and that's natural. And, at the same
- 10 time, you're reaching to protect your weapon?
- 11 A. I let go of him first.
- 12 Q. Okay. So then what does he do? He continues running?
- 13 A. Yes, sir.
- 14 Q. And then what direction does he run from you?
- 15 A. I believe he was running to the left.
- 16 Q. Okay. Let me show you a photograph.
- 17 MR. GONZALEZ: May I approach the witness, Your Honor?
- 18 THE COURT: You may.
- 19 BY MR. GONZALEZ:
- 20 Q. I'm showing you what's been introduced into evidence as
- 21 Government's Exhibit Number 3.
- 22 A. Okay.
- 23 Q. Do you recognize what's shown in this photograph?
- 24 A. Yes, sir.
- 25 Q. Could you tell us -- and this is the levee road. Is that

1 correct?

2 A. Yes, sir.

3 Q. And you-all had this wrestling match at the south edge of
4 the levee road?

5 A. Yes, sir, right there (indicating) at the -- right at the
6 bottom.

7 Q. And you-all slide down, correct?

8 A. Yes, sir.

9 Q. And you said he ran in which direction?

10 A. Can I step up?

11 Q. Yes, please.

12 A. He was down -- we were down here (indicating), and he
13 started running over this way (indicating).

14 Q. So I think yesterday you testified at a 45-degree angle.

15 A. About, yes, sir.

16 Q. And so that's your testimony --

17 A. Yes, sir.

18 Q. -- today, as well.

19 And so he's going -- from you, he's going -- on this
20 photograph -- and I'm not great with directions. So I guess
21 that would be southwest?

22 A. Southeast.

23 Q. Southeast? In this photograph?

24 A. Yes, sir.

25 Q. Okay. So he's going southeast, and I'll take your word for

1 it. Okay? But southeast?

2 A. Yes, sir.

3 Q. Okay. And so he's running in this direction (indicating).

4 MR. GONZALEZ: May I approach the witness, Your Honor?

5 THE COURT: You may.

6 BY MR. GONZALEZ:

7 Q. Now, let me show you Government's Exhibit Number 54. Do

8 you see these different points, 1, 2, 4, and 3?

9 A. Yes, sir.

10 Q. Okay. You're -- you're saying he's actually traveling in

11 the opposite of that direction. Is that correct?

12 A. Yes, sir.

13 Q. And let me put that on the screen, so the jury can see what

14 we're talking about.

15 It's your testimony that, from point 1, he's going

16 southeast, the way I'm running my finger (indicating), is that

17 correct, from this point down to the bottom corner of this

18 photograph, where I'm holding my finger (indicating)? So he's

19 going from point 1, in this direction (indicating)?

20 A. From there, he was coming across up over here (indicating).

21 Q. And then he ran where, sir?

22 A. And then he ran this way (indicating).

23 Q. And you see the other points on that map?

24 MR. ANTCLIFF: The other what?

25 A. Yes, sir.

- 1 BY MR. GONZALEZ:
- 2 Q. The other points, points 1, 2, 4, and 3?
- 3 A. Yes, sir.
- 4 Q. And it's your testimony today that that's not the way he
- 5 was running?
- 6 A. Correct.
- 7 Q. Yet that's the way I think the driver testified he was
- 8 running, and you disagree with that?
- 9 A. Yes, sir.
- 10 Q. So you let him go, correct? You're on the ground, you let
- 11 him go?
- 12 A. Yes, sir.
- 13 Q. And he takes off running?
- 14 A. Yes, sir.
- 15 Q. What do you do?
- 16 A. As soon as I let go, I reach down to cover my weapon.
- 17 Q. Okay. You cover your weapon, then what?
- 18 A. Then I looked up, and I saw him running.
- 19 Q. Okay. And then what, sir?
- 20 A. I looked up. I was watching him, and I saw him -- he
- 21 slowed down a little bit, and then I saw him turn around and
- 22 look at me, and he moved his hand -- his hand back.
- 23 Q. And what did you do at that time?
- 24 A. I drew my weapon.
- 25 Q. Okay. Explain how you did that.

1 A. I was down on the ground --

2 Q. You were down on the ground. I think yesterday you
3 testified you got on your knee, or what?

4 A. Yes, I came up to one knee.

5 Q. You're on one knee, and you're on the south side of the --
6 of that levee road?

7 A. Yes, sir.

8 Q. And --

9 MR. GONZALEZ: May I approach the witness, Your Honor?

10 THE COURT: You may.

11 BY MR. GONZALEZ:

12 Q. Well, I'll show you from right here.

13 And you agree -- here, where it says ten -- and I
14 don't know if you can see it from there. But it says that the
15 height from the top of the levee road to the bottom, or to the
16 vega road -- or the vega area -- is ten feet. Would you agree
17 with me? Is that correct?

18 A. I can't see the number.

19 Q. Well, let me bring it to you.

20 MR. GONZALEZ: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 BY MR. GONZALEZ:

23 Q. Is it ten feet?

24 A. Yes, sir.

25 Q. Okay. And this -- and this is the area, where it says ten,

- 1 that you're on your knee, and that's where you start taking a
2 shot, or what?
- 3 A. Yes, sir, I believe so.
- 4 Q. Okay. You're not laying down when you're shooting, are
5 you?
- 6 A. No, sir.
- 7 Q. You're on your knee. Has there been any weapon fire at
8 that point?
- 9 A. No, sir, I don't believe so.
- 10 Q. Because you initiate the weapon fire, because you think
11 that he's pointing something at you, correct?
- 12 A. Yes, sir.
- 13 Q. All right. You pull out your weapon, and you do what?
- 14 A. I began firing.
- 15 Q. And from your knee, correct? So you're up on your knee
16 firing away?
- 17 A. Yes, sir.
- 18 Q. Where is Agent Ramos?
- 19 A. I don't know, sir.
- 20 Q. You haven't seen him yet?
- 21 A. No, sir.
- 22 Q. You do see him at some point in time, don't you?
- 23 A. Yes, sir.
- 24 Q. But not yet?
- 25 A. Right.

- 1 Q. You shoot -- how many times do you shoot?
- 2 A. I -- I -- 10, 11 rounds. I almost emptied out the
- 3 magazine.
- 4 Q. Okay. Well, how -- it has, what, 11, plus one in the
- 5 chamber, 12?
- 6 A. Yes, sir.
- 7 Q. But you didn't empty that?
- 8 A. No, sir.
- 9 Q. And so when -- and you heard Agent Juarez testify that,
- 10 when he was over here -- and I'm talking about the north side
- 11 of the drainage ditch -- he saw across and saw you shooting.
- 12 Is that correct? Or not -- not only shooting, but changing
- 13 magazines. You heard his testimony?
- 14 A. Yes, sir.
- 15 Q. Okay. And did you change magazines?
- 16 A. As I was coming up to my feet, I reloaded. I did reload my
- 17 weapon.
- 18 Q. Okay. And, sir, you're not ten feet tall, like you told us
- 19 earlier. So he could not have seen you at this point.
- 20 A. Correct.
- 21 Q. Okay. So either -- do you think he saw you or not? Maybe
- 22 you're a little bit higher?
- 23 A. I don't believe so.
- 24 Q. Okay. So then you -- you're up and shooting?
- 25 A. I was on -- on one knee shooting.

1 Q. Okay. And you fire 10, 11 times, correct?

2 A. I -- I didn't count them. I just knew I had been firing
3 for -- for a while.

4 Q. Well, at some point, you do count them, don't you?

5 A. No, sir. Well, later on.

6 Q. Okay. We'll get to that. All right.

7 Where is Agent Ramos?

8 A. I didn't see him until I was -- I was still on one knee. I
9 was coming up, trying to stand up to-- to reload. And as I
10 was going for my magazine, I heard a shot.

11 Q. Okay.

12 A. And --

13 Q. You're going for your magazine, and what happens?

14 A. And I heard a shot.

15 Q. Where is Agent Ramos?

16 A. He was standing a few feet ahead of me.

17 Q. Okay. You heard his testimony, correct?

18 A. Yes, sir.

19 Q. And I believe -- and correct me if I'm wrong. I thought it
20 was his testimony that he hears the shots when he's inside the
21 ditch.

22 A. I don't remember, sir.

23 Q. Okay. Well, let's assume that that's correct, that he
24 hears the shots when he's in the ditch. So that means you're
25 on your knees, one knee, at least, correct?

1 A. Yes, sir.

2 Q. And so then you heard his testimony that he comes across
3 the slope and the levee, and you're on the ground.

4 A. Yes, sir.

5 Q. So how could he have heard the shots if you were on your
6 feet -- or on your knee?

7 A. How could he have heard the shots?

8 Q. Yes, sir. Because he says, I hear shots. I go running. I
9 look across. My partner is on the floor. Is that correct?
10 I'm sorry. Agent Compean is on the floor.

11 You heard him say that?

12 A. Yes, sir.

13 Q. Okay. And I guess that what I'm wondering is, if he hears
14 shots -- you're on your knees shooting. That's what he's
15 responding to, you shooting, correct?

16 A. Yes, sir, I believe so.

17 Q. But you're not on the floor, were you?

18 A. I was on the ground. I was on one knee.

19 Q. Okay. You didn't fall, did you, after you were on one
20 knee?

21 A. No, sir.

22 Q. And yet he comes across, because he hears shots. And
23 you're -- you're shooting. You're on one knee, you're not on
24 the ground. But somehow he has you passed out, or on the
25 ground. Is that correct?

- 1 A. I don't know what he saw, sir.
- 2 Q. You shoot all these rounds. Then what happens?
- 3 A. Then I tried to -- I started to reload.
- 4 Q. Okay. And what happens? Were you successful in your
5 reload attempts?
- 6 A. I couldn't get the magazine pouch open. And that's when
7 I -- I started to come up.
- 8 Q. What do you mean, "come up"?
- 9 A. Well, I was on the -- on one knee, and I was -- I was
10 firing. I was trying to reload, to pull out the magazine from
11 my belt, and I wasn't able to. And that's when I started to
12 come up, to stand up.
- 13 Q. And you're at the bottom of the slope, so no one can see
14 you, according to your testimony?
- 15 A. Yes, sir.
- 16 Q. Okay. And yet, somehow, Juarez sees you reloading your
17 magazine?
- 18 A. That's -- I don't know what he -- what he saw.
- 19 Q. But you were trying to reload your magazine, do you agree?
- 20 A. Yes, sir.
- 21 Q. And you didn't tell him that you were trying to reload your
22 magazine, did you, before this trial?
- 23 A. No, sir.
- 24 Q. In fact, you told no one about all the shooting you had
25 done, did you?

- 1 A. No, sir.
- 2 Q. So you shoot 10, 11 times, and then what happens?
- 3 A. Then I came up to -- then I reloaded.
- 4 Q. You did reload?
- 5 A. Yes, sir. I put the new magazine in.
- 6 Q. Oh, I'm sorry. I thought yesterday you didn't exchange
- 7 magazines.
- 8 A. No, sir. I was coming up to -- to do that.
- 9 Q. So you did exchange your magazines?
- 10 A. Yes, sir.
- 11 Q. Just like Oscar Juarez said?
- 12 A. I -- I did the -- the magazine exchange is -- is different.
- 13 But I did reload my magazine, yes, sir.
- 14 Q. Now -- okay. Let's clarify that. What's different?
- 15 A. The magazine exchange is when you release it and you still
- 16 hand -- hold onto the empty magazine.
- 17 Q. And -- okay. You're holding onto an empty magazine, and
- 18 what are you doing with it?
- 19 A. While you're bringing out the new one.
- 20 Q. I'm sorry?
- 21 A. And you're bringing out a -- a full -- a full magazine.
- 22 Q. A full magazine, and you put it in the gun?
- 23 A. Yes, sir.
- 24 Q. So you did reload?
- 25 A. Yes, sir.

- 1 Q. You did exchange magazines?
- 2 A. I did a reload, yes, sir.
- 3 Q. Okay. I guess I'm not understanding the distinction.
- 4 Would you please explain it to me?
- 5 A. What I did, I released the magazine. Well, there's a
- 6 button on the weapon. I released it, and that's when I brought
- 7 out the -- the other one.
- 8 Q. Okay.
- 9 A. And I -- I dropped it. I let it drop.
- 10 Q. You let it drop, and you put a new one in with another --
- 11 the new one had all the rounds in it, correct?
- 12 A. Yes, sir.
- 13 Q. It had the 11 rounds in it?
- 14 A. Yes, sir.
- 15 Q. And now it's your testimony -- what did you do with that
- 16 second magazine?
- 17 A. It stayed on the ground.
- 18 Q. I'm sorry? You dropped a magazine, and you just left it on
- 19 the --
- 20 A. The empty one or...
- 21 Q. Yes.
- 22 A. The empty one stayed on the ground.
- 23 Q. And when did you retrieve that one?
- 24 A. As I was walking back to the -- to the levee.
- 25 Q. Okay. So that's also not available for this jury to see.

- 1 Is that correct?
- 2 A. Yes, sir.
- 3 Q. And why did you pick it up?
- 4 A. Because it was my magazine.
- 5 Q. Okay. And then you hear a shot?
- 6 A. Yes, sir.
- 7 Q. And where is Agent Ramos?
- 8 A. He was standing a few feet ahead of me.
- 9 Q. Okay. And are you still pointing your weapon?
- 10 A. Yes, sir.
- 11 Q. Now, are you still shooting?
- 12 A. No, sir.
- 13 Q. All right. Is -- Agent Ramos is now how far ahead of you?
- 14 A. A few feet.
- 15 Q. To the right, to the left, which direction, sir?
- 16 A. To the left.
- 17 Q. To the left of you. And how far ahead does he get?
- 18 A. About seven or eight feet, maybe.
- 19 Q. And what does he do?
- 20 A. I heard -- I heard him -- I heard a shot, and I looked
- 21 over, and I saw him.
- 22 Q. I'm sorry. He's how far away?
- 23 A. About seven feet.
- 24 Q. Okay. And what's he yelling?
- 25 A. I don't remember.

- 1 Q. Okay. But he's seven feet away, and you don't hear him
2 yell anything, do you?
- 3 A. I didn't hear anything, sir.
- 4 Q. Okay. But you heard him testify a couple days ago that he
5 yelled to the fleeing driver, Stop. And that's when the driver
6 looks around, and that's when he shoots him. Or you don't
7 recall that testimony?
- 8 A. I do, but I did not hear anything, sir.
- 9 Q. Okay. And you're only seven feet away from him, right?
- 10 A. Yes, sir.
- 11 Q. And how far away is the fleeing driver at this point in
12 time, sir?
- 13 A. I believe he was near the edge of the -- the last time I
14 saw him, he was near the edge of the -- of the river, of the
15 vega.
- 16 Q. So you're seeing him as he's running away. Officer Ramos
17 runs ahead of you. Does he say anything to you? Hey, Joe, are
18 you okay, or what -- anything like that?
- 19 A. No, sir.
- 20 Q. He calls you Joe, right?
- 21 A. He ran past me.
- 22 Yes, sir.
- 23 Q. He runs right past you, right?
- 24 A. Yes, sir.
- 25 Q. And, by that point, you're standing up?

- 1 A. Yes, sir, I was coming up.
- 2 Q. Okay. And what other officers have arrived on the scene by
3 that point?
- 4 A. I didn't see anyone.
- 5 Q. From the other side -- on the south side -- you've heard
6 testimony that Juarez is there, Vasquez arrives, because Juarez
7 and Vasquez both hear the firing. So would you agree that they
8 were, in, fact there?
- 9 A. They were.
- 10 Q. Okay. And no one comes to the rescue?
- 11 A. No, sir.
- 12 Q. Except Agent Ramos?
- 13 A. Yes, sir.
- 14 Q. Now, how far away is Agent Ramos into the vega before he
15 shoots that final shot?
- 16 A. I don't know, sir.
- 17 Q. Any idea?
- 18 A. He was -- he was ahead of me.
- 19 Q. Okay. You see his back. Is that correct?
- 20 A. About half.
- 21 Q. Okay. And when his back is to you, is that when you're
22 picking up all the casings?
- 23 A. No, sir.
- 24 Q. That happens later?
- 25 A. Yes, sir.

1 Q. Okay. Well, let's -- okay.

2 So he shoots the final shot. The driver falls down?

3 A. I looked -- when I heard the shot, I looked to the side. I
4 saw Agent Ramos. Then I looked again for the driver, and I
5 didn't see him.

6 MR. GONZALEZ: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 MR. GONZALEZ: Your Honor, I'm going to show the
9 witness his statement, and it's Government's Exhibit 107.

10 BY MR. GONZALEZ:

11 Q. First of all, Agent Compean, do you recognize Government's
12 Exhibit 107?

13 A. Yes, sir.

14 Q. And it's a four-page statement. Is that correct?

15 A. Yes, sir.

16 Q. Well, actually, your statement is only on three pages. Is
17 that fair?

18 A. Yes, sir.

19 Q. Let's talk about your statement.

20 THE COURT: You know what? Why don't we take a short
21 break? It's about 3:45. We've been sitting for a while, so
22 let's go ahead and take a sort recess.

23 Ladies and gentlemen of the jury, we will recess for
24 about 15 minutes.

25 (Open court, parties present, jury not present.)

1 THE COURT: You may be seated.

2 I just want to know, before we take our break, how
3 much longer?

4 MR. GONZALEZ: I'm hoping not more than half an hour.
5 I assume we will have redirect.

6 MR. ANTCLIFF: I don't know.

7 THE COURT: The only reason I'm asking is because I'm
8 really going to try to finish up testimony tonight. So
9 everybody is aware, we may be a little bit late -- not too
10 late.

11 MR. ANTCLIFF: Thank you.

12 (Open court, parties present, jury not present.)

13 THE CLERK: Court is back in session.

14 THE COURT: You may be seated.

15 Anything we need to take up before we bring the jury
16 back in?

17 MR. GONZALEZ: Not from the Government.

18 MR. ANTCLIFF: No, Your Honor.

19 MR. PETERS: Not from us.

20 THE COURT: Okay.

21 (Recess; open court, parties and jury present.)

22 THE COURT: You may be seated.

23 You may proceed.

24 MR. GONZALEZ: Thank you, Your Honor.

25

1 BY MR. GONZALEZ:

2 Q. Agent Compean, you testified that you fired off 10 rounds
3 when you are on your knee, approximately, or how many rounds,
4 sir?

5 A. Approximately.

6 Q. 9, 10, how many?

7 A. Approximately. I didn't empty the magazine. So it was --
8 it was less than 12.

9 Q. Why did you change magazines, or reload or whatever, if it
10 wasn't empty?

11 A. Because I knew -- I -- I didn't know how many rounds
12 exactly I had fired. I knew I was coming close to being empty,
13 and I still -- I still saw him as a threat.

14 Q. Okay. All right. And you're shooting. Agent Ramos goes
15 running in front of you, right?

16 A. Not in front of me.

17 Q. Well, I'm sorry. To the side of you?

18 A. Yes, sir.

19 Q. And you're done shooting, and he's running up. He takes
20 one final shot?

21 A. I -- I heard one shot.

22 Q. You didn't see it -- you didn't see him raise his hand and
23 shoot?

24 A. I heard it, and that's when I turned.

25 Q. Okay. So he's to your right. Is that correct?

- 1 A. To my left.
- 2 Q. To your left. He's to your left. Okay. He's to your
3 left. He runs up. You hear a shot, and you look, and he's
4 doing what?
- 5 A. He has got his gun pointed straight -- straight ahead.
- 6 Q. Then what do you do?
- 7 A. I -- I started walking up towards him.
- 8 Q. Okay. And then, when you walk towards him, what do you-all
9 do next?
- 10 A. We were look- -- I -- at least I was. I was still
11 looking -- looking for the driver.
- 12 Q. Okay. And you're right next to Agent Ramos. Is that
13 correct?
- 14 A. Yes.
- 15 Q. What's he doing?
- 16 A. He's looking, as well.
- 17 Q. Looking for the driver?
- 18 A. Yes, sir.
- 19 Q. And do you-all see him anymore?
- 20 A. Not at first.
- 21 Q. Then, at some point in time, you do see him again?
- 22 A. Yes, sir.
- 23 Q. How much time had elapsed?
- 24 A. I really couldn't say.
- 25 Q. Okay. And you are out there. Are you just all stationary?

- 1 Are you moving? What are you-all doing?
- 2 A. Just standing with -- I -- I had my gun drawn.
- 3 Q. Gun drawn, in the middle of the vega?
- 4 A. Yes, sir.
- 5 Q. And Agent Ramos is next to you, also his gun drawn, in the
- 6 middle of the vega?
- 7 A. Yes, sir.
- 8 Q. And the driver is -- you can't see him?
- 9 A. No, sir.
- 10 Q. And he's somewhere in the river?
- 11 A. Yes, sir.
- 12 Q. Is it fair to say that, if he's somewhere in the river,
- 13 he's got a clear shot of you and Ramos standing in the middle
- 14 of the vega?
- 15 A. Yes, sir.
- 16 Q. And there's no trees, nothing, no cover whatsoever?
- 17 A. No, sir.
- 18 Q. And yet, you think nothing of just standing there in the
- 19 middle of vega pointing your weapon?
- 20 A. I was -- I was looking for him.
- 21 Q. Okay. And I guess Agent Ramos is also just -- well, doing
- 22 what?
- 23 A. I -- I -- I don't know. I was looking for the driver.
- 24 Q. How far away is he from you, sir?
- 25 A. I was standing next to him.

- 1 Q. Okay. So both of you are looking south, looking around,
2 scanning, what?
- 3 A. Yes, sir.
- 4 Q. And you do what next?
- 5 A. We continued watching -- looking -- looking for him. And
6 we saw him coming out of the river.
- 7 Q. And you're just looking for him, standing, or are you
8 moving towards him?
- 9 A. We stayed. We -- we weren't moving.
- 10 Q. And you're stationary?
- 11 A. Yes, sir.
- 12 Q. Okay. And then you do what?
- 13 A. We saw him climb -- well, I saw him climb out.
- 14 Q. Okay. And you see him climb out from where, sir?
- 15 A. From the river.
- 16 Q. And what do you see him do?
- 17 A. He started walking back south.
- 18 Q. Okay. And describe his walk to the jury.
- 19 A. He started walking back south, slowly.
- 20 Q. Okay. Limping?
- 21 A. It -- it looked like it could have been.
- 22 Q. Okay. And did you think, Oh, my God, I think we shot that
23 man?
- 24 A. I wasn't sure.
- 25 Q. Did you think that?

1 A. No, sir, not initially. I didn't see any blood or
2 anything.

3 Q. It hasn't even crossed your mind?

4 A. It did, but I didn't think -- I didn't think he had been
5 hit.

6 Q. You did or did not think he had been?

7 A. I did not.

8 Q. He's --

9 A. It crossed my mind, but I did not think he was hit.

10 Q. And do you ever think he's been hit?

11 A. No, sir.

12 Q. Okay. So he's -- you see him walking, limping back,
13 correct?

14 A. It looked like he could have been limping.

15 Q. All right.

16 A. That's --

17 Q. Then you and Agent Ramos do what?

18 A. We kept our -- our weapons pointed at him. Once he
19 started -- we -- I saw that he wasn't turning around, then I
20 brought my weapon down and holstered it.

21 Q. All right. So then Agent Ramos -- let me make sure I have
22 the sequence right.

23 You're shooting, he runs up your to left past you
24 seven, eight, ten feet. Is that correct?

25 A. It wasn't that far, no, sir.

- 1 Q. Closer to you?
- 2 A. Yes, sir.
- 3 Q. He shoots, and you look. You see where he's shooting.
- 4 Then you join him, and then you two go forward into the vega?
- 5 A. No, sir. I walked up to him, and we stayed there.
- 6 Q. Stayed there. And then, after all this shooting is done,
- 7 you see him limping off, the driver, correct?
- 8 A. It looked like he was limping. I couldn't say for sure.
- 9 Q. And then what do you two do next?
- 10 A. I holstered my weapon.
- 11 Q. What did Agent Ramos do?
- 12 A. I believe he did the same.
- 13 Q. Okay. You heard testimony -- okay. You holstered your
- 14 weapons, and -- why do you-all holster your weapons?
- 15 A. Because he was already going back over the levee.
- 16 Q. And you're not in fear of any threat?
- 17 A. Not at the time. At the moment, we didn't see any.
- 18 Q. And then you-all start doing what, sir?
- 19 A. Started going back to the north side.
- 20 Q. Okay. When does -- and then both of you walk up to the
- 21 levee road?
- 22 A. Yes, sir.
- 23 Q. Okay. And you're just walking next to one another with
- 24 your back towards this person who, at one point, you thought
- 25 had a gun?

- 1 A. No, sir. I believe he -- he stopped a few times and looked
2 over, and I did the same.
- 3 Q. Okay. But you heard testimony from Agent Ramos that he was
4 blading and moving back and keeping his weapon drawn. You
5 don't remember any of that, do you?
- 6 A. I don't remember, sir.
- 7 Q. I think that would have been pretty significant, do you
8 agree, had he been doing any of that?
- 9 A. I didn't see it, sir. I was --
- 10 Q. So you two are walking back, and what do you do?
- 11 A. As I was walking back, I was looking back.
- 12 Q. Okay.
- 13 A. And --
- 14 Q. How close is he to you?
- 15 A. He was ahead of me. I -- I'm not sure.
- 16 Q. All right. Approximately, sir?
- 17 A. Maybe ten feet.
- 18 Q. You've got ten feet --
- 19 A. Between five and ten feet. I -- I don't know. I -- I'm
20 not really good with distance. I mean --
- 21 Q. Okay.
- 22 A. -- I couldn't tell you exactly.
- 23 Q. Is he further away from you when you were walking back than
24 from where you and I are standing?
- 25 A. It's about the same. He was ahead of me.

1 Q. Well, wait a minute. When he goes and shoots -- when does
2 he pat you down to see if you're okay?

3 A. It was af- -- I believe it was after, once -- once I
4 holstered my weapon.

5 Q. Then he pats you down?

6 A. He asked me if I was okay.

7 Q. Then he pats you?

8 A. I -- I believe so, yes.

9 Q. Well, you've holstered your weapon, you've been shooting,
10 and then he comes and pats you?

11 A. Yes, sir, I believe he did. I was -- I was still
12 looking -- looking south.

13 Q. All right. And then you two were walking back. And then
14 he's ten feet ahead of you?

15 A. He was walking ahead of me, yes, sir.

16 Q. And then, even though he was concerned for your safety, he
17 was that far away from you?

18 A. I was okay. I hadn't been hit.

19 Q. You hadn't been hit. Well, you hadn't been shot at,
20 either, had you?

21 A. I didn't know.

22 Q. What do you mean, you don't know?

23 A. I don't know if I had. I -- I figured he might, but he --
24 he did not shoot at me, or hit me.

25 Q. I'm sorry, what?

- 1 A. I figured that he didn't hit me --
- 2 Q. But you thought --
- 3 A. -- and that I was okay.
- 4 Q. Had you thought maybe he shot at you?
- 5 A. I didn't know.
- 6 Q. Okay. And, of course, you didn't go look for any of that
- 7 alleged evidence, his casing, because -- for what reason?
- 8 A. Could you repeat the question? I don't understand.
- 9 Q. You know where he was standing, in relation to the
- 10 Rio Grande, correct?
- 11 A. The driver?
- 12 Q. Yes.
- 13 A. Yes.
- 14 Q. Before he goes off into the sunset, you know where he's
- 15 standing, right?
- 16 A. Yes, sir.
- 17 Q. Then you-all turn around, and you think he's shot at you,
- 18 maybe?
- 19 A. I didn't know.
- 20 Q. You didn't go back there and see, well, where is his
- 21 casing, and where --
- 22 A. No, sir. I wasn't going to go near the river.
- 23 Q. Okay. So then you two are heading back, and Ramos is ahead
- 24 of you ten feet. What are you doing?
- 25 A. I don't know the distance, but he was ahead of me.

1 Q. Okay. And what are you doing?

2 A. I just started walking back.

3 Q. Okay. And how far back do you have to walk before you get
4 to the levee?

5 A. It was for a few seconds -- well, for some time.

6 Q. For some time? And you had gone half the distance, would
7 you agree, on the vega, before you turned back?

8 A. Yes, sir, at least.

9 Q. Okay. And he's ahead of you, and -- but he was very
10 concerned previously, right?

11 A. Yes, sir.

12 Q. But he leaves you behind?

13 A. Yes, sir, when I told him I was okay.

14 Q. Okay. And are you also blading?

15 A. I stopped. I -- I stopped.

16 Q. Okay. And then you do what next?

17 A. I began walking up -- up towards the levee.

18 Q. And as you're walking towards the levee, what do you do?

19 A. I looked down, and I saw my empty magazine. I picked up my
20 magazine, and I saw some of the casings, and I picked those up.

21 Q. I'm sorry, you saw what?

22 A. I saw my empty magazine on the ground, and I saw some of
23 the casings, and I went and picked both of them up.

24 MR. GONZALEZ: May I approach the witness, Your Honor?

25 THE COURT: You may.

1 BY MR. GONZALEZ:

2 Q. Agent Compean, I'm showing to you what's been marked as
3 Government's Exhibit Number 110 for identification purposes,
4 and I have scratched out the previous number. And let me
5 initial that.

6 Why don't you look -- what is that, that I've just
7 marked as Government's Exhibit 110?

8 A. A can.

9 Q. A little metal container?

10 A. Yes, sir.

11 Q. Why don't you go ahead and open it up? What does it
12 contain?

13 A. Casings.

14 Q. All right. And look at the rounds. Can you tell the type
15 of the caliber --

16 A. Yes, sir.

17 Q. -- casing.

18 A. It says 40.

19 Q. And that's what you-all use, correct?

20 A. Yes, sir.

21 Q. And now, let me show you what I've marked as Government's
22 Exhibit Number 111 for identification purposes.

23 What does it contain?

24 A. These are rounds.

25 Q. Okay. And how many rounds are in Government's Exhibit

1 Number 111?

2 A. Nine.

3 Q. Why don't you go ahead and count the casings that are in
4 Government's Exhibit 110?

5 A. Nine.

6 MR. GONZALEZ: Your Honor, at this time we would offer
7 Government's Exhibits Number 110 and 111 into evidence.

8 THE COURT: Any objections?

9 MR. PETERS: Can we have a second to look at these?

10 THE COURT: Sure.

11 MR. PETERS: No objection.

12 MR. ANTCLIFF: I don't have any objection.

13 THE COURT: All right. Then 110 -- Government's
14 Exhibits 110 and 111 will be admitted.

15 MR. GONZALEZ: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MR. GONZALEZ:

18 Q. So, Agent Compean, I'm handing you what's been marked and
19 entered into evidence as Government's Exhibit Number 110. And
20 these are the casings, correct?

21 A. Yes, sir.

22 Q. And these are .40 caliber casings. Would you agree?

23 A. Yes, sir.

24 Q. And that's the same type of casing you-all use in your
25 weapons, in your Berettas?

- 1 A. Yes, sir.
- 2 Q. And those are .40 caliber Berettas?
- 3 A. Correct.
- 4 Q. And that's the type of weapon that was used on February 17,
5 2005.
- 6 A. Yes, sir.
- 7 Q. Now, these -- you said -- how many did you pick up? I only
8 brought nine with me, I'm sorry.
- 9 A. It was approximately ten. I -- I didn't -- I didn't count
10 them.
- 11 Q. We're missing one, approximately?
- 12 A. Yes.
- 13 Q. And these casings -- these casings are where?
- 14 A. On my -- as I was making my way to the --
- 15 Q. I'm sorry?
- 16 A. As I was making my way up to the levee, I saw them, and I
17 picked them up.
- 18 Q. And how many did you pick up?
- 19 A. I -- I didn't count them.
- 20 Q. Well, how many do you think you picked up?
- 21 A. Like I had told Agent Sanchez, it was maybe 10 -- 10 or 11.
22 I couldn't be sure.
- 23 Q. Okay. You picked up 10 or 11?
- 24 A. Yes. I wasn't sure. I just started grabbing what I saw
25 down there.

- 1 Q. Well, I think you have your statement in front of you. Do
2 you still have that there, sir?
- 3 A. Yes, sir. That's -- that's why -- why I said that. I
4 looked at the -- from the statement, I -- I never counted them,
5 but I gave him an approximate.
- 6 Q. All right. And then -- let me see. You picked up 10.
7 That's what you admit to, correct?
- 8 A. Yes, sir. Approximately 10 or 11.
- 9 Q. And then Agent Vasquez picks them up for you, as well?
- 10 A. Not for me, but he picks them up, yes, sir.
- 11 Q. Okay. And do you know where that is in your statement?
- 12 A. Page 2.
- 13 Q. Page 2?
- 14 A. Yes, sir.
- 15 Q. Where, sir? You asked Art Vasquez to pick up -- to look
16 for some rounds. Is that correct?
- 17 A. Yes, sir.
- 18 Q. Okay. So you pick up nine or ten. Is that true?
- 19 A. Yes, sir.
- 20 Q. And we've heard Agent Vasquez testify that he's picked up
21 five. So now we have at least how many? 14, 15?
- 22 A. Yes, sir.
- 23 Q. So then you did fire from the second clip. Isn't that
24 true?
- 25 A. No, sir.

1 Q. So then I guess Agent Vasquez went back and just found
2 casings that were not part of your shooting?

3 A. I don't know, sir.

4 Q. Were they part of Agent Ramos' shooting, then?

5 A. I don't know.

6 Q. Okay. Now, you agree that, from your own statement, you
7 pick up ten, and Agent Vasquez picks up five. That's what he
8 testified to. Do you remember that?

9 A. That's what he told me.

10 Q. And you also heard Agent Juarez say that you exchanged
11 rounds, and the only way you could fire off 15 rounds, would
12 you agree, is to change clips?

13 A. Yes, sir.

14 Q. Now, you testified earlier that you didn't think -- you saw
15 the driver limping off, but you didn't think that he had been
16 hit. Is that true?

17 A. Yes, sir.

18 Q. Now, why don't you go ahead and look at your statement
19 again, page 2. Go six lines up from the bottom of page 2.

20 A. Yes, sir.

21 Q. What did you tell Agent Sanchez when you -- this -- and
22 this is your handwritten statement, correct?

23 A. Yes, sir.

24 Q. And you signed it as yours, and no one forced you to make
25 this statement, correct?

1 A. Correct.

2 Q. All right. What did you tell Agent Sanchez about the
3 driver being shot?

4 A. Do you want me to read it?

5 Q. Yes, sir.

6 A. Agents Mendoza and Jacquez asked what had happened.

7 I told them, I think Nacho might have hit him.

8 Q. Okay. And yet today you're telling this jury, a year after
9 this statement was taken, that the driver was not hit. But yet
10 a year ago, you said he had been hit. Is that fair?

11 A. What I told Agents Mendoza -- well --

12 Q. No, sir. I asked you: Is that what you said?

13 A. That's what I wrote down, sir. That's not what I meant to
14 put, but yes.

15 Q. Okay. Thank you.

16 And when you're shooting at the driver, what was your
17 intent?

18 A. My intent was to stop the threat, to kill him, because he
19 had a gun, and he was pointing it at me.

20 Q. Your intent was to kill, correct?

21 A. To stop the threat which, at the time, I thought the only
22 way to stop him was to shoot him and kill him. Yes, sir.

23 Q. Okay. Well, what are you -- what are you saying on page 3
24 of your statement?

25 Do you not say, My intent was to kill the alien,

1 because I thought he had a gun, but I never really saw for
2 certain that he had a gun?

3 A. Yes, sir. It looked like a gun to me.

4 Q. All right. So you're on the levee picking up those
5 casings. And you refer to those casings as brass. Is that
6 correct?

7 A. Yes, sir.

8 Q. And why are you picking up the -- the evidence, the
9 casings?

10 A. I -- I just picked it up. I saw them there, and I just
11 went down and picked them up.

12 Q. And yesterday you testified that -- well, we'll get to
13 that.

14 You picked them up for what reason?

15 A. I just did. I -- there's no reason. I just went -- I saw
16 them, and I just automatically picked them up.

17 Q. And you put them in your pocket?

18 A. No, sir.

19 Q. Held them in your hand?

20 A. Yes, sir.

21 Q. And you walked where with them?

22 A. I was walking up to the levee.

23 Q. You get to the levee, and who's there, by that point?

24 Agents Yrigoyen and Mendez? They were arriving?

25 A. I believe they showed up as I was heading back to -- to my

1 vehicle to secure my shotgun.

2 Q. Okay. So they've arrived. And Juarez and Vasquez and
3 Mendoza, they're all -- they're on the south side of the ditch,
4 correct?

5 A. Yes, sir.

6 Q. And then you take these casings in your hand and you do
7 what with them?

8 A. I tossed them towards the ditch.

9 Q. In front of all these witnesses?

10 A. Yes, sir.

11 Q. And no one saw you do this. Is that what you're telling
12 us?

13 A. I don't know, sir.

14 Q. And you had to make a conscious effort to walk from the
15 levee, the bottom of the vega up the levee, across the slope,
16 to the ditch. That was a conscious decision on your part to
17 throw away those casings?

18 A. I went to pick up my shotgun.

19 Q. And you also went to throw away your casings?

20 A. I -- I noticed I had them in my hand, and I just tossed
21 them in.

22 Q. And, of course, those casings are not available for this
23 jury to see. Is that correct?

24 A. No, sir.

25 Q. And they've been destroyed and concealed, correct?

- 1 A. I don't know if they've been destroyed, sir, but...
- 2 Q. They're not available, are they?
- 3 A. No, sir.
- 4 Q. And after Agent Ramos shot his one shot -- that's your
5 testimony?
- 6 A. Yes, sir. That's all I heard.
- 7 Q. And what happened to his casing?
- 8 A. I don't know, sir. I may have picked it up. I really
9 don't know.
- 10 Q. You may have picked up his casing?
- 11 A. If it was near -- near the other ones. I don't know.
- 12 Q. Well, I think you testified that he runs ahead of you
13 eight, ten feet. You're eight, ten feet behind. That's where
14 you shot from. Is that correct?
- 15 A. I think eight to ten feet is too -- is too far away.
- 16 Q. Okay. Well --
- 17 A. I -- I don't know. He couldn't have been that -- that far
18 from the distance.
- 19 Q. Okay. So not only are you now picking up your casings, but
20 you think you may have picked up his casing, too?
- 21 A. I don't know. I picked up what I saw near -- near my
22 magazine.
- 23 Q. Okay. And then the supervisors and everyone gets to the
24 scene, true?
- 25 A. Yes.

- 1 Q. And Richards yells out to you what?
- 2 A. I believe he asked, Are you okay?
- 3 Q. And what do you say?
- 4 A. I said, I'm okay.
- 5 Q. Okay. And so you never told him, I've been assaulted.
- 6 I've had dirt thrown in my eyes, anything like that?
- 7 A. I believe that was Agent Yrigoyen. He asked me if -- he
- 8 asked me the same question.
- 9 Q. No, I'm sorry.
- 10 A. No, sir.
- 11 Q. You never --
- 12 A. I told him I was okay. I was fine.
- 13 Q. You --
- 14 A. He asked, Are you okay?
- 15 And I said, I'm fine.
- 16 Q. And if someone says -- is there a reason why he shouldn't
- 17 believe you, when you say you're okay?
- 18 A. I was okay, sir.
- 19 Q. And you were okay?
- 20 A. I was fine.
- 21 Q. Because the dirt never even hit your eyes. Is that
- 22 correct?
- 23 A. I don't know if it -- it didn't go inside my eyes, no.
- 24 Q. And then what -- and then you're told to go back to the
- 25 station, right?

1 A. Yes, sir.

2 Q. Okay. Go ahead, have some water.

3 And, sir, you get in your vehicle and you head to the
4 C.C. Bills crossing. Is that correct?

5 A. Yes, sir.

6 MR. GONZALEZ: Oh, may I approach the witness,
7 Your Honor?

8 THE COURT: Yes, you may.

9 BY MR. GONZALEZ:

10 Q. I'm showing you what's been introduced into evidence as
11 Government's Exhibit Numbers 21 and 22.

12 Do you want to go ahead and look at those two
13 photographs?

14 A. Yes, sir.

15 Q. Okay. What do they show?

16 A. The levee and the slope.

17 Q. And do you see these little cans?

18 A. Yes, sir.

19 Q. Okay. And that's where Agent Vasquez claims he picked up
20 the five casings. Do you have any disagreement that he could
21 have picked up those casings from those areas?

22 A. I didn't -- I wasn't shooting near that area, so I don't
23 know.

24 Q. Okay. So somehow these casings just ended up in that area?

25 A. I didn't shoot from that area, sir. No, I don't know.

- 1 Q. And then let me show you Government's Exhibit Number 83B.
- 2 Do you recognize what's shown in that photograph?
- 3 A. Yes, sir.
- 4 Q. And what is that, sir?
- 5 A. That is the C.C. Bills gate.
- 6 Q. And this is where you and Agent Vasquez meet. Is that
- 7 correct?
- 8 A. Yes, sir.
- 9 Q. You drive there, you get to the gate, and what's going on?
- 10 A. He is coming up onto the levee.
- 11 Q. Okay. And you slow down, or he slows down? What happens?
- 12 A. He stopped on the south side of the gate.
- 13 Q. Okay.
- 14 A. And I stopped alongside of him, of his truck.
- 15 Q. And you do what?
- 16 A. And he asked me what happened. He said, I heard shots.
- 17 Q. What do you tell him?
- 18 A. I told him I wrestled with the guy and had to fire some
- 19 rounds.
- 20 Q. Okay. But you don't tell him that the person has been shot
- 21 and that he's limping away, that you think that Nacho hit him?
- 22 A. No, sir.
- 23 Q. Why didn't you?
- 24 A. Because I -- at the time, I -- I still didn't think he had
- 25 been hit.

1 Q. Okay. It's in your statement that you thought that Nacho
2 hit him.

3 A. I -- I didn't -- I read it, but that's not what I meant to
4 put down, sir.

5 Q. Okay. And then how does Agent Vasquez get the idea in his
6 head that he's got to go pick up the casings?

7 A. I was talking -- I was sitting there talking with him. And
8 I told him -- we -- I -- we heard on the radio, he was -- he
9 was told to sit up on the levee, I believe, to wait for the tow
10 truck.

11 And I told him, if you're going to be up there, you're
12 probably going to see some rounds -- or some casings.

13 Q. Okay. And why are you telling him that?

14 A. Because he was going to be up there on the levee. I didn't
15 know if he was going to be walking around or just...

16 Q. Were you concerned that he might run over them or what?

17 A. No, I just told him. That's all I said. I said, You're
18 going to see some -- probably see some up there.

19 Q. Okay. Well, you saw a bunch of other agents prior to
20 seeing Agent Vasquez, didn't you? You saw Agent Yrigoyen, you
21 saw Agent Mendez, on your side of the levee, correct?

22 A. Yes, sir.

23 Q. Did you have that same conversation with either one of
24 those individuals?

25 A. No, sir. We -- we left the -- he -- we both left the area

1 about the same time.

2 Q. So you didn't tell Mendez or Yrigoyen, Hey, I left some
3 casings, or, You're going to find some casings up there.
4 They're mine, did you?

5 A. No, sir.

6 Q. But yet you tell Agent Vasquez, correct?

7 A. Yes, sir.

8 Q. And what does he do?

9 A. He called me a few minutes later-- well, later on, at the
10 station.

11 MR. GONZALEZ: May I approach the witness, Your Honor?

12 THE COURT: You may.

13 BY MR. GONZALEZ:

14 Q. Well, what is it you're saying that you told Agent Vasquez
15 about those casings?

16 A. I said, You're going to see some casings up there.

17 Q. And what was your intent?

18 A. I just told him. He asked about the -- the shooting, so he
19 knew about the shooting. And I just mentioned it to him,
20 You're probably going to see some casings up there.

21 Q. So it's just idle conversation?

22 A. Yes, sir.

23 Q. Okay. Let me direct your attention to Government's -- it's
24 Government's Exhibit Number 107 for identification purposes.

25 And this is your statement, correct?

1 A. Yes, sir.

2 Q. And, on page 2 of your statement -- and let me point you to
3 the section that you talked about Art Vasquez. That's about
4 eight lines down.

5 Start -- what do you say here, sir, with the word "I"?

6 A. It says, I asked Art Vasquez if he could look for some
7 rounds, if he could.

8 Q. I asked Art Vasquez if he could look for some rounds, if he
9 could?

10 A. Yes, sir.

11 Q. And wouldn't you agree with me, sir, that that's a lot
12 different than what you just previously testified to?

13 A. Yes, sir, it is.

14 Q. So you did ask Art Vasquez to pick up your casings?

15 A. No, sir, I did not.

16 Q. But that's what you wrote, but that's not what you meant.
17 Is that what you are now telling us?

18 A. Yes, sir. It was 2:00 -- 1:30 in the morning --

19 Q. Sir, thank you. You've answered my question.

20 MR. ANTCLIFF: Judge, I think he's trying to answer
21 the question.

22 THE COURT: I'll sustain the objection.

23 I think he started saying it was 1:30 or 2:00, and
24 I'll sustain the objection.

25 MR. GONZALEZ: Well --

1 THE COURT: I'm sorry.

2 MR. ANTCLIFF: My objection --

3 THE COURT: I'll overrule the objection.

4 MR. ANTCLIFF: All right.

5 THE COURT: It's 5:00, right?

6 BY MR. GONZALEZ:

7 Q. So, somehow, Vasquez gets it into his head he's got to go
8 pick up casings for you, correct?

9 A. Yes, sir.

10 Q. And somehow he gets into his head, not only he's got to
11 pick up casings, he's got to call you. Because he does call
12 you?

13 A. Yes, sir, he did.

14 Q. But, of course, you didn't ask him to call you?

15 A. No, sir, I never did.

16 Q. And then I think yesterday you testified that, when you're
17 talking to Vasquez, not asking him to pick up your casings,
18 that you're doing what with your bullets?

19 A. I was reloading one of the -- my empty magazine.

20 Q. You're talking about these (indicating)?

21 A. Yes, sir.

22 Q. Which is part of Government's Exhibit 111?

23 A. Yes, sir.

24 Q. And you're doing what with these rounds?

25 A. I was reloading the magazine that I had shot.

1 Q. And Agent Vasquez, he's an experienced agent, isn't he?

2 A. Yes, sir, I believe so.

3 Q. Okay. And you think Agent Vasquez was confused between a
4 round and a casing?

5 A. He may have been, sir. I was -- I was loading the
6 magazine.

7 Q. Because you heard him testify he saw casings in your hand,
8 and he saw you counting from your clip, right?

9 A. Yes, sir.

10 Q. But you're saying that did not occur?

11 A. No, sir, it did not.

12 Q. Then you make it back to the station, correct?

13 A. Yes, sir.

14 Q. Had you talked to Agent Ramos at all, at that point?

15 A. Not since he asked me if I was okay, when we were -- when
16 we were on the vega.

17 Q. Let's see if these look very different on the screen.

18 And your testimony is that Agent Vasquez must have
19 been confused about what he saw in your hand, that he -- you
20 had rounds and not casings?

21 A. Yes, sir. I had rounds, reloading my magazine.

22 Q. And -- even though he's as experienced as you are, right?

23 A. Yes, sir.

24 Q. And he also goes to the same firearms training that you do.
25 Is that correct?

- 1 A. Yes, sir.
- 2 Q. And he also shoots 70 -- 60 to 70 rounds every time he
3 qualifies?
- 4 A. Yes, sir.
- 5 Q. And he's been doing that for as long as you have,
6 approximately?
- 7 A. Less, but yes.
- 8 Q. Okay. Because he's been on -- I think he's been an agent
9 about three years. Is that fair to say?
- 10 A. I'm not sure. I believe so. About two to three years.
- 11 Q. One and a half, two years here, and then he had been in
12 San Diego previously?
- 13 A. I believe so, yes.
- 14 Q. Okay. And you're saying that he's confused?
- 15 A. I'm not saying he's confused, but that's -- that's what I
16 was doing. I was reloading my magazine.
- 17 Q. All right. Thank you.
- 18 Now, you get back to the station, correct?
- 19 A. Yes, sir.
- 20 Q. And you're doing what there, sir?
- 21 A. I walked to the -- to the restroom.
- 22 Q. Okay. And then you walk out. And you heard Agent
23 Richards, FOS Richards, testify that he asked you again, Are
24 you okay?
- 25 A. When -- he asked me when --

1 Q. Back at the station.

2 A. At the station, when I was processing, he did go back in
3 there.

4 Q. I'm sorry?

5 A. When I was processing the -- when I was working on the
6 I 44, he went to the back, and he -- and I spoke with him.

7 Q. Okay. And what did you-all talk about?

8 A. He asked me, Joe, are you sure you -- you're -- you weren't
9 assaulted? Because if you were, then we're going to have to
10 call -- then I'm going to have to do an SIR. I'm going to have
11 to call the FBI. They're going to have to come down here.
12 They're going to have to come down here and interview you and
13 everybody else that was out there, and we're going to be here
14 for a long time.

15 Q. And, of course, you didn't want the FBI called, or anyone
16 else called, for that matter, did you?

17 A. It seemed like he wanted -- he wanted me to say no, so I
18 said no.

19 Q. No. But did you want the FBI called on February 17, 2005?

20 A. I wasn't thinking about that.

21 Q. Because you didn't want the FBI or anyone else to
22 investigate this case, did you?

23 A. I wasn't thinking about that.

24 Q. Because, in fact, as a result of your actions, we don't
25 know exactly what happened out there, because the casings are

1 unavailable. Is that correct?

2 A. Yes.

3 MR. GONZALEZ: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 BY MR. GONZALEZ:

6 Q. Now, let me show you Government's Exhibit 75. Do you
7 recognize that? Is this part of your firearms policy manual?

8 A. Yes, sir.

9 Q. And I'm referring you to page 21 of 64, Number 2 on that
10 page. Doesn't it tell you that you're required to report a
11 shooting within one hour?

12 A. Yes, sir.

13 Q. And you knew that it was your responsibility, correct?

14 A. Yes, sir.

15 Q. And you didn't do that, did you?

16 A. No, sir.

17 Q. And, in fact, 29 days passed before anyone knew that you
18 had shot. Is that true, sir?

19 A. Yes, sir.

20 Q. And let me direct your attention to page 14 of 64 of the
21 same firearms policy manual, which we have marked as
22 Government's Exhibit Number 71 for identification purposes.

23 What does the -- what is the Border Patrol policy on
24 firing warning shots?

25 A. A firearm shall not be discharged under the following

1 circumstances.

2 Q. And you're not allowed to shoot warning shots, are you?

3 A. No, sir.

4 Q. And what's Number 3 say?

5 A. In any situation where it appears likely that an innocent
6 person will be injured.

7 Q. And let me direct your attention to Government's Exhibit
8 Number 69 for identification purposes, to page 5 of 64.

9 And what is a reportable shooting incident?

10 A. A reportable shooting incident means any incident involving
11 the discharge of a firearm which occurs as described in
12 Subsection 3H14.

13 Q. And what occurred that day qualified as a reportable
14 shooting incident, correct?

15 A. Yes, sir.

16 Q. And you never told anyone about what you had done?

17 A. No, sir.

18 Q. And on February 17, 2005, you did, in fact, discharge a
19 firearm, namely, a Beretta .40 caliber firearm. Is that true,
20 sir?

21 A. Yes, sir, I did.

22 Q. And someone was assaulted as a re- -- someone suffered
23 serious bodily injury as a result of that shooting, not yours,
24 but Agent Ramos, shooting. Is that correct?

25 A. Yes, sir. I found out a month later.

1 Q. And those casings have been disposed of, correct, by your
2 own actions?

3 A. Yes, sir.

4 MR. ANTCLIFF: Objection, asked and answered.

5 THE COURT: All right. I'll sustain.

6 BY MR. GONZALEZ:

7 Q. And none of the facts of what occurred contemporaneous with
8 their occurrence on February 17, 2005, were available for a
9 grand jury to hear. Is that correct?

10 MR. ANTCLIFF: I'm going to object, Judge. I think it
11 calls for a legal conclusion.

12 MR. GONZALEZ: Your Honor, he's a law enforcement
13 officer. He would know what a grand jury is.

14 THE COURT: I'll sustain.

15 MR. GONZALEZ: May I have a moment, Your Honor?

16 THE COURT: Yes, you may.

17 MR. GONZALEZ: Pass the witness, Your Honor.

18 THE COURT: All right.

19 Mr. Antcliff?

20 MR. ANTCLIFF: Briefly, Judge.

21 REDIRECT EXAMINATION

22 BY MR. ANTCLIFF:

23 Q. Sir, do you recall giving a statement in this case?

24 A. Yes, sir.

25 Q. What time did that happen?

1 A. I believe it was sometime after 1:00 in the morning.

2 Q. When -- what time did anybody come to your house that
3 evening?

4 A. It was a little before midnight.

5 Q. Were you asleep?

6 A. Yes, sir, I was.

7 Q. Okay. While you were writing this statement, was anybody
8 helping you?

9 A. No, sir.

10 Q. You wrote it in your own words?

11 A. Yes, sir.

12 Q. Was anybody else in the room?

13 A. I believe Agent Sanchez was.

14 Q. Okay. And he told you just to write down what you
15 remembered?

16 MR. ANTCLIFF: I'm sorry, I don't mean to lead.

17 BY MR. ANTCLIFF:

18 Q. What did he tell you?

19 A. He told me to write down what I remembered.

20 Q. And did you try to do that?

21 A. Yes, sir.

22 Q. There were several questions about your statement that
23 Mr. Gonzalez asked, and I'm going to ask you a couple of
24 questions about them.

25 In your statement you wrote -- well, I take it back.

1 With respect to what you said about -- I think in your
2 statement you wrote, Agents Mendoza and Jacquez asked what had
3 happened. I told them, I think Nacho might have hit him.

4 Do you recall writing that?

5 A. Not until I just read it.

6 Q. And you told Mr. Gonzalez that you didn't mean that. What
7 did you mean?

8 A. I did remember speaking to -- specifically to Agent
9 Jacquez, at the processing room. Agent Mendoza, I had seen him
10 earlier inside the processing room.

11 MR. GONZALEZ: Objection, Your Honor, narrative
12 response.

13 MR. ANTCLIFF: I think he's trying to answer.

14 THE COURT: I'll overrule. He can answer.

15 A. I -- I mentioned Agent Mendoza's name in there, because I
16 had seen him in that room earlier. I didn't specifically speak
17 with him, but I did speak with Agent Jacquez. And I told him
18 we fired shots at the -- at the driver.

19 BY MR. ANTCLIFF:

20 Q. Did you tell him that you thought Nacho might have hit him?

21 A. I said, He may have, I don't know.

22 Q. Okay. Earlier in your statement do you recall saying you
23 didn't know if you hit him or not?

24 A. Yes, sir.

25 Q. And take a look at your statement. I would ask you to take

1 a look at page 2.

2 A. I don't have it up here, sir.

3 MR. ANTCLIFF: I'm sorry. Can I approach, Judge?

4 THE COURT: Sure.

5 BY MR. ANTCLIFF:

6 Q. Right there (indicating).

7 A. Yes, sir.

8 Q. What does that say?

9 A. I did not report the shooting, because I didn't think
10 anything had happened to the guy. I was afraid I was going to
11 get in trouble.

12 Q. What did you mean when you said you were afraid you were
13 going to get in trouble?

14 A. I didn't think any -- anyone was going to believe what had
15 happened, because the driver was already back south. And at
16 the station -- or at least at our station -- the agents are
17 always guilty until proven innocent.

18 Q. In your statement you wrote, I asked Art Vasquez if he
19 could look for some rounds, if he could.

20 Do you recall that?

21 A. Yes, sir, I read it.

22 Q. I think you also told Mr. Gonzalez that you didn't mean
23 what that said. What did you mean?

24 A. On there, I -- when I spoke with him, I told him, You're
25 probably going to see rounds up there on the levee.

1 Q. Did you ask him to pick them up or do anything with them?

2 A. No, sir, I did not.

3 Q. Did you ask him to throw them away?

4 A. No, sir, I did not.

5 Q. When you gave that statement, did you know that you had a
6 right to a lawyer?

7 A. Yes, sir.

8 Q. And did you know that you didn't have to give a statement?

9 A. Yes, sir.

10 Q. Why did you do it?

11 A. Because I did -- I did nothing wrong. I felt I hadn't done
12 anything wrong.

13 MR. ANTCLIFF: I'll pass the witness.

14 THE COURT: Mr. Peters?

15 MR. PETERS: Your Honor, could I have a just a second,
16 please?

17 THE COURT: Sure.

18 MR. PETERS: I have no questions of this witness.

19 THE COURT: Mr. Gonzalez?

20 MR. GONZALEZ: Yes, Your Honor.

21 RE-CROSS-EXAMINATION

22 BY MR. GONZALEZ:

23 Q. You just testified that the agents are what? Are always
24 guilty until proven innocent? Is that what you're saying?

25 MR. ANTCLIFF: I object, Judge. He didn't say

1 anything of the kind.

2 THE COURT: All right. I'll sustain.

3 BY MR. GONZALEZ:

4 Q. Well, what did you say in reference to why you didn't
5 report this?

6 A. The agents are always -- they are always to blame for --
7 for anything that goes wrong.

8 Q. And you heard Chief Barker testify that in any -- in every
9 shooting -- well, not only did you hear him testify, in fact,
10 you went before him, didn't you?

11 A. Yes, sir.

12 Q. And you told him, Yes, I know that the agents are always to
13 blame, and I also know that they're always cleared. Isn't that
14 what you told him?

15 A. Yes, sir.

16 Q. So when the shoots are reported and investigated, they --
17 to date -- have been determined to be a good shoot, correct?

18 A. Yes, sir. I was afraid of -- of everything that was going
19 to go with that because, like I said, I felt no one was going
20 to believe my -- what had happened --

21 Q. I understand that.

22 A. -- because the driver was not there.

23 Q. Thank you.

24 Oh, that's something else. Yesterday you testified --
25 that the driver was not there, so no one is going to believe

- 1 you?
- 2 A. Yes, sir, about the -- about him having a weapon.
- 3 Q. Ramos was there when you shot, because Ramos also shot at
- 4 him, correct?
- 5 A. Yes, sir.
- 6 Q. And wasn't he there to corroborate your story that the
- 7 driver had a gun?
- 8 A. Yes, sir.
- 9 Q. And the physical evidence, the casings, the trajectory,
- 10 everything would have corroborated that -- your story?
- 11 A. Yes, sir. I was wasn't thinking about any of that.
- 12 Q. And you picked it all up, and you destroyed the evidence so
- 13 no one could go corroborate your story. Isn't that true?
- 14 A. I didn't pick it up because of that, but I did pick them
- 15 up, sir.
- 16 Q. Okay. And yet when you're out there, did you ever tell
- 17 Jacquez, The driver had a gun?
- 18 A. No, sir, I don't believe I did.
- 19 Q. Did you tell Mendoza, The driver had a gun?
- 20 A. No, sir.
- 21 Q. Did you tell Mendez, The driver had a gun?
- 22 A. No, sir.
- 23 Q. Did you tell Yrigoyen, The driver had a gun?
- 24 A. No.
- 25 Q. Did you tell FOS Richards, The driver had a gun?

1 A. No, sir, I did not.

2 Q. Did you tell Arnold, The driver had a gun?

3 A. No, sir, I did not.

4 Q. Did you tell Juarez, The driver had a gun?

5 A. No, sir.

6 Q. You didn't tell anyone, The driver had a gun, did you?

7 A. No, sir.

8 Q. Thank you.

9 MR. GONZALEZ: Pass the witness, Your Honor.

10 THE COURT: All right.

11 Anything else of this witness?

12 REDIRECT EXAMINATION

13 BY MR. ANTCLIFF:

14 Q. Did it look to you like the driver had a gun?

15 A. Yes, sir, it did.

16 MR. ANTCLIFF: Pass the witness.

17 MR. GONZALEZ: Nothing further, Your Honor.

18 THE COURT: Anything further of this witness?

19 MR. PETERS: No questions.

20 THE COURT: You may step down.

21 You may call your next witness.

22 MS. KANOF: Your Honor, the United States closes.

23 THE COURT: Wait. You didn't call him.

24 MS. KANOF: Oh, sorry. But, after they close, I

25 close.

1 THE COURT: Okay. You're confusing me now.

2 Go ahead, Mr. Antcliff.

3 MR. ANTCLIFF: Your Honor, the defense for Mr. Compean
4 rests.

5 THE COURT: All right.

6 Okay. Now it's your turn.

7 MS. KANOF: Okay. Oh, now. The United States closes,
8 Your Honor.

9 THE COURT: All right.

10 MS. STILLINGER: Defendant Ramos closes, Your Honor.

11 MR. ANTCLIFF: Defendant Compean closes.

12 THE COURT: All right.

13 Ladies and gentlemen of the jury, it is 5:00 on a
14 Friday afternoon. You have heard all of the evidence, but you
15 have not received the Court's charge, nor have you been
16 instructed to deliberate.

17 I have contemplated -- just so you know what I've been
18 plotting behind your backs -- I have contemplated having you
19 come tomorrow for deliberations, for oral -- for argument and
20 deliberations. But, instead, I'm going to have you return on
21 Monday morning. And so Monday morning you will need to be back
22 here about 8:30. We will do closing argument at that time,
23 and -- I will read you the charge, and we will do closing
24 argument at that time, and then you will be instructed to
25 deliberate.

1 Between now and then, remember that you have not
2 received the Court's charge. In other words, you have not
3 received any of the law in this case. You have not heard
4 closing arguments. So you cannot begin your deliberations
5 until instructed to do so.

6 You remain under all the instructions the Court has
7 previously given you. You cannot read anything about this case
8 or listen to anything about this case. You can't discuss this
9 case with anyone, not even with each other.

10 Does everybody understand that clearly?

11 JURORS: Yes.

12 THE COURT: All right. And we will see you back here
13 on Monday morning for the charge and closing arguments.

14 (Open court, parties present, jury not present.)

15 THE COURT: You may be seated.

16 All right. Any matter we need to take up before --

17 MS. KANOF: Nothing from the Government, Your Honor.

18 MR. ANTCLIFF: You're going into the charge?

19 THE COURT: Yes, we will. But anything --

20 MR. PETERS: Yes, Your Honor, we want to re-urge our
21 Rule 29 motion.

22 THE COURT: All right. Go ahead.

23 MR. PETERS: Okay. Your Honor, first, just for the
24 record, we request that the Court order a judgment of acquittal
25 as to every count against Ignacio Ramos.

1 Aside from that generalized motion, we also want to
2 renew our motion that we gave some more detailed argument on.

3 And, in addition to the arguments that were made at
4 the time of the close of the Government's case, or when the
5 Government rested, I would like to point out a couple of
6 things.

7 THE COURT: All right.

8 MR. PETERS: One is -- I mentioned this briefly, but I
9 didn't give you a cite, and I want to give you the cite for
10 Garrity versus New Jersey, which is 385 US 493, Supreme Court
11 616. And it's a 1967 case.

12 That case held that, when a police officer was
13 required by the regulations of the -- I guess it was the
14 New Jersey State Police -- to give a statement, that statement
15 could not be used against him in a criminal case, because that
16 violated his Fifth Amendment right.

17 We would submit that if, in that case, such a
18 statement cannot be used, then the failure to give a statement
19 in that case, in such a case, also cannot be used as proof of
20 guilt or as crime in itself.

21 Also, I want to respond --

22 THE COURT: And so I'm clear, that's 385 US 493?

23 MR. PETERS: 385 US 493, yes.

24 THE COURT: Thank you. Go ahead.

25 MR. PETERS: In addition, Counsel for the Government

1 pointed to a couple of examples of laws where an omission to
2 give a statement was sufficient to constitute a violation of
3 the law. And I believe the two that I recall were reporting of
4 monetary transactions over a certain amount, and tax evasion.

5 Those two can be distinguished because the -- I'm
6 looking at the pattern jury charges of the Fifth Circuit, the
7 criminal pattern jury charges.

8 And under the Number 2.98, on -- which is the
9 instructions for reports on exporting/importing monetary
10 instruments, the crime requires that the -- that a defendant
11 know he has a legal duty to file a report.

12 This is a different thing than an administrative duty.
13 Okay?

14 THE COURT: All right.

15 MR. PETERS: And that makes that not exactly apposite.

16 As far as tax evasion, the failure to file a tax
17 return -- I mean, the Government has to show an affirmative
18 act, and cannot rely upon a failure to act or failure to file a
19 tax return in order to prove tax evasion.

20 THE COURT: I have a question for you on the --

21 MR. PETERS: I promise you I'm no expert on tax
22 evasion.

23 THE COURT: No, but let's go back before I get to tax
24 evasion, because I'm not an expert on tax evasion either. But
25 let's go back to the -- the one you just raised, which is the

1 issue of the filing of a report in a bank and how that makes it
2 a lawful duty, right?

3 MR. PETERS: The -- I'm -- I'm reading -- okay. This
4 is -- that -- that offense is 31 USC Section 5316(a)(1).

5 THE COURT: Okay.

6 MR. PETERS: And --

7 THE COURT: But here is my question for you. We are
8 dealing with a relatively new statute with a tampering, are we
9 not?

10 MR. PETERS: The -- I believe (c)(2) is the one that's
11 new.

12 THE COURT: Right. 1512(c)(2) is the one we're
13 dealing with in this case.

14 MR. PETERS: Yes.

15 THE COURT: All right. And in that statute, if you
16 read it, it specifically talks about governmental agencies,
17 right?

18 MR. PETERS: Let's see.

19 THE COURT: It makes reference -- I have to look at
20 the exact wording. But it makes reference to --

21 MR. PETERS: An official proceeding.

22 THE COURT: -- an official proceeding, and defines
23 that as governmental agencies, does it not?

24 MR. PETERS: I don't see the definition, but I'm not
25 going to dispute that.

1 THE COURT: All right. Well, let's assume, for
2 your -- for the argument, or the -- the motion you're making,
3 let's assume that's the case.

4 MR. PETERS: Okay.

5 THE COURT: And it -- and it -- this law certainly was
6 passed since the time -- or the enactment of those laws that
7 you're talking about there.

8 MR. PETERS: This law, I believe, was passed in --
9 yes. It's a very recent law. 2003, maybe.

10 THE COURT: All right. Isn't it apparent, by 1512(c),
11 though, that the statute is attempting to make tampering, for
12 purposes of an official proceeding, an unlawful act?

13 MR. PETERS: Your Honor, I would not dispute that, but
14 that's not my argument.

15 THE COURT: Okay.

16 MR. PETERS: My argument is -- I agree that tampering
17 with an official proceeding is an unlawful act. Okay?

18 THE COURT: Okay.

19 MR. PETERS: For example, if there were evidence that
20 my client had asked somebody to give a false statement, or even
21 to not give a statement, I wouldn't claim that that was outside
22 the ambit of the law.

23 What my client is accused of doing is --

24 THE COURT: But -- but -- okay. I understand he's
25 accused of failing to report a gun -- a discharge of a

1 weapon --

2 MR. PETERS: Right.

3 THE COURT: -- for the purposes of the Border Patrol's
4 requirement --

5 MR. PETERS: Right.

6 THE COURT: -- which the official proceeding is the
7 official investigation of the discharge.

8 MR. PETERS: But, Your Honor, they -- the -- the way
9 the Government is trying to read this law --

10 THE COURT: Okay.

11 MR. PETERS: -- okay? The coercive -- they -- the
12 obstruction statute becomes a coercion to require him to give a
13 statement which, under their theory of this case, is
14 self-incriminatory. Okay?

15 The Government doesn't have the power to coerce
16 anybody to do that; not a Government official, not a private
17 citizen, not anyone. They can't do it.

18 THE COURT: Well, how is that different than a bank
19 requiring you to file a statement saying you're depositing a
20 certain amount which may, in the same way, incriminate you and
21 result in a --

22 MR. PETERS: Because the depositing of it isn't what
23 the criminal offense is. It's not against the law to deposit
24 \$10,000.

25 THE COURT: No, it's the failure to fill out the

1 report.

2 MR. PETERS: Exactly. It's the failure to fill out
3 the report. But it's only the failure -- the failure -- the --
4 filling out the report can't be a criminal act. Okay? I mean,
5 in other words, the report is so the Government can track where
6 you got the money. Okay?

7 THE COURT: Right.

8 MR. PETERS: I mean -- and you have a legal duty to do
9 that. First of all, it is a legal versus administrative duty.

10 And the other problem we have with it was the other
11 part of -- of our little brief, which is that the Government is
12 transforming an administrative regulation, the failure to abide
13 by an administrative regulation, into a felonious act. And
14 that's -- you know, that's a separate thing.

15 But the -- but the -- the -- I'm getting lost here.
16 The -- you know, I'm not sure you couldn't fail to fill out a
17 form and claim that you had a Fifth Amendment privilege against
18 doing it, as long you notify them you're asserting a privilege.

19 The distinction I'm making is that this implicates
20 what is a legal duty. Okay? And this implicates what is an
21 administrative regulation.

22 THE COURT: And my -- my question to you is: Does not
23 1512(c)(2) somewhat convert what was an administrative duty, or
24 an agency duty, into a legal duty?

25 MR. PETERS: I don't see it. I don't see how -- how

1 you can say that. It doesn't -- the duty to report can't -- I
2 mean, the failure to obey an administrative regulation can't
3 be -- I don't see how that's -- how that can be just -- become
4 a felony, unless -- you know, I mean, this -- this statute has
5 to make an act a felony which is a felony, not an act which is
6 an administrative -- violation of an administrative regulation.

7 I'm kind of skipping back and forth, because,
8 actually, I'm having trouble answering your question.

9 But I'm trying to -- and the reason I'm pointing to
10 the monetary instruments instruction is because it does require
11 the failure to do a -- it also requires an intent to violate
12 the law, by the way, you know, in the -- in the failure to
13 report the monetary transaction, which isn't implicated by the
14 obstruction statute.

15 THE COURT: All right.

16 MR. PETERS: And so --

17 THE COURT: All right.

18 MR. PETERS: -- also, Your Honor, I think --

19 THE COURT: I think you were going to make some
20 reference to the tax, and I don't know if you still want to do
21 that.

22 MR. PETERS: Well, I was just going to say that the
23 tax -- the tax evasion, if you look at the note at the bottom
24 of instruction 2.95, it says, The Government must allege and
25 prove an affirmative act. It cannot rely upon failure to act

1 or failure to file a tax return for tax evasion.

2 So I'm simply saying that that is an inapposite
3 comparison. I mean, that doesn't -- that's -- that -- here,
4 they are relying upon a failure to act, and not an affirmative
5 act. So this is not an example of the statute that allows them
6 to prosecute somebody for simply failing to do so. I mean, you
7 have to file a false return. Okay?

8 THE COURT: Okay.

9 MR. PETERS: And, you know, there might be a
10 difference if he -- if he just made a statement that there was
11 no such -- you know, that he denied that there was a shooting.
12 That might be -- that might fit within the statute. But
13 failing to report it, I don't see how it can.

14 Ms. Stillinger has an issue that is related to this,
15 and I would like to allow -- request for her to --

16 THE COURT: That's fine.

17 MS. STILLINGER: And I will address it briefly,
18 Your Honor. It's -- I just -- it's just specifically
19 pertaining to Count 9 of the indictment, Your Honor, and that
20 is the tampering count that was added in the most recent
21 superseding indictment.

22 THE COURT: All right.

23 MS. STILLINGER: And I really think the arguments that
24 Mr. Peters has made about the Fifth Amendment and the
25 administrative duty and all that apply to that, also.

1 But there's another argument that applies to this,
2 that I think requires the Court to just grant a motion for
3 judgment of acquittal, and that is that this section, which is
4 1512(c)(1), applies to corruptly altering, destroying,
5 mutilating, concealing a record, document, or object.

6 That's actually in the indictment. The statute also
7 says object -- no, I'm sorry. It says record, document, or
8 other object. Okay?

9 And we don't have a record, document, or other object
10 in this case, Your Honor. What -- what the Government's theory
11 is is that by failing to report it, a record was not produced,
12 which would have been an SIR, I guess, if there had been a
13 report.

14 But this statute doesn't say preventing an
15 investigation, impeding an investigation, preventing a report
16 from being filed. It talks about destroying, altering,
17 mutilating, concealing a record, document, or object. And it
18 really is -- I mean, I think there's just a complete failure of
19 proof in this.

20 They -- they've basically alleged, Your Honor, in
21 Counts 8 and 9, with respect to Mr. Ramos, the same conduct,
22 which is, by failing to report the shooting, you -- in Count 8
23 it says you impeded an investigation, and then in Count 9 it
24 says you've altered, mutilated, or -- and I guess, to be very
25 specific, they would probably say concealed. But then what's

1 the record, document, or object being concealed?

2 I mean -- I mean, it -- and I understand that, and
3 I've read the Court's instructions on that count, and I
4 certainly would have objections to the instructions on that
5 count. Because I think what the Government wants to do is have
6 the jury leap to, well, a record would have been prepared. But
7 this offense goes to concealing an existing record. This is
8 really tampering with evidence, not impeding an investigation.
9 The Count 8 is impeding investigation.

10 Count 9 is tampering with physical evidence. We're
11 not talking about the shotgun shells, we are talking about the
12 failure to report. And I do not see how failure to report can
13 be somehow transferred into tampering with physical evidence,
14 which is what that statute addresses.

15 Your Honor, the -- the tax evasion, it occurred to me,
16 is a similar sort of analogous situation, that if you fail to
17 file your tax returns, that's -- that's bad.

18 But that's different than making a false statement on
19 your tax returns. There's two different statutes, two types of
20 conduct, two different statutes.

21 And I think we have the same statutory -- I mean,
22 obviously, not identical, but there's a similar difference in
23 these sections of the statute. One is just impeding an
24 investigation, which could be a number of things. It could be,
25 you know, trying to influence witnesses, withholding

1 information, all sorts of things.

2 But this subsection, I think, specifically addresses
3 tampering with physical evidence, which did not occur with
4 respect to failing to report the shooting.

5 THE COURT: Okay. Before you leave, let me ask you a
6 question.

7 MS. STILLINGER: Yes.

8 THE COURT: If, then, you -- you look at the
9 instruction the Court has given, you will note that the Court
10 specifically refers in that instruction regarding the statute
11 1512(c), the language about, with the intent to impair the
12 document, record, or object's availability for use in an
13 official proceeding.

14 MS. STILLINGER: Right.

15 THE COURT: So how would it not be applicable if there
16 is indication that failure to report impairs the object's
17 availability for use in an official proceeding?

18 MS. STILLINGER: Well, I mean, for instance -- I mean,
19 the language in the instruction says that, you know, if you
20 find that if he had disclosed the fact a document would have
21 been generated, and you must find that the document, if
22 generated, would be available for use in an official
23 proceeding. I mean, it -- it wasn't generated. There is no
24 alteration of that document, because the document did not
25 exist.

1 THE COURT: But again, the -- the issue then becomes,
2 then, did it impair the ability for that document to be used in
3 the official proceeding, does it not?

4 MS. STILLINGER: But that document -- there is no
5 document.

6 THE COURT: And why is there no document?

7 MS. STILLINGER: Because it wasn't reported. And I
8 understand that, and I understand that that conduct might fall
9 under count -- I mean, we have other arguments with respect to
10 the Fifth Amendment and --

11 THE COURT: I understand.

12 MS. STILLINGER: But that conduct would otherwise fall
13 under Count 8 --

14 THE COURT: Okay.

15 MS. STILLINGER: -- impeding an investigation. You're
16 preventing a document from being prepared. But this has to do
17 with -- I mean, my reading of the statute -- has to do with a
18 physical concealment of a thing.

19 THE COURT: Okay.

20 MS. STILLINGER: And if there's no thing, I mean,
21 that's an element of the -- I mean, I believe that's an element
22 of the offense the jury has to --

23 THE COURT: That you have to have the thing in
24 existence before you can tamper with it?

25 MS. STILLINGER: Right.

1 THE COURT: Is that what you're saying?

2 MS. STILLINGER: That you have to have a tax return in
3 existence before you can file a false tax return. You can't
4 just say, well, you would have filed falsely, because we know
5 you were hiding your assets.

6 THE COURT: Okay.

7 MS. STILLINGER: That's my reading of the statute.

8 THE COURT: Gotcha. All right. Thank you.

9 Ms. Kanof?

10 MS. KANOF: Yes, Your Honor.

11 MR. ANTCLIFF: One moment.

12 THE COURT: Okay. You wanted to also go before she
13 goes?

14 Go ahead, Mr. Antcliff.

15 Ms. Ramirez?

16 MS. RAMIREZ: Judge, we wanted to adopt all of the
17 arguments made by Mr. Peters and Ms. Stillinger on behalf of
18 Mr. Compean. And I'm assuming, then, that the -- Mr. Compean's
19 proposed jury instructions are overruled, if the Court is not
20 going to include them in these jury instructions.

21 THE COURT: That's correct, but we're going to talk
22 about it.

23 MS. RAMIREZ: Okay.

24 And we also, on behalf of Mr. Compean, I wanted to
25 renew our motion for judgment of acquittal based on factual

1 insufficiency and also on legal insufficiency on all the counts
2 against him.

3 And I believe that's it. For all the reasons that
4 previously we stated, before we presented our evidence. And I
5 believe that that is all I have until we start to discuss
6 the --

7 THE COURT: The charge?

8 MS. RAMIREZ: -- jury instructions.

9 THE COURT: All right. Thank you.

10 MS. RAMIREZ: Thank you, Judge.

11 MS. KANOF: Your Honor, first of all, tax violations
12 are not analogous at all to this situation, because most tax
13 violations and most Title 26 violations where the tax code is
14 found require a different culpable mens rea. They require
15 willfulness. And the United States Supreme Court, in US versus
16 Cheek, has imposed a special kind of mens rea. The Government
17 has to prove the highest level of mens rea in a tax case than
18 in any other case. Under US versus Cheek, they basically have
19 to say ignorance of the law is a defense.

20 And that's -- and that's why the Government didn't
21 talk about Title 26 when they were using analogies.

22 The closest analogy is 18 USC 1001. But let me
23 address the Fifth Amendment argument first.

24 Basically, what Defense Counsel is saying is that no
25 federal agency may regulate their employees by requiring them

1 to report anything, because that report might be incriminating
2 and, therefore, they should have a Fifth Amendment right, so
3 why even impose the regulation?

4 Just like it is not a crime to deposit cash, it is not
5 a crime to discharge a firearm. All Border Patrol is doing is
6 saying, You've got to report a discharge. It's an
7 accountability thing. It's to make sure they're okay. Maybe
8 it's to count bullets. I don't know why they have the rule.
9 It sounds like a pretty good rule and should be regulated, when
10 you have a right to use a weapon in a -- in a job.

11 But all Border Patrol is saying is, If you discharge
12 your weapon, you have to report it.

13 That is not in and of itself a criminal act, and
14 reporting it is not a Fifth Amendment protected act, because
15 they're not asking them to report a crime.

16 Let me clear up the record a little bit. The
17 definition of official proceeding is in 1515. It's in the same
18 chapter, but it's not under 1512. And the term "official
19 proceeding" does mean a proceeding before a Federal Government
20 agency which is authorized by law, which, obviously, the shoot
21 committee and the investigation in a shooting is an
22 authorized-by-law proceeding.

23 Obviously, they could not have that investigation and
24 proceeding if it were -- if there were a Fifth Amendment
25 privilege to reporting the discharge of a firearm.

1 More importantly, Your Honor, with regard to the
2 document existing or not existing, in United States versus
3 Arthur Andersen, Judge Rehnquist said that the proceeding had
4 to be reasonably foreseeable on the part of the defendant.

5 The Government is saying that it is reasonably
6 foreseeable, consistent with Judge -- Justice Rehnquist's
7 thinking and logic. In other words, imposing a greater burden
8 on the Government, not a lesser burden, that they know, the
9 defendants, that if they fail to report the discharge of a
10 firearm, not in and of itself a crime, that a document will not
11 be generated that otherwise would be generated if they're
12 reported.

13 You know, one of the most interesting parts of the
14 testimony today, Your Honor, was the fact that at firearms --
15 the day before this offense they had firearms training, which
16 includes the requirement to report the discharge of a firearm,
17 the very preceding day.

18 They know, from that policy, that what happens is your
19 supervisor writes a report. So it is reasonably foreseeable
20 that, if they follow that rule, a report is going to be
21 generated.

22 Therefore, you have a document, and that document is,
23 under the words of the statute, being concealed. And it is the
24 word "conceal" that was not mentioned by Defense Counsel,
25 because the definition of the word conceal in 1001, and in

1 other violations by Congress, is where you have a duty to make
2 a report -- not a duty to incriminate yourself, not a duty to
3 file a tax return. But in 1001 violation case law, where a law
4 enforcement agent has a duty to do something and fails to do
5 it, that is concealing. And it is criminally concealing if
6 it's material to a crime.

7 I think that clearly, Your Honor, this is a case of
8 first impression. This is a brand-new statute, 2002. (b) has
9 been tested in Arthur Andersen; (c) has not. Both (b) and (c)
10 were part of Sarbanes-Oxley, which was the congressional
11 legislation that enacted this portion of the tampering act.

12 And (c), there's just no case law on it. But I don't
13 think the Court is committing a grievous error by letting this
14 go to the jury, because it is consistent with the case law --
15 with the definition of concealment.

16 It is consistent with the duty that law enforcement
17 officers always have.

18 And it is consistent with United States versus Arthur
19 Andersen, where Justice Rehnquist talked about foreseeability.

20 THE COURT: All right. Anything further in the way of
21 your motion, Mr. Peters?

22 MR. PETERS: Just briefly. I agree with -- first of
23 all, I agree that that's part of Sarbanes-Oxley, which was
24 passed in wake of the Enron scandal. And the Enron trial
25 started about the same time as this one, and may get over

1 before ours, it seems.

2 But, you know, I would just ask the Court to look at
3 the Garrity case and look at those Christo cases that we
4 haven't discussed, but that I think are very -- very much on
5 point.

6 And also, I will point out that I have just a semantic
7 argument with what Counsel for the United States is saying.
8 And that is, what's being concealed, what's alleged to be
9 concealed in this case, is not a document. It's the fact of a
10 shooting. And that's -- that's -- that's the problem.

11 You know, it's -- but the statute says to conceal a
12 document. It doesn't say to conceal a fact that might somehow
13 get into the document. It's just the wrong -- it's -- it's --
14 it -- you know, it's not only, in my opinion, only legally
15 unsound, it's semantically unsound.

16 THE COURT: All right.

17 MR. PETERS: Syntactically unsound.

18 THE COURT: All right. Anybody else?

19 Ms. Ramirez?

20 MS. RAMIREZ: Judge, I just wanted to refer the Court
21 to my motion for judgment of acquittal, because the only thing
22 that really concerned me about the -- the instructions were
23 that, in -- Christo and Butler and in Kindig were the three
24 cases I cited in my motion for judgment of acquittal. The
25 Government was trying to equate civil regulations to -- to

1 become a criminal statute. And, in those three cases, the
2 Court was very careful to put a limiting instruction in the
3 Court's instructions and telling the jury, Look, you can't
4 equate this civil regulation to criminal liability.

5 In other words, just because there was a civil
6 regulation doesn't mean that the defendant is automatically
7 guilty, just because he violated the civil regulation.

8 And so that kind of concerns me in this case, because
9 that's exactly what the Government is arguing. They're
10 saying --

11 THE COURT: Well, interesting you should raise that
12 issue, because isn't Enron all about civil?

13 MS. RAMIREZ: Yes, except that --

14 MR. PETERS: It's not.

15 MS. RAMIREZ: Well, no, it's not about civil,
16 actually.

17 THE COURT: Isn't it about discovery documents?

18 MS. RAMIREZ: It was. Except, in that case, it was --
19 we're talking about Andersen, right?

20 THE COURT: Yes. Well, it's Enron and Ar- --

21 MS. RAMIREZ: Right, Arthur Andersen.

22 THE COURT: -- the whole -- yes.

23 MS. RAMIREZ: I think, in that case -- and
24 specifically, I asked for that instruction in my -- in my
25 proposed jury instructions. The Supreme Court said that

1 knowingly and corruptly were not defined correctly for the
2 jury, and so they reversed.

3 And they said you didn't define knowingly and
4 corruptly correctly, so you need to send it back to the trial
5 court and define it correctly for the jury, because --

6 THE COURT: Was it -- it was a mistake on the jury
7 charge.

8 MS. RAMIREZ: Right.

9 THE COURT: That's right.

10 MS. RAMIREZ: And the -- the jury instructions I
11 submitted to you were that knowingly, corruptly, were to be
12 defined as with evil, with dishonesty, with that type of
13 intent. And I don't see that definition in the Court's
14 instructions.

15 THE COURT: All right. Well, we'll talk about that
16 when we get to the Court's instructions.

17 All right. Yes.

18 MS. KANOF: I just -- if I can argue from here,
19 Your Honor?

20 THE COURT: Yes.

21 MS. KANOF: I just briefly want to say that failing to
22 report the discharge of the firearms in the case did conceal a
23 document. Because, but for the acts of the defendants, the
24 improper concealment acts, the document would have been
25 generated. And it is their acts that concealed that document.

1 THE COURT: All right.

2 The Court, having heard the Rule 29 motion, and -- as
3 well as the motions regarding the -- specific motions regarding
4 motion for judgment of acquittal, and the references to Counts
5 8 -- I think it's 7, 8, 9, and 10, the Court will overrule
6 those motions, and the prior ruling of this Court will stand.

7 So, at this time, then, I would like to talk to the
8 attorneys about the charge.

9 Has everybody had the chance to review it?

10 MR. ANTCLIFF: Yes, Your Honor.

11 MS. STILLINGER: Yes, Your Honor.

12 MS. KANOF: Yes, Your Honor.

13 THE COURT: All right. Give me just a minute, and
14 we'll just go ahead and meet in chambers on that issue. If you
15 will, bring your marked up copies, unless you have absolutely
16 no changes.

17 (Transcript continues in Volume XV.)

18

19

20

21

22

23

* * * * *

24 I certify that the foregoing is a correct transcript
25 from the record of proceedings in the above-entitled matter. I

David A. Perez, CSR, RPR

1 further certify that the transcript fees and format comply with
2 those prescribed by the Court and the Judicial Conference of
3 the United States.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Signature: _____ Date: _____
David A. Perez, CSR, RPR

1	INDEX	
2		PAGE
3	WITNESSES:	
4	DEFENDANT RAMOS PROFFER OF EVIDENCE	
5	WITNESSES:	
6	CHRISTOPHER SANCHEZ:	
7	Direct Examination by Ms. Stillinger	4
	Cross-Examination by Ms. Kanof	9
8	Redirect Examination by Ms. Stillinger	12
9	NOLAN BLANCHETTE:	
10	Direct Examination by Ms. Stillinger	15
	Cross-Examination by Mr. Antcliff	28
11	Cross-Examination by Ms. Kanof	28
	Redirect Examination by Ms. Stillinger	31
12	Recross-Examination by Mr. Antcliff	33
	Recross-Examination by Ms. Kanof	33
13		
14	JOSE ALONSO COMPEAN:	
	Cross-Examination by Mr. Gonzalez	43
15	Redirect Examination by Mr. Antcliff	210
	Recross-Examination by Mr. Gonzalez	214
16	Redirect Examination by Mr. Antcliff	216
17	Defendant Compean Rests	217
18	Government Closes	217
19	Defendant Ramos Closes	217
20	Defendant Compean Closes	217
21	Rule 29 Motion	219
22	Motions for Judgment of Acquittal	219
23	Certificate of Court Reporter	240
24		
25		

1 GOVERNMENT'S EXHIBITS			
2	NO.	DESCRIPTION	ADMITTED
3	6	Photograph	72
4	6A	Photograph	72
5	6B	Photograph	72
6	6C	Photograph	70
7	6D	Photograph	70
8	6E	Photograph	95
9	7	Photograph	70
10	51C	Photograph	116
11	100	Photograph	100
12	101	Photograph	55
13	101A	Photograph	55
14	102	Photograph	134
15	103	Photograph	135
16	104	Photograph	134
17	106	Photograph	147
18	106A	Photograph	147
19	108	Photograph	152
20	110	Casings	190
21	111	Rounds	190
22			
23 DEFENDANT RAMOS PROFFER EXHIBITS			
24	NO.	DESCRIPTION	ADMITTED
25	1	Memo	35