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

2 THE COURT: You may be seated.

3 THE CLERK: EP:05-CR-856, USA versus Ignacio Ramos and
4 Jose Alonso Compean.

5 MS. KANOF: Good morning, Your Honor. Debra Kanof and
6 Jose Luis Gonzalez for the United States. We're ready for
7 final argument.

8 MS. STILLINGER: Mary Stillinger and Steve Peters for
9 Mr. Ramos. We are ready, Your Honor.

10 MR. ANTCLIFF: Chris Antcliff and Maria Ramirez.
11 Ready.

12 THE COURT: All right. We have the charge ready, and
13 we are going to go over any objections on that first.

14 Then I want to go over with everyone what exhibits we
15 show as admitted, because I want to make sure that we know
16 which exhibits -- I mean, we've gone over it, and I think we
17 are pretty clear on it, but I just want to make sure everyone
18 is clear, because if you are going to be arguing exhibits, I
19 want to make sure we're clear on what those are.

20 And then we will bring the jury in. All right?

21 So, do you want to do the exhibits first or do you
22 want to do the objections to the charge? It doesn't matter to
23 me.

24 MS. STILLINGER: We might as well do the objections.

25 THE COURT: All right. Then go ahead.

1 Ms. Stillinger, you're ready to go, huh? Okay.

2 MS. STILLINGER: Your Honor, on behalf of Ignacio
3 Ramos, we would object to the Court's instruction on Count 9 of
4 the indictment, which is one of the obstruction of justice
5 counts.

6 And, of course, we did tender a proposed instruction
7 on that count, which we believe is a correct instruction. But
8 specifically, we're objecting to the Court's charge because it
9 allows the jury to convict without finding the necessary
10 element that there was a document, object, or thing that was
11 tampered with and, therefore, of course, would allow the jury
12 to convict without finding all the requisite elements of the
13 offense. That's one objection.

14 The other objection is, Your Honor, as to the use of
15 deadly force instruction that we submitted to the Court, it was
16 in the Court's proposed charge. As of Friday, it was taken
17 out, but that one would be applied to the civil rights
18 violation. We're objecting to that, of course.

19 THE COURT: All right.

20 MR. ANTCLIFF: Judge, on behalf of Mr. Compean, rather
21 than go through it, I will just adopt the arguments made by
22 Ms. Stillinger.

23 My objection would be to Count 10 -- I think that's
24 the count that deals with Mr. Compean, for her Count 9.

25 THE COURT: Right.

1 MR. ANTCLIFF: And I would also object, I think, that
2 the use of deadly force instruction submitted does need to be
3 included in the charge relative to the civil rights Counts 11
4 and 12.

5 THE COURT: Okay.

6 MS. RAMIREZ: And, Judge, Maria Ramirez on behalf of
7 Mr. Compean. And for Counts 6, 7, 8 and 10, we had submitted
8 to the Court a definition on knowingly corrupt.

9 And it's not included in the instructions, so I'm
10 assuming that that proposed jury instruction is not -- it's
11 overruled, and is not going to be included.

12 THE COURT: That's correct.

13 MS. RAMIREZ: Okay. Thank you.

14 THE COURT: So, as to defense objections, Ramos and
15 Compean, the Court will overrule those objections. As to the
16 charge, it will stay as -- it will stand as prepared by the
17 Court.

18 Any objections on behalf of the Government?

19 MS. KANOF: No, Your Honor. The United States has no
20 objections to the charge.

21 THE COURT: All right. Let's go over real quickly the
22 exhibits that we show as admitted.

23 All right. Is the Government ready?

24 MS. KANOF: Yes, Your Honor. Agent Sanchez has kept
25 that for us.

1 THE COURT: Okay. I'm going to have Mr. Martinez read
2 those out, then, as to the Government's exhibits.

3 Go ahead, whenever you're ready.

4 THE CLERK: It's 1, 2, 6, 6A, 6B, 6C, 6D, 6E, 7, 9,
5 10, 11, 12, 13, 13A, 15, 16, 21, 22, 26, 27, 28, 29, 30, 31,
6 32, 33, 34, 35, 36, 37, 38, 39A and B, 40, 41, 42, 43, 45, 46,
7 47, 48, 49, 50, 51, 51A, 51B and 51C, 54, 56A and B, 57, 58,
8 60, 61, 62, 63, 64, 65, 66, 67, 68, 83, 83A, B, C, D, and E,
9 84, 85, 87, 88, 89, 90, 92, 93, 94, 95, 100, 101, and 101A,
10 102, 103, 104, 106 and A, 108, 110, 111, and Government's Ramos
11 Bill 1.

12 THE COURT: All right. Is that the same as you show?

13 MR. GONZALEZ: Yes, Your Honor.

14 THE COURT: All right. Then as to Defendant Ramos?

15 THE CLERK: 7, 8, 9, 10, and Bill Ramos 1.

16 MS. STILLINGER: I think that there were two for the
17 bills, Your Honor. There was one that we admitted in chambers.

18 THE COURT: Yeah, I think that was proffer. Hold on.

19 I think we listed -- labeled that one as proffer.

20 Yes. And that's also -- what's that one labeled as,
21 Government's Prof- -- I'm sorry. I show it as exhibit --
22 second proffer Exhibit 1, Defendant Ramos.

23 MS. STILLINGER: Okay.

24 THE COURT: Okay? All right. Any others that you're
25 missing?

1 MS. STILLINGER: No, Your Honor.

2 THE COURT: All right. And then as to Defendant
3 Compean.

4 THE CLERK: Compean is 1, 2, and 3.

5 THE COURT: Is that correct?

6 MR. ANTCLIFF: I think so, Judge.

7 THE COURT: All right. So are we ready to bring in
8 the jury?

9 MR. GONZALEZ: We are, Your Honor.

10 MS. STILLINGER: Yes, Your Honor.

11 THE COURT: All right. Bring them in.

12 (Open court, parties and jury present.)

13 THE COURT: You may be seated.

14 Ladies and gentlemen, before you sit down, you might
15 want to pick up what's on your seats, and then you may be
16 seated.

17 Everyone may be seated. Thank you.

18 Ladies and gentlemen of the jury, we have now prepared
19 the charge. I'm going to go over that charge with you. You
20 may follow along as I read it to you, and then we will begin
21 closing argument. All right? Everybody ready?

22 (Charge of the Court read.)

23 THE COURT: Could the attorneys approach the bench for
24 just a second before we begin?

25 (Bench conference:)

1 THE COURT: How much time do you want? Are you
2 splitting it?

3 MS. KANOF: 15/30.

4 (End of bench conference; open court.)

5 THE COURT: You may proceed, Mr. Gonzalez.

6 (Bailiff and the Court conferring.)

7 THE COURT: The jury has requested a short break
8 before we begin the closing. I wouldn't mind one either,
9 ladies and gentlemen.

10 So we're going to take a real short break. Is five
11 minutes enough? Okay.

12 A five-minute break, and then we will begin closing.

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

14 THE CLERK: Court is back in session.

15 THE COURT: You may be seated. Ready?

16 MR. GONZALEZ: Yes, Your Honor.

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

18 THE COURT: You may be seated, ladies and gentlemen.

19 You may proceed, Mr. Gonzalez.

20 MR. GONZALEZ: Thank you. May it please the Court,
21 Counsel, Co-Counsel.

22 CLOSING STATEMENT

23 BY MR. GONZALEZ:

24 Ladies and gentlemen of the jury, I would like to take
25 this opportunity to thank each and every one of you for all the

1 attention that you've given to us these past two weeks. I know
2 it's a personal sacrifice for you to be here, and the
3 Government deeply appreciates that.

4 What I'm going to do at this point in time is
5 essentially go over some of what the Court read to you, go over
6 the Court's charge, and explain to you, at least from my point
7 of view, how that plays out with the facts represented to you
8 these past two weeks.

9 After I'm done, then the defense counsel will have an
10 opportunity to address you. Then, after they're done, then
11 Ms. Kanof will make the final concluding remarks.

12 As the Court indicated to you, the defendants are
13 charged with a number of crimes. Essentially, they boil down
14 to four different types of crime. They're charged with three
15 counts of assault. They are both charged with the same assault
16 counts. They are also charged with the same -- or similar --
17 discharge of a firearm, in relation to a crime of violence.
18 And they're also charged with a tampering with official
19 proceeding counts.

20 One of them is charged with approximately, I think,
21 five or four. The other one is with a different number. But
22 we'll go through those one by one.

23 And, lastly, they're each charged with a violation of
24 civil rights. That's what they're charged with, and that's
25 what I would like to discuss with you for the next half hour.

1 So, first of all, as you'll notice when you go back to
2 deliberate, the Counts 1, 2, and 3 are the assault counts.
3 They are then followed by the discharge of a firearm, in
4 relation to a crime of violence, and then they are followed
5 with a tampering with official proceeding counts; that's Counts
6 6 through 10. And Counts 11 and 12 are the civil rights
7 violation counts.

8 Now, what I want to urge you, and what I would suggest
9 to you, and I would recommend, that when you go deliberate,
10 that you start with the Counts 6, 7, 8, 9, 10, the tampering
11 with official proceeding. I suggest to you that, if you start
12 with those counts, your deliberations will be a lot smoother, a
13 lot simpler, because everything will fall into place once you
14 decide those counts.

15 So let's go ahead and talk about Count 6. Count 6 is
16 charged against Jose Alonso Compean. And it essentially is
17 charging him, in that count, with the collection and the
18 disposing of spent shell casings. And he did so to make sure
19 that those spent shell casings were not available to you during
20 your deliberations. That's essentially what that count
21 charges.

22 During the trial, I think last Friday, we brought
23 forth some evidence for you. Those things that we brought at
24 the very end were the examples of live rounds and examples of
25 the shell casings. We did that so that you would know the

1 difference between those two.

2 Because I think you recall there was Agent Compean's
3 testimony that Arturo Vasquez was confused, that, no, he never
4 showed him the casings, that he had showed him rounds.

5 So we brought those, so you could see that these are
6 very different. And as you remember, Arturo Vasquez, as is
7 Agent Compean, are experienced agents that would have known the
8 difference.

9 Now, I don't want anyone to think that these were the
10 casings that were shot on February 17, 2005, because those
11 casings have long been gone. We do not know where they are.
12 They've been concealed, they've been destroyed. They're not
13 available to you. That's part of the reason why we are here
14 today, ladies and gentlemen.

15 As I was saying, we go to Count 6 of the indictment,
16 and that's on page 29. And you may or may not want to follow
17 with me, depending what you want to do.

18 Essentially, that's the count that talks about Jose
19 Alonso Compean himself disposing of those casings. And you
20 heard his testimony. He said that -- he admitted he disposed
21 of those casings. The issue becomes, why did he dispose of
22 those casings? What was his motivation?

23 He wants you to believe that his motivation was
24 innocent, that -- you know, he shoots 14 times at someone, and
25 just automatically, just as he's walking back, decides to pick

1 up those casings.

2 Does that make any sense to you, ladies and gentlemen?
3 That defies sense. That defies reason. Let's think about it.

4 Part of the instruction in your charge is -- part of
5 the definition of beyond a reasonable doubt is also using your
6 common sense.

7 So, as I stand here before you today, I ask and urge
8 each and every one of you, just use your common sense. Did
9 what they say make sense? Does it make sense, you know, in
10 understanding the way things work in real life? Would someone
11 who's trained to shoot, to take all these precautions, pick up
12 all these casings, when he's also trained in crime scene
13 preservation?

14 You heard him testify that, I know what water marks
15 are, I know what drag marks are. And why was that significant?
16 Because that tells me that he knows the importance of those
17 things.

18 He also knew the importance of these casings. And he
19 also knew that these casings would be used against him if they
20 were found. He knew that they could be used to determine
21 things such as trajectory, and they could be used to verify
22 whether anything that he said was true, ladies and gentlemen.
23 And that's why he corruptly destroyed them, so that they would
24 not be available, so that no one would know exactly what
25 happened on that date beyond all doubt.

1 And, luckily, all we're required to prove is beyond a
2 reasonable doubt. And the only way that you would know beyond
3 a shadow of a doubt, or beyond all possible doubt, is for you
4 to have been out there. Of course, none of you were out there,
5 because then you would be witnesses.

6 So what we're charged with is to prove this case
7 beyond a reasonable doubt. And the definition is in your
8 instructions, and we'll go over that momentarily.

9 And I submit to you, ladies and gentlemen, that the
10 reason that neither Ignacio Ramos or Jose Alonso Compean told
11 anyone that they had shot their firearm, that they had shot a
12 human being, was because they knew from the very beginning that
13 it was a bad shoot. They knew that that shoot would never be
14 upheld upon review by anyone. And that's why we're here today,
15 ladies and gentlemen of the jury.

16 Now, the next count is that -- in your indictment --
17 is Count 7. That also mentions tampering with official
18 proceeding. And that official proceeding is also against Jose
19 Alonso Compean. And he's charged with the destruction of a
20 crime scene by collecting and disposing of spent casings, so
21 that the true and accurate crime scene could not be brought
22 forward to you. Because, once again, we did not learn of the
23 facts of this case until two or three weeks after they had
24 occurred. So there was no possible way that we could go back
25 and bring to you what occurred on that given date, because

1 reports were not made, were not taken, about the actual
2 shooting.

3 All we heard about that day, on February 17, 2005, was
4 the marijuana. We -- no -- nothing else about the shots, the
5 casings, nothing else, until much later. Because they went out
6 there and destroyed the crime scene so that it would not be
7 available to a trial jury -- and you-all are the trial jury --
8 or a Federal Grand Jury.

9 Now, the next count in the indictment is Count 8.
10 Now, that's charged against both Ignacio Ramos and Jose Alonso
11 Compean. And what does that count charge? It charges failing
12 to report to the appropriate authorities the discharging of a
13 firearm, which obstructed and impeded a contemporaneous
14 investigation.

15 I mean, obviously, we're here, we're in trial, because
16 we were able to piece this case back together again. But what
17 that count goes to is, what occurred on that day, the
18 investigation that should have occurred, the report that should
19 have been made, one that they did not make to their
20 supervisors, to anyone. That's why we're here. Had they done
21 what they were supposed to do, possibly things would have been
22 different.

23 But why didn't they do it? Because they couldn't
24 afford to take that chance. They couldn't afford to have a
25 contemporaneous investigation. Why? Because it was a bad

1 shoot. They knew it was a bad shoot. That's why they did not
2 tell a soul. It's that simple, ladies and gentlemen.

3 This case is not that hard. I know it's taken a
4 while, and we've tried to bring you all the possible evidence
5 that we could muster, so that you would have no doubt as to
6 what you're doing when you go back to deliberate.

7 The next count in the indictment -- I'm sorry.

8 And in relation to that count, it talks about, on page
9 33, that the duty to report the discharge of a firearm is a
10 civil regulation, which requires an employee with the U.S.
11 Border Patrol to orally advise a supervisor within one hour of
12 a firearm discharge.

13 And I think you've heard multiple witnesses testify on
14 multiple occasions. And even Agent Compean, in his own words,
15 says, I know we go through this quarterly training on firearms
16 testing, and they tell us over and over again, you know, what
17 we have to do as far as firearms policy. And part of the
18 firearms policy is to report shootings.

19 He knew it, as did Agent Ramos. As you heard, Agent
20 Ramos was himself a firearms instructor. He was the one who
21 was actually teaching people, If you have -- if you discharge
22 your firearm, you have to report it.

23 Why do you have to report? So that an investigation
24 would be made.

25 So they both knew what they were required to do, and

1 they both intentionally did not allow an investigation.

2 Also during the trial there was a -- much mention of
3 whether the reporting of the shooting is a -- you know, an
4 administrative violation, an administrative penalty.

5 Well, ladies and gentlemen, we know it is. The
6 shooting, in and of itself, yes, that's a violation of Border
7 Patrol policy. But why did they not report it? What were they
8 trying to conceal when they did not report it? They were
9 trying to conceal the crime that they had committed, the crimes
10 against Osvaldo Aldrete-Davila. That's O A D. That's in your
11 indictment. That's -- you know, when you see O A D, that's who
12 we're referring to, the victim in this case.

13 Once again, why didn't they report? Because they knew
14 from the very beginning it was a bad shoot. They knew that
15 they had -- if they reported it, that they would never be
16 exonerated.

17 And Count 9, ladies and gentlemen, goes to Ignacio
18 Ramos. And he's charged with having to -- having an
19 affirmative duty, pursuant to U.S. Border Patrol rules and
20 regulations, as you've heard, to report the discharge of his
21 firearm provided to him for his use, that he failed to report
22 that shooting to anyone.

23 And that failing to report his shooting impeded,
24 stopped, the generation of a written report. He didn't tell
25 anyone, so no reports were made.

1 What did he tell people? That Jose Compean had been
2 assaulted, that he had dirt in his face. And that we now know
3 that he didn't even witness that for himself, and he just
4 assumed that that occurred.

5 So we know, once again from the get-go, that these two
6 were covering up their crime. They knew what they had done was
7 wrong. They knew it was a bad shoot. They knew that if they
8 reported it there would be a full investigation, and they would
9 be where they are today, before you, ladies and gentlemen of
10 the jury.

11 And the last tampering with official proceeding count
12 is Count 10. And that's against Jose Alonso Compean, and it's
13 the same thing as the one I just mentioned to you, that he had
14 a duty, pursuant to U.S. Border Patrol policies, rules, and
15 regulations, to report the discharge of his firearm.

16 Ladies and gentlemen, it's that simple. All they had
17 to do was report it. Why did they not report? It's that
18 simple. I mean, if you do something wrong, you know, you're
19 not going to go announce it. That's why they didn't do it.
20 They knew they had done something wrong.

21 These are trained officers. They had been on the
22 force for -- one, three years, the other one over ten years.
23 They knew what they had done was wrong. And yet they come
24 before you telling you that it was an accident, that it was an
25 oversight. They're not telling you the truth, let me tell you

1 that, ladies and gentlemen of the jury.

2 Now, let me direct your -- so, like I said, I
3 recommend that you do those counts for tampering, Counts 6, 7,
4 8, 9, and 10, and then go to the beginning of the indictment.
5 That's where it charges the assault counts.

6 And in the assault counts, it charges three different
7 ways of committing the assault.

8 The first one in count -- let me see. Count 1 is
9 against both defendants, Jose Alonso Compean and Ignacio Ramos.
10 And in that count, they are charged with assaulting with
11 attempt to commit murder.

12 And it reads that they aided and abetted each other at
13 a place within special maritime and territorial jurisdiction of
14 the United States.

15 Well, you heard testimony that the location where this
16 occurred is within the special maritime and territorial
17 jurisdiction of the United States. So there's no issue about
18 that. There's no question.

19 Namely, on land acquired for use of the United States
20 under its jurisdiction, did assault a person, one O A D, with
21 intent to commit murder.

22 How do we know their intent?

23 First of all, these agents are trained to shoot to
24 stop the force. They're trained so shoot to kill. That's how
25 we know what their intent was. Their intent was to kill

1 Osvaldo Aldrete-Davila. So on that count, that's what their
2 intent was.

3 And how do we know beyond any doubt? We know through
4 the very own statement of Mr. Compean. What does Mr. Compean
5 tell us? Mr. Compean tells us in his statement, My intent was
6 to kill the alien. That was his intent.

7 And then he also adds, I think Nacho was also trying
8 to kill the alien.

9 MR. PETERS: Objection, Your Honor. That was not in
10 evidence. That last sentence was not evidence, and that was an
11 utterly improper thing for him to say.

12 THE COURT: Well, the jury will recall what is in
13 evidence.

14 MR. PETERS: And it would have been -- it couldn't
15 have ever gotten into evidence under the Rules of Evidence.

16 THE COURT: Okay. Hold on a second.

17 Could the attorneys approach?

18 (Bench conference:)

19 THE COURT: What part -- first of all, he made two
20 statements.

21 MR. PETERS: One statement, in his written, he said, I
22 think Nacho meant to kill him. That did not come into
23 evidence. We would object. It's speculation. It never came
24 in.

25 THE COURT: Because he made two statements, which is

1 that he intended to kill him. But you're talking about the one
2 where he intended to --

3 MR. PETERS: Could we have the ability to say what
4 Nacho's mind was? It never did come in. We were on the
5 lookout, when they were going over the statements, because the
6 minute they did it, I was going to jump up and object.

7 MR. GONZALEZ: My understanding was that evidence came
8 in, that he made that statement.

9 THE COURT: I never heard it.

10 MR. GONZALEZ: Okay.

11 MR. PETERS: Well --

12 THE COURT: Well, I will instruct the jury to recall
13 the testimony, and that what you say is not evidence. Be
14 careful.

15 MR. GONZALEZ: Yes.

16 MR. PETERS: Are you granting my objection?

17 THE COURT: Yes, regarding the statement that he is
18 saying that Compean said that Ramos intended to kill, yes,
19 because that is not evidence.

20 So I can strike that.

21 MR. PETERS: I would move for a mistrial.

22 THE COURT: The Court will deny your motion for
23 mistrial.

24 (Bench conference ends.)

25 THE COURT: Ladies and gentlemen of the jury, you will

1 recall, as I told you at the beginning and throughout the
2 trial, and in final instructions, that what the attorneys say
3 to you is not the evidence. The evidence is what you've heard
4 from this witness stand and the exhibits.

5 So again I will caution you, in closing arguments,
6 that what is said to you in closing arguments is to be -- is
7 argument, and just that, and not evidence. You will recall the
8 evidence.

9 The Court will strike the statement made by
10 Mr. Gonzalez, saying that Mr. Compean stated that Mr. Ramos'
11 intent was to kill.

12 All right. You may proceed.

13 MR. GONZALEZ: Ladies and gentlemen of the jury, you
14 heard Agent Ramos testify. You heard his training. He told
15 you what he was trained to do at the Border Patrol. Stop the
16 force. He's trained to kill. That's what he said, out of his
17 own words, that he's trained to stop the force. That's part of
18 their job. That's part of their training, ladies and
19 gentlemen.

20 And, ladies and gentlemen, they should have that
21 right. They are Border Patrol agents. As all law enforcement
22 officers should have, they should have the right to protect
23 themselves. But they have to do so when it's warranted.

24 And, as we'll discuss in a little bit, what they did
25 was not warranted by anything that they saw, anything that

1 happened, on February 17, 2005.

2 So, essentially, that count, Count 1, is the assault
3 with the intent to commit murder.

4 The next count is the count that talks about
5 assaulting a person with a dangerous weapon. And the dangerous
6 weapon in this count is the Beretta and the shotgun. Those are
7 the firearms that we're relating to.

8 And lastly, the Count 3 is the assault count that
9 deals with assaulting O A D, intending to commit serious bodily
10 injury.

11 And you have a definition of serious bodily injury,
12 and that's found on page 26 of your instructions. On page 26
13 it reads: The term serious bodily injury means bodily injury
14 which requires -- which involves a substantial risk of death,
15 extreme physical pain, protracted and obvious disfigurement or
16 protracted loss or impairment of the function of a bodily
17 member, organ, or mental faculty.

18 And, as you recall, Osvaldo Aldrete-Davila testified
19 that he felt extreme physical pain, that initially he felt a
20 burning sensation when he was first shot. And then he reached
21 back, touched his butt, looked at his hand, and saw that there
22 was blood on it.

23 And then, after he lay there for a few minutes
24 watching these two come towards him and holstering their guns,
25 seeing that he was down, and he was surprised and shocked that

1 these two would not come and arrest him, and he was there on
2 the ground. For all intents and purposes, he was there, ready.
3 He could not go any further. He was giving up.

4 What do they do? They holster their guns and turn
5 around.

6 And then he told you what -- that, after he walked
7 into the river, he felt -- three or four times that he was on
8 his hands and knees, that he felt extreme pain.

9 In addition to that, we also proved serious bodily
10 injury, through the testimony of the doctors, Dr. Warne and
11 Dr. Miller. They told us that, as you-all know, that Osvaldo
12 Aldrete-Davila is currently wearing a catheter. And -- because
13 he's lost the use of his urethra. And the urethra, as you
14 heard, is an organ of the human body. So we know that he has
15 suffered serious bodily injury.

16 Now that brings us to Counts 4 and 5. Counts 4 and 5
17 are the following, ladies and gentlemen. Count 4 is against
18 Ignacio Ramos, and its the discharge of a firearm in relation
19 to a crime of violence.

20 So, once you've decided the assault counts, and you
21 can say -- and once you've -- if you find him guilty of any of
22 those three counts, then the question becomes, did he knowingly
23 discharge his firearm in relation to the crime that you found
24 him guilty of? And then -- it's that simple. Yes, he did
25 shoot him, and he shot, used a firearm with intent to kill,

1 with intent to injure, with intent to commit serious bodily
2 injury. That's what that count goes towards.

3 The same thing in Count 5. That goes against Jose
4 Alonso Compean. Did he discharge his firearm, the Beretta, .40
5 caliber firearm?

6 And please, we all know Jose Alonso Compean was not
7 successful in actually hitting Osvaldo Aldrete-Davila. But he
8 attempted to do so, and he attempted on 14 different times, the
9 assault -- the intent to assault him was the same, ladies and
10 gentlemen of the jury.

11 And that, once you've looked at all those counts, the
12 last two counts in the indictment are Count 11 and Count 12.
13 And those counts deal with the violation of the civil rights of
14 Osvaldo Aldrete-Davila.

15 Yes, ladies and gentlemen, he was an illegal alien to
16 this country. But even illegal aliens, like all human beings,
17 have certain rights in this country. They have the right to be
18 protected from an unreasonable search and seizure, an
19 unreasonable seizure.

20 And that's what occurred on February 17, 2005, when
21 these two were shooting at him, and one actually shot him, by
22 Jose -- I'm sorry -- by Ignacio Ramos.

23 And you'll see the elements of the crime are as
24 follows: That Osvaldo has a right, secured by the Constitution
25 or laws of the United States, as you've heard. As you'll see,

1 we all have that right not to be shot at without good reason.

2 THE COURT: Ten minutes.

3 MR. GONZALEZ: Thank you, Your Honor.

4 The second element is that the defendant acted
5 willfully, that the defendant committed such acts with bad
6 purpose or evil motive.

7 Ladies and gentlemen, as you've heard for two weeks,
8 these two agents did not have a good reason to shoot at
9 Osvaldo. They didn't want him to get away. They had the
10 dooper. They wanted him in custody, and they were going to do
11 everything they could. But they realized they had gone too far
12 when they shot him. And that's why they left him. That's why
13 they didn't go pick him up. They had ample time and
14 opportunity to go get him by the edge of the river, if they
15 knew that they had -- he was down, he had been shot. They
16 weren't going to bring their crime to the world, and they let
17 him get away.

18 That they were acting under the color of law. They
19 were Border Patrol agents. They're authorized to carry a gun.
20 They're authorized to shoot the gun. But they must do so in a
21 reasonable manner.

22 And the third count, in the fourth element, resulted
23 in the bodily injury to the victim.

24 What you have to decide, ladies and gentlemen, is,
25 were they reasonable in their actions? Was it reasonable for

1 them to do what they did?

2 The only way that their actions would have been
3 reasonable and justified is if, in fact, Osvaldo Aldrete-Davila
4 had had a weapon.

5 What evidence -- what evidence has been presented to
6 you that Osvaldo Aldrete-Davila had a weapon? The only
7 evidence that has come forth has been through these two
8 witnesses' testimony. Not -- not one other Border Patrol agent
9 has testified that Osvaldo Aldrete-Davila had a weapon. The
10 only one who told us, the first time we learned of it, is 29
11 days after the fact.

12 Ladies and gentlemen, don't you think that, if Osvaldo
13 Aldrete-Davila would have had a weapon, they would have told
14 the world? They would have told every agent who showed up on
15 February 17, 2005.

16 But what did they do? They didn't tell a soul. They
17 didn't tell anyone. They made some reference to Jose Compean
18 maybe being assaulted, got some dirt on his face. They talked
19 about that. They talked about other meaningless things.

20 But why don't they talk about the most important thing
21 that allegedly happened that day, that Osvaldo Aldrete-Davila
22 had a gun? Why didn't they mention that to anyone? For the
23 very simple reason that Osvaldo Aldrete-Davila never had a gun,
24 and they knew it. That's why they covered up their crime.
25 They knew he never had a gun. It's that simple.

1 And, ladies and gentlemen, you saw Osvaldo
2 Aldrete-Davila testify. I think he testified for two days.
3 And, for two days, they tried hour after hour to break him
4 down, to see if they could impeach his credibility, to see if
5 they could get you to dislike him, because he was transporting
6 drugs on that day.

7 And that's true, ladies and gentlemen. No one has
8 taken that away. We know he was transporting drugs. That's
9 what he was doing. But, unfortunately, because of what they
10 did, we could not prosecute him. They decided, on February 17,
11 2005, who would be prosecuted. They decided we would not be
12 prosecuting Osvaldo Aldrete-Davila.

13 Had they done their job, had they been reasonable,
14 perhaps we could have been prosecuting the one who should have
15 been prosecuted on that day. But, no, they decided to break
16 the law themselves. They decided that they were above the law.

17 And then they come before you with this concocted
18 story that Osvaldo Aldrete-Davila had a gun. It's -- it was
19 shameful. The person who had some of the most credible
20 testimony is the drug dealer. The agents' stories do not hold
21 up.

22 You'll hear from Ms. Kanof, when she comes up, when
23 she makes her final concluding remarks on all the
24 contradictions and all the inconsistencies in their own
25 statements, once again, if Osvaldo Aldrete-Davila had had a

1 gun, why didn't they tell Rene Mendez, Lorenzo Yrigoyen,
2 Ignacio -- I'm sorry -- Oscar Juarez, Arturo Vasquez, Jonathan
3 Richards, Robert Arnold, Lance Medrano? Why didn't they tell
4 any one of those people?

5 Okay. They want you to believe, Oh, the supervisors
6 never believe us. The supervisors always pick the side of the
7 alien. Even though the agent's always cleared, they never
8 believe us.

9 That's just untrue, ladies and gentlemen of the jury.
10 The reason they didn't tell a soul, the reason they didn't even
11 tell their co-workers, is because it never happened.

12 And why does Jose Alonso Compean tell Arturo Vasquez
13 anything about even being -- there being an altercation? He
14 wants Arturo's sympathy. Because, in his statement -- and
15 Compean stated, he says, I picked up ten rounds. I talked to
16 Compean and -- I'm sorry, talked to Vasquez, and I tell him I
17 need him to pick up some more rounds.

18 And yet, when he testified, he wants you to believe
19 that, No, that's not what I meant. I didn't have the
20 conversation. He was confused about the bullets. He was
21 confused about the casings. And he has the audacity to take
22 the witness stand and lie to you, ladies and gentlemen.

23 THE COURT: Three minutes.

24 MR. GONZALEZ: Thank you, Your Honor.

25 Like I said, ladies and gentlemen, this is actually

1 very simple. Think about it. Why did they not report it? Why
2 did they not report the gun that Osvaldo had? For one simple
3 reason. Osvaldo never had a gun.

4 Now, also, during the course of the testimony, you
5 heard some witnesses take the stand, I think three Border
6 Patrol agents. Two were Jose Alonzo Compean's trainees:
7 Arturo -- not Arturo -- Oscar Juarez, and David Jacquez, people
8 that he trained. And they told you what occurred that day.
9 But, at what expense? We had to immunize them. We had to
10 grant immunity.

11 And once again, why did we have to grant immunity?
12 Because of their actions, the only way we were ever to get this
13 entire story presented to the jury was to grant people
14 immunity. Otherwise, there was no way we could present to you
15 what occurred on that day.

16 Ladies and gentlemen of the jury, I submit that we
17 have proven each and every element of the 12 different counts
18 beyond a reasonable doubt.

19 Now, the defense will follow me pretty soon. And
20 they, in my opinion, will do the following. They will try to
21 confuse and misdirect you. They will try to get you to focus
22 on things that do not go to the elements of the offense. They
23 would talk about some of the following things that they
24 covered -- and maybe they won't. Maybe I'm wrong, and I hope
25 I'm wrong. But they -- I expect them to cover some of these

1 following things.

2 Was Osvaldo truthful when he testified he didn't have
3 a driving permit? I mean, do you-all recall how long that went
4 on for? Is that a (speaking Spanish), is it not a (speaking
5 Spanish)?

6 What difference does it make whether his license was
7 expired? Jesus Christ, I mean, he is an unemployed person. We
8 all know that there's a lot of poverty in Mexico. We know why
9 people commit these crimes. We know why people bring drugs
10 into the United States. Because they don't have the money to
11 feed their families. That's why they do it.

12 And yet they went on and on and on, wasting all of
13 your time, to try to stress he didn't have a license. Maybe
14 they're going to come up here and say, Well, we're trying to
15 impeach his credibility.

16 How did that impeach anything? They didn't impeach
17 anything, ladies and gentlemen of the jury.

18 Another thing that they wasted a lot of time on was
19 the relationships between Rene Mendez (sic) and Osvaldo
20 Aldrete-Davila. That went on and on ad nauseam.

21 What difference does it make? Rene Sanchez was not
22 present on February 17, 2005. Rene Sanchez was nowhere in
23 sight. But yet, because he had the audacity to help out
24 Osvaldo Aldrete-Davila's family, or Osvaldo Aldrete-Davila,
25 somehow he's a bad person. He should not be believed. He's

1 dirty.

2 Same thing with Agent Sanchez. He got dragged in,
3 too. What relationship did he and Osvaldo Aldrete-Davila have?

4 Well, he is the case agent. He has to transport this
5 victim around. Once again, they wanted to cast a sinister spin
6 on this.

7 Well, ladies and gentlemen, that's just smoke, trying
8 to misdirect you, trying to keep you away from where your
9 attention should be. And your attention should be on the
10 elements of the offense.

11 All the elements of the offense are in the indictment,
12 and you can have them for yourself. You will have the Court's
13 instructions. If you have any questions, please refer to them.

14 Now, like I said a little while ago, the biggest smoke
15 screen -- pardon me. And I'll get to the biggest one.

16 One of the final smoke screens was the trajectory of
17 the bullet. You know, where did it hit? Did it enter on this
18 side? Was he turning?

19 Who cares? We know he was running. We know he was
20 trying to get to the river. He gets to the point in the river
21 where he's going to try to find a path to get across. That's
22 why he starts turning.

23 Use your common sense. It's not that hard. But yet,
24 they want to turn this into a sinister thing. Oh, he's got a
25 gun. He's pointing, he's shooting. And yet, if that happened,

1 why didn't they tell a soul? They didn't tell anyone, because
2 he never had it, and they both knew at the time that they shot
3 him that he did not have a weapon.

4 And lastly, the biggest smoke screen, the biggest of
5 them all, is that Osvaldo had a weapon, when he did not.

6 I trust when you go back, get together and deliberate,
7 that you will come back with a finding of guilty as to each of
8 the counts charged in the indictment against each of those two
9 defendants.

10 Thank you.

11 THE COURT: You may proceed, Mr. Peters.

12 MR. PETERS: Thank you, Your Honor.

13 Good morning, ladies and gentlemen.

14 THE JURORS: Good morning.

15 MR. PETERS: May it please the Court, Counsel for the
16 defense, Counsel for the Government.

17 CLOSING STATEMENT

18 BY MR. PETERS:

19 I want to thank you, on behalf of my client and
20 myself, for your jury service. Obviously, it's taken a lot
21 longer than what anyone expected, longer than you were told.
22 And I know, and my client knows, you-all have other things to
23 do that are very important to you.

24 But I believe that jury service is a very, very high
25 civic function. In many countries, even countries that are

1 relatively civilized and democratic, the determination of the
2 guilt or innocence of a person accused by his Government of a
3 crime is made by the Government. It's made by a bureaucrat or
4 a commissar or a prosecutor or a judge.

5 In this country, it's made by a citizen who is a peer
6 of the defendant. And, without your service, we wouldn't have
7 that freedom. And I thank you all for it, on behalf of my
8 client.

9 I want to talk to you briefly -- I don't have very
10 much time. But I want to talk to you about some things that
11 are in the jury charge. And the first thing I want to talk to
12 you -- if you want to look at it, it's on page 6 -- is about
13 the burden of proof.

14 And, as you've been told, and as you've known since
15 childhood civics classes, the Government has to prove the
16 defendant guilty beyond a reasonable doubt as to every element
17 of any crime of which they seek to obtain a conviction.

18 And, while it is true that reasonable doubt is not
19 beyond all doubt, it is still a very high standard. The Court
20 tells you what it is, because it tells you that it is a doubt
21 based on reason and common sense after careful and impartial
22 consideration of all the evidence in the case. Proof beyond a
23 reasonable doubt is proof of such a convincing character that
24 you would be willing to rely and act upon it without hesitation
25 in the most important of your own affairs.

1 Those words are very important. What are the most
2 important of your own affairs? You can think of what they are
3 yourself. To me, it would be something like whether you or a
4 loved one would have a dangerous medical procedure. It would
5 be whether to marry a particular person or divorce a particular
6 person or take a job in another state. These are very
7 important things.

8 And, in order for you to follow your instructions,
9 before you can find either of these defendants guilty, you must
10 be convinced that the Government has proven every element in
11 their case to that level of certainty. And that is a very high
12 level.

13 I want to also talk to you a little bit about an
14 instruction that appears on page 46 of your charge, that these
15 defendants are only on trial for the crime that is charged --
16 the crimes that are charged in this indictment.

17 The Government has presented a lot of evidence on
18 Agent Ramos' alleged violations of traffic laws and radio
19 protocols. And, incidentally, I think the Government spent
20 more time on that -- if we're going to talk about who was going
21 down rabbit trails -- than we spent presenting our entire case.

22 You know, but as far as these pursuit policies, my
23 client's not on trial for a traffic ticket. If he was, I mean,
24 as traffic tickets go -- I've tried traffic ticket cases. They
25 don't really have a strong speeding case against them. They

1 don't even have him on radar. They don't have anybody who
2 clocked him. They spent a lot of time talking about that.

3 And you have to ask yourself why. I think the reason
4 they did it is because they wanted you to believe that my
5 client is a bad person, and therefore, he must be guilty of all
6 these serious charges, which are obviously a lot more serious
7 than a traffic ticket.

8 There are a lot of charges here, and I submit to you
9 that Mr. Ramos is not guilty of any single one of them. And in
10 a minute, I'm going to tell you, as to each one, why he's not
11 guilty and why you should find him not guilty of every count.

12 But I would also like you to be partic- -- I would
13 also like to point out to you the instruction on page 17 about
14 multiple defendants.

15 I don't know how you're going to find either of these
16 defendants. But we submit that you may find them both guilty,
17 you may find them both not guilty, or you may find one of them
18 guilty and the other one not guilty. But how you determine the
19 guilt or innocence of one does not affect how you must
20 determine the guilt or innocence of the other.

21 Now, Ignacio Ramos is charged in seven counts, numbers
22 1, 2, 3, 4, 8, 9, and 12. Counts 1, 2, and 3 are all counts
23 pertaining to assault charges. And, with some minor
24 variations, they are all about the same, and the issues before
25 you are pretty much the same, and that is self-defense. That

1 is the defense. It's on page 21.

2 And the Government -- the defendant does not have to
3 prove that he acted in self-defense. The Government has to
4 prove beyond a reasonable doubt that he did not act in
5 self-defense. That's what your instructions tell you.

6 And this would require them, we submit -- this would
7 require two things. The first is that you would have to
8 believe beyond a reasonable doubt that Agent Ramos is not
9 telling the truth when he tells you that he believed he saw a
10 weapon in the hands of Osvaldo Aldrete-Davila on the day of
11 this occurrence, or something that looked like one.

12 But it also requires you to believe Osvaldo
13 Aldrete-Davila is telling you the truth about this incident,
14 and you must believe it beyond a reasonable doubt. And if you
15 do not, you cannot convict Ignacio Ramos.

16 I want to just talk about two pieces of evidence.
17 Ms. Stillinger is going to talk about most of the evidence in
18 this case, and I'm mostly just going to talk about the jury
19 charge.

20 But in relation to these assault charges, there's two
21 things I want to point out to you. The first is the body on
22 the bank. There was some reference made to it right now.

23 You know, Osvaldo Aldrete-Davila tells you that they
24 shot him, and then they holstered their guns, and they walked
25 away. And from that, you could reasonably infer that if that

1 were true, they left him to die, bleed to death, on the banks
2 of the Rio Grande. Right. The place is swarming with agents.
3 They knew the place would be swarming with agents in a moment.
4 There's patrols that go up and down that levee road every day.

5 And Agent Yrigoyen told you, Yeah, if there had been a
6 body on the bank, we would have seen it.

7 So how are you going to believe that these agents are
8 covering their tracks by leaving a body to bleed to death on
9 the bank? It makes no sense. The body would have been found,
10 the bullet would have been extracted, it would have been clear
11 whose gun it had come from, and they wouldn't have saved
12 themselves anything.

13 I also want to talk to you about the cell phone
14 Mr. Aldrete-Davila admitted he had when he crossed the river.

15 He says he left it in the van. But he also says
16 something else. He says, I never plugged it in.

17 Ms. Stillinger specifically asked him that. I think
18 it may have been the last question she asked him.

19 Did you plug your cell phone that they gave you into
20 the charger in the van?

21 No, I did not.

22 Well, Agent Vasquez told you that the only cell phone
23 that was in that van was plugged into the charger.

24 So, what happened to the other one?

25 Osvaldo Aldrete-Davila had it. It may have been what

1 was in his hand. It may have been what he used to call his
2 friends to come pick him up on the other side of the river.

3 But he was lying about that. And he was lying about a
4 lot of things, and I think you-all know that.

5 I also want to talk to you a little about the aiding
6 and abetting instruction.

7 I would ask, and I think the charge supports me on
8 this, that just because -- that you consider just because
9 someone does something that may help someone else in a criminal
10 act, that person is not responsible unless he intends a
11 criminal act. He has to have a criminal purpose, or the way
12 that -- the charge tells it on -- it's on page 22. It's in
13 various places in your charge. He has to have an intent to
14 bring about a crime. He has to voluntarily participate, with
15 the intent to violate the law.

16 As far as Mr. Ramos is concerned -- and you-all have
17 heard the sequence of events. He came up on a situation where
18 he believed that this fleeing suspect was in a gunfight with
19 his fellow officer. He came to this officer's aid. He
20 believed he saw a weapon in his hand, and he took the correct
21 step in that situation.

22 Count 4 is discharge of a firearm in relation to a
23 crime of violence. The Defendant Ramos did not commit a crime
24 of violence, because he's not guilty as to Counts 1, 2 and 3,
25 because he has a legitimate and honest and truthful claim of

1 self-defense. Therefore, he did not commit the offense stated
2 in Count 4.

3 As to the tampering counts, your charge tells you, for
4 example, on page 33, that in order for you to find Agent Ramos,
5 Ignacio Ramos, guilty of tampering with an official proceeding,
6 you must find that he knowingly and dishonestly, with the
7 specific intent to obstruct, influence, or impede an official
8 investigation, failed to make that report.

9 It's kind of like the body on the bank. There's no
10 evidence he ever asked any other officer not to report the
11 discharge. There is evidence that every other officer heard
12 it -- and there were several of them -- were aware of it, that
13 had duty, rather, to make that report.

14 So how is it that his failure to make this report is
15 supposed to keep him from being investigated? How is he
16 supposed to know that nobody else is going to make this report?
17 It makes no sense. It doesn't add up.

18 They're trying to get you to infer, just because he
19 didn't say it, therefore, he must be guilty. Because if he --
20 if he had thought it was a good shoot, he would have reported
21 it. But he was covering it up, because he knew it was a bad
22 shoot.

23 How is that going to cover it up? I mean, in fact, it
24 did prevent it from being investigated, but how is he supposed
25 to know that?

1 Furthermore, if he had known he hit him, which he
2 didn't; but if he had known that, then why would he not have
3 reported it, when the guy was gone anyway? I mean, how are
4 they going to get evidence that's going to convict him?
5 Because the only evidence that's going to convict him in that
6 shooting is evidence that Osvaldo didn't have a gun. That's
7 the only thing that's going to convict him. Okay?

8 And the only way they're going to get that evidence is
9 if they get Osvaldo. But him reporting isn't going to make
10 them get Osvaldo. Osvaldo is gone. Osvaldo is in a car
11 heading down the Mexican highway.

12 So how is it that he's protecting himself by not
13 reporting it? He's not. His heart is pumping, his adrenaline
14 is pumping. He's worried about Agent Compean, who had dirt all
15 over his face, and who he believed had been assaulted.

16 And he goes and he says, Hey, he's assaulted. There's
17 a big van full of dope, and he gets sidetracked by that. And
18 he doesn't say, Oh, by the way, I reported -- by the way, I
19 discharged my firearm.

20 Why wouldn't he not think that somebody else had
21 reported it? He would have. And it's a stretch to say that
22 him not doing it was some kind of criminal mastermind act.

23 There's something else about the tampering that's
24 right in your charge. And that is, the Court has told you that
25 the failure to report the -- the discharge of a firearm is a

1 violation of a civil regulation, and is not in and of itself a
2 crime. You've been told that you may consider it for evidence
3 of his state of mind. But if it's not in and of itself a
4 crime, then what crime, in the way of tampering, did Agent
5 Ramos do, could he possibly have done? If not reporting the
6 discharge of your firearm is not a criminal act, then what's he
7 accused of?

8 You can't find him guilty of that, because it's not a
9 crime. And it can go to his state of mind, and that may be
10 relevant to the assault charges, but it's not relevant to
11 either one of these tampering charges.

12 And also, as to Count 9, there's just one other thing
13 I do want to point out. Agent Ramos could not have altered,
14 destroyed, mutilated, or concealed a document, record, or
15 object, because there was no such object. If he concealed
16 anything, he concealed a fact. Okay? But he didn't conceal an
17 object. He didn't -- there's no evidence he had anything to
18 do, or even knew about picking up the shells. Zero. No
19 evidence. Nothing.

20 And that brings us to Count 12, wherein Mr. Ramos is
21 accused of depriving Mr. Aldrete-Davila of the right secured by
22 the Constitution or laws of the United States.

23 He's not guilty of this, because the Constitution and
24 laws of the United States only protect Mr. Aldrete-Davila from
25 an unreasonable search or seizure.

1 Reasonableness, the Court tells you on page 43, is
2 determined in light of all the surrounding circumstances. If
3 the officer used an amount of force reasonably believed
4 necessary to prevent escape or defend himself or another from
5 bodily harm, then he's not guilty. It says that on page 43.

6 And this is determined from the point of view of an
7 ordinary and reasonable officer.

8 And the Government's witnesses, ladies and gentlemen,
9 the Government's own witnesses, including Chief Barker,
10 including FOS Richards, all of them, were asked this. And all
11 of them said, Yes, that this is a standard. This is the
12 standard that Border Patrol officers are judged by. The
13 reasonableness of a belief or decision must be viewed from the
14 perspective of the officer on the scene who may often be forced
15 to make split-second decisions in circumstances that are tense,
16 unpredictable, and rapidly evolving. Reasonableness is not to
17 be viewed from the calm vantage point of hindsight.

18 THE COURT: Two minutes.

19 MR. PETERS: In this case, Agent Ramos received a
20 radio report that there was someone who he had every reason to
21 believe was smuggling drugs or aliens into our country.

22 He got up from his lunch hour, he went out to do his
23 job. He followed this alien, who fled from him and other
24 officers, back to the border. He got out of his vehicle, he
25 tried to make him stop. He didn't even want to go in that

1 ditch. He stood on the bank of the ditch and said (speaking
2 Spanish). Stop. You're under arrest.

3 And Mr. Aldrete-Davila made a run for it. He thought
4 he could get through Agent Compean, who was the only one on
5 that side of the bank.

6 And when he made a run for it, my client, Ignacio
7 Ramos, did what Agent Sanchez told you he would have done in
8 that situation. He went across that ditch in a heartbeat to
9 protect his fellow officer. And, while he's down in that
10 ditch, down in that ugly water, wading knee deep in mud and
11 muck and God knows what else, he hears a number of gunshots.
12 And he has no way to know who is shooting at whom.

13 And he crawls and climbs up a ditch. And when he
14 comes around Agent Compean's truck, here is what he sees.
15 Agent Compean is on the ground, he's struggling to get up, but
16 he's on the ground. He's obviously been in some kind of
17 struggle. He's got dirt in his face, and the driver is running
18 away from him.

19 And as he -- he pursues him, the driver turns around
20 and points at him like this (indicating), with something in his
21 hand. And this is what the medical testimony supports, because
22 this is what the trajectory supports.

23 And he makes a split-second decision, because he wants
24 to go home to his family that day. And he's not required to
25 die down there on the river, if he's in risk of being shot,

1 just so he can come in here and say, Well, I wasn't sure he had
2 a gun, so I died.

3 He doesn't have to do that. He has to make a
4 reasonable decision, and he has to make a fair decision, and
5 that's what he did. And he's not guilty of any of these
6 charges, and I ask you find him not guilty as to every single
7 count.

8 Thank you.

9 THE COURT: Ms. Stillinger?

10 MS. STILLINGER: Thank you. May it please the Court?
11 Counsel, and members of the jury.

12 CLOSING STATEMENT

13 BY MS. STILLINGER:

14 You know what? This prosecution stinks. And I know
15 that, and I think you-all know that. And I would feel
16 comfortable sitting down at this point in time.

17 Having said that, I would feel comfortable sitting
18 down and handing this case over to you, the jury, to consider
19 the evidence, to consider the jury charge. And I feel
20 confident that you would come back with not guilty verdicts on
21 all counts. And maybe, after two weeks of being here, that
22 would be a relief if I would do that.

23 But I have an obligation. I have a duty to my client.
24 I have an obligation and responsibility, and I have to do my
25 utmost to defend him, because he is worthy of every word that I

1 say in his defense.

2 And I will keep defending him until I'm told to sit
3 down, until this thing is over, because that's what he
4 deserves.

5 So, how did this case go from being a maximum five-day
6 suspension without pay -- which as we heard several times was
7 the administrative penalty for failing to report the discharge
8 of a firearm. How did it go from being a maximum five-day
9 suspension without pay to a federal felony criminal indictment
10 with the potential of years in prison?

11 How did that happen? How did a man who really, I
12 think, deserves a medal for his bravery that day, should be
13 commended for the way he defended his fellow agents, for the
14 way he was defending our country, how does a man like that go
15 to being a defendant in a criminal case?

16 Well, I think it is useful to look and see how that
17 happened, because then you see the weakness in the Government's
18 case. That is something I have asked myself many times. Why
19 did this happen? How could it be that these men are sitting
20 here? How could this be? How did the system go that wrong?

21 And it began with a dangerous and unusual alliance
22 between a drug trafficker and a Border Patrol agent.

23 And, of course, I'm talking about Osvaldo
24 Aldrete-Davila and Rene Sanchez. And they were trying to dupe
25 the system for profit, by the way.

1 And then you add an agent who -- who I think seems
2 like a good agent, but I would say is a little inexperienced.
3 Who, by the way, was not informed about every detail of the
4 relationship between Rene Sanchez and Aldrete-Davila.

5 He knew that there was some family/friend connection.
6 He didn't know that Rene Sanchez was advising Aldrete-Davila on
7 how to get immunity, how to get his medical benefits paid for,
8 how to find a lawyer, and how to file a big lawsuit against
9 Border Patrol. Agent Sanchez found that out while he was in
10 court.

11 So I'm not saying this is Agent Sanchez' fault. I am
12 saying that, in his zeal to do what he thought was the right
13 thing, he jumped to conclusions, he rushed to judgment. He
14 wanted the facts to fit his theory. He ignored some facts that
15 did not fit his theory, and he caused the changing of some
16 facts. And specifically, there, I'm talking about how some of
17 the agents changed their statements.

18 They changed their statements because the statements
19 didn't make sense to Agent Sanchez. They didn't make sense to
20 the prosecutors here, and they were talked to by these
21 prosecutors in loud tones of voice, which we heard in the
22 courtroom. They were threatened with indictment and told, Your
23 story doesn't make sense. And they would have to be stupid not
24 to change their stories to something that did make sense to
25 these people that had the power to indict them and put them

1 over here at the defense table.

2 Finally, the necessary ingredient to what happened in
3 this courtroom, why we're here today, is an overzealous
4 prosecution. That's the last necessary ingredient, and I think
5 that's what we've got. And I think it's important to examine
6 all of these things, and you will see the weakness of their
7 case, because everything in this case depends on the
8 credibility of the admitted drug trafficker, Osvaldo
9 Aldrete-Davila. Everything. Because he's the only Government
10 witness that can testify that he did not have a gun, he did not
11 brandish a weapon on the vega that day, or something that
12 looked like a weapon. He's the only one that can testify to
13 that.

14 So it comes down to, can you believe him beyond a
15 reasonable doubt?

16 Now, I expect the Government will say, Well, no, not
17 everything depends on Aldrete-Davila, because, number one, no
18 one else saw a weapon. There's other agents that were there,
19 and they didn't see a weapon.

20 Well, when would they have seen a weapon? While he's
21 driving the van? Is that when they would have seen the weapon?
22 Or when he's running through the ditch, which you're got
23 pictures of? It's quite deep and dangerous. Is he going to be
24 running with a gun in his hand as he's running through the
25 ditch? Of course not. The other agents didn't have any

1 opportunity to see it.

2 More likely, he would have put it in his pocket, put
3 it in his waistband, something like that, as he's running
4 through the ditch, and he got it out when he needed it.

5 And you know what? No one else was there to see it.
6 So Aldrete-Davila is the only Government witness who can
7 support the Government's theory that he was not armed, that he
8 was not threatening these agents.

9 Now, the Government may also say, Okay, well, maybe --
10 maybe that goes to the assaults. Maybe you have to believe
11 Aldrete-Davila on the assaults. Maybe you have to believe him
12 on the civil rights violations. But we have these obstruction
13 of justice counts over here, the tampering counts.

14 But you know what? Everything depends on
15 Aldrete-Davila. Because if there's no assault, if there's no
16 civil rights violation, no assault, if there's no bad shoot,
17 then what is the motive to obstruct justice? What is the
18 motive to tamper with evidence?

19 And, as you've seen in the Court's instructions,
20 intent is key to those charges. They have to prove to you that
21 these men acted corruptly, with a criminal intent. Okay?

22 And do you think that they would have any trouble
23 justifying this shooting? I mean, there's plenty of witnesses
24 that this was a chase. Of course, we've got a bunch of
25 marijuana that they found in the van afterwards. All it takes

1 is a furtive movement on the part of a defendant, or on the
2 part of a person, and that shoot is justified.

3 And when you think about it, use your common sense in
4 this. If a person gets pulled over, even for a traffic
5 offense, and the officer for some reason -- maybe he has some
6 heightened suspicion, but the officer for some reason comes up
7 and says, Put your hands on the steering wheel, where I can see
8 them. Put your hands on the steering wheel, where I can see
9 them.

10 And you don't do it. You say, No.

11 Put your hands where I can see them.

12 And, instead, you reach for your phone, because you
13 want to call your lawyer. What do you think is going to
14 happen? You might get shot in the head, is what might happen.
15 And you know what? You might be a completely innocent person
16 who was having a bad day and didn't feel like doing what the
17 officer said.

18 That would be a justified shooting. Because, you know
19 what? That officer has a right to tell you to put your hands
20 where he can see them, and he has a right to defend himself, if
21 he thinks you're going for a gun.

22 So these men would have no problem justifying that
23 shooting.

24 Really, in order for you to believe the Government's
25 theory, you have to think they are some sort of crazed rogue

1 agents out there that shoot people for fun, and that's what
2 they were doing out there.

3 You know what? They didn't tell anybody else about
4 the gun, because the threat had ended. They are going to
5 say -- well, they have said -- the failure to report the
6 shooting, the failure to report a firearm, that the man had a
7 firearm, means they had something to hide. But you know what?
8 The converse is just as true, isn't it?

9 That, if it's a good shoot and it was justified and
10 nobody is hurt, there's nothing to investigate. There's
11 nothing to hide. So the failure to report the discharge of a
12 firearm is an administrative oversight. It's not a crime. And
13 that's where you need to start, is looking at the assault. Was
14 there a crime they were trying to cover up?

15 If they are not trying to cover up a crime, then
16 there's no obstruction, either, because they're not trying to
17 cover up anything. There's no motive.

18 So we get back to -- and I think you can see why, now,
19 everything depends on the credibility of Osvaldo
20 Aldrete-Davila.

21 Are you going to believe the admitted drug trafficker,
22 or are you going to believe the agents?

23 And let me say, it's not really that simple, do you
24 believe him or do you believe them? Mr. Peters talked about
25 burden of proof, and you have to believe things beyond a

1 reasonable doubt. It's not a balancing act, okay, the
2 Government and the defense, who am I going to believe?

3 They have to convince you beyond a reasonable doubt.
4 You have to know that Osvaldo Aldrete-Davila is telling you the
5 truth. Okay. You can't know it absolutely for sure. You have
6 to know it beyond a reasonable doubt. You have to be willing
7 to put that kind of confidence in Alderete-Davila that you
8 would put in someone that was advising you in the most
9 important of your own affairs.

10 And I think we know what that answer is. Who could
11 believe a word that man said, really?

12 I do want to say something. I'm calling him a drug
13 trafficker, and I want to make it quite clear.

14 Our theory of the defense is not that he's a drug
15 trafficker and he deserves to be shot. I think you know that.
16 That's not our defense, he's a drug trafficker and he deserves
17 to be shot.

18 Or, he's a drug trafficker, therefore, you can't
19 believe anything he says. That's not our theory, either.

20 I'm calling him a drug trafficker because that's what
21 he was that day. He was a drug trafficker. And you know what?
22 He's not just a little mule. You-all can use your common sense
23 on that one, too. Yes, we cross-examined him a little bit
24 about his driver's license, because he said, Oh, I had to do
25 this because I had to renew my driver's license.

1 Well, it wasn't expired, number one. But use your
2 common sense. The mules -- that's what we call the people that
3 bring the marijuana, the very low-level participants who bring
4 the marijuana across the river. They're the ones that strap
5 these bags -- when you look at this exhibit, you'll see these
6 bundles are made into backpacks. The mules are the ones that
7 carry these across on their backs.

8 Somebody driving a van, carrying this kind of
9 marijuana, that is a person in a position of trust. That is a
10 person who knows where the stash house is, where he's going to
11 take the marijuana. And we know that he knew who hired him.
12 We know that he has friends in the drug trafficking
13 organization that picked him up, friends that were making
14 threats against other Border Patrol agents in retaliation for
15 this.

16 So he is not just a mule. He is a drug trafficker,
17 and that's why I'm identifying him that way.

18 I'm identifying them as agents. That's what they were
19 doing that day. They were acting as Border Patrol agents.
20 And, of course, Ignacio Ramos is much more than a Border Patrol
21 Agent. He's a husband. He's a father. He wants to go home at
22 the end of the day. He loves his kids. He wants to raise his
23 kids. But, on that day, he was acting as a Border Patrol
24 agent.

25 Mr. Aldrete-Davila may be more than a drug trafficker,

1 but that's what he was doing on that day.

2 The Government wanted you to think this had nothing to
3 do with this case. These bundles of marijuana had nothing to
4 do with this case. In fact, we went a day and a half of trial
5 and nobody even told us about this. I think that you --

6 MS. KANOF: I would object, Your Honor. That was
7 Court's order.

8 MS. STILLINGER: It went to their request, Your Honor.

9 THE COURT: Could the attorneys approach?

10 (Bench conference:)

11 THE COURT: Explain what you mean by "their request."

12 MS. STILLINGER: Motion in limine.

13 THE COURT: That doesn't --

14 MS. KANOF: It's normal to do that. That doesn't
15 change our motion in limine.

16 THE COURT: It doesn't change a motion in limine,
17 whether that made it --

18 MS. STILLINGER: They made strategic --

19 MS. KANOF: If you want to talk about motion in
20 limine --

21 THE COURT: You know what was admitted. You know it
22 wasn't. You know what the motion in limine allowed and didn't
23 allow. Let's stick with the facts as represented in trial.
24 All you're allowed to do is argue the case as was presented in
25 trial.

1 MS. STILLINGER: All right.

2 (Bench conference ends.)

3 THE COURT: You may proceed.

4 MS. STILLINGER: Thank you. Members of the jury, I
5 would say the Government has gone to great lengths to obscure
6 from you the fact that everything depends on Aldrete-Davila's
7 credibility in this case.

8 And I submit to you that they have presented an
9 extraordinarily misleading case. I'm sure you noticed that
10 yourselves. You've been very attentive. You sat here for a
11 couple of weeks. I'm not going to be able to go over all the
12 evidence with you, and I'm going to rely upon your judgment and
13 your recollection to do that. But I would like to point out a
14 couple of things to you.

15 It was mentioned several times by the Government,
16 starting in opening statement and through witnesses, Border
17 Patrol agents aren't even supposed to investigate drug cases.
18 That's not even their duty. They are supposed to be doing --
19 investigating immigration offenses.

20 Well -- and that might be true. In some sense, that
21 certainly is their primary duty. But all of their witnesses
22 agreed with me, Isn't it true Border Patrol is the primary drug
23 interdiction agency along the border?

24 Yes.

25 Aren't they supposed to do this? I asked a number of

1 their witnesses. Aren't they supposed to investigate and
2 follow suspected drug traffickers?

3 Yes, that's what they're supposed to do.

4 The Government wanted you to think that these agents
5 had no reason to investigate this particular van. They tried
6 to throw out some confusion about, Well, how do you know that's
7 the same van that Compean called out?

8 Well, you know, I spent a little bit of time with
9 Aldrete-Davila on the map, and had him show me on the map,
10 Where did you pick up this van?

11 I spent time with some of their other witnesses
12 saying, Where is area 76?

13 And you know what? It's the same place. It is the
14 same van.

15 They wanted you to think that the agents cannot follow
16 a van unless they've seen the drugs inside. Nobody, including
17 the supervisors of these agents, thought that was the way you
18 evaluate an investigation. It's the biggest nonissue of all,
19 the vehicle pursuit policy.

20 And I will apologize to you for doing my part in
21 cross-examining on that. I felt I had to, because that was the
22 red herring. And I agree with what Mr. Peters said, is that
23 they wanted to throw that out to you, to show you these are
24 overzealous agents. They don't follow any rules.

25 And remember how Ms. Kanof said, You're misstating the

1 policy.

2 Well, her agents -- I mean, I'm sorry, the
3 supervisors, her witnesses, actually confirmed that we did
4 understand it right. We were asking the right questions. We
5 did understand it right.

6 They also confirmed that, apparently, even though
7 what's written in black and white can seem somewhat clear, the
8 supervisors interpret it differently. There is no black and
9 white policy. Well, there is a black and white one, but the
10 supervisors interpret it differently. The agents have to use
11 their judgment.

12 And you know what? Even speeding a little bit does
13 not make it a high-speed, high-risk pursuit. Supervisor Arnold
14 said that. You know, you use your judgment.

15 I asked him, What do you think about this chase out
16 there that day?

17 It looked like they were doing their job, doing a good
18 job.

19 That's what they were doing.

20 And the next biggest, probably, waste of our time, or
21 attempt to obscure, or divert attention, was the radio. They
22 were making it sound like it was a terrible thing to not use
23 the repeater. They were, you know, using local. They're
24 trying to hide something from you, because they're using a
25 local radio that doesn't get you recorded, until Supervisor

1 Arnold testified and said, Yes, I used direct. That's all I
2 did that day.

3 You see, he's not on the transcript. That's all he
4 used.

5 Anything wrong with that?

6 No.

7 Is there a policy about that?

8 No.

9 How much time did we spend having to learn how these
10 radios worked, because they wanted you to do think that these
11 agents had done something wrong about using the direct radios.

12 They picked apart and criticized every step that
13 Mr. Ramos took that day. He likes to catch drug smugglers. Is
14 this a terrible thing? Is this a terrible thing? He likes to
15 catch drug smugglers. He prefers catching drug smugglers to
16 aliens. That's a terrible thing.

17 They criticized his operation of pursuit, which none
18 of the witnesses seem to think was a problem. They criticized
19 which radio channel he used. They criticized him for crossing
20 the ditch to help Agent Compean.

21 And remember how Ms. Kanof cross-examined Mr. Ramos?
22 Well, you knew he was just trying to get back to Mexico. Why
23 did you go?

24 Oh, well, is he just supposed to sit back and let him
25 go? And did she forget that Chris Sanchez had said, I would

1 have gone over there in a heartbeat?

2 That's what a good agent would do. He would go over
3 there. He wouldn't stay behind and start checking numbers on
4 the cell phone, start looking at the marijuana load in the van
5 while he's hearing gunshots go out. That's not what a good
6 agent would do. A good agent would cross the ditch to go help,
7 and see what was happening on the other side of the ditch, to
8 back up his fellow worker.

9 Criticized him about stopping to help Agent Compean.
10 Why didn't he stop and render first aid? If you knew that he
11 had been hit, why didn't you stop and render first aid?

12 Well, his explanation of it was a very good
13 explanation. Maybe I would have stopped and rendered first
14 aid. I would have been shot. I don't know. I don't -- I'm
15 not trained in these things. I suspect Ms. Kanof is not
16 trained in these things. And I don't know if any of you are or
17 not. But it made sense what he's saying. There's been a
18 shooting, you run over there, you see your fellow agent down,
19 and you don't stop and render first aid when you don't know if
20 the threat is gone. You see the person, you run after him.

21 Now, if Agent Ramos had wanted just to shoot him
22 because he's having fun shooting people on the vega that day,
23 why did he tell him, Stop, stop? Why did he even run? Why
24 didn't he just stand there, focus, and shoot?

25 He ran after him, because he was going to give him

1 another chance to stop. And he wasn't going to shoot him until
2 this man turned around again like this. And that's when he
3 shot.

4 And, finally, of course, that's the main thing that
5 he's criticized for, is making that decision to shoot.

6 How could he know he had a gun? Didn't you know he
7 was right-handed? Which is ridiculous, of course. But how do
8 you know it's a gun? Can't you tell? When you heard the
9 shots, couldn't you tell they all sounded the same? Different
10 guns, don't they sound differently?

11 You know, Mr. Peters just read it to you, the standard
12 that you apply. But you know that, in your common sense,
13 things hap- -- these things happened in seconds. You don't
14 have time to stop and think, Well, does that look like a gun?
15 I'm not sure. Somebody is pointing something at you that looks
16 like a gun, you heard shots fired, you see a fellow worker
17 down, what does any reasonable person do? They shoot, when the
18 suspect turns around with a hand pointed like that. Of course
19 they do.

20 Now, Ms. Kanof might want to twist the time line
21 around a little bit on what happened, and I want to make sure
22 it's clear to you, because it is a little complicated.

23 Agent Ramos -- because they kept asking, Why didn't
24 you see this happen with Compean? Why didn't you see the
25 struggle with Compean?

1 Well, that all happened when he's going through this
2 ditch. This isn't just -- you know, this is not a little ditch
3 that you just crawl through -- jump across. It takes some time
4 getting down in it, crossing through the murk, and climbing
5 back out of it.

6 And, while Agent Ramos is in there, the shots are
7 fired. Actually, while -- when he starts going down, that's
8 apparently when whatever happens with the shotgun and Agent
9 Compean happens. That's when the struggle happens between
10 Agent Compean and the drug smuggler, when Agent Ramos is going
11 through that ditch, and that's when the shots are fired.

12 And is it impossible to believe all that happens while
13 Agent Ramos is in this ditch? Of course not. That happens in
14 seconds. And it takes longer than that to cross the ditch.

15 And when he comes over, Agent Compean, according to
16 him, is fooling with something having to do with the
17 ammunition. And that's when Agent Ramos walks over, and he
18 doesn't know that's what he's doing. He can't stop and ask him
19 what he's doing, because he has to react to the situation, and
20 react like a professional. And that's exactly what he did.

21 Now, another misleading aspect, I would say, of the
22 presentation of this case is, we heard some testimony about a
23 shooting review committee. We've heard something about -- this
24 is the kind of thing that would happen after a shooting, a
25 shooting review committee.

1 Well, Luis Barker testified the shooting review
2 committee didn't exist anymore as of February 17, 2005.
3 Remember that? He said, No, we don't have -- we didn't have
4 that anymore in 2005.

5 Oh, okay. Well, where would it go?

6 Well, it would go to the DRB, our disciplinary review
7 board, if there were more than a 14-day suspension.

8 And if there's not?

9 If there's not, it just gets reported. It gets
10 reported to Washington.

11 What is this proceeding that we're talking about?
12 What proceeding is being tampered with or obstructed or
13 impeding? I don't know what that is, because I didn't hear the
14 testimony about that.

15 But more important, Agent Ramos told you he doesn't
16 know what that is, because the one time he was involved in a
17 shooting, he was asked to write a memo about it, which he did,
18 and nothing ever happened. Nobody questioned him. Nobody
19 asked for any follow-up. He never knew anybody met about it.
20 He never got a decision on it. As far as he knows, there never
21 was a decision made on it. There never was any kind of
22 proceeding.

23 So what is he thinking about tampering with at this
24 point in time?

25 And Agent Blea -- I think that's how he said his

1 name -- the sector evidence team, the person who came here.
2 And they wanted him to say, of course, all of these things
3 should have been done. And they talked about you take photos,
4 you measure, you find the casings, you take measurements, and
5 you do this and that, and you take footprints, tire prints, all
6 these different things. And those are the kinds of things the
7 sector evidence team does.

8 Well, are agents supposed to preserve these things?

9 And he said -- I wrote this down so I would remember
10 it. He said, It would be nice if they would preserve the
11 evidence. I'm not sure if it's in the policy.

12 It would be nice? He is not sure if it's in the
13 policy? And that's the horrible criminal intent supposedly
14 that they had, is they weren't doing what would be nice under
15 Agent Blea's opinion.

16 You know, I also think it's very misleading the
17 characterization of the thin green line. And the thin green
18 line, as Ms. Kanof said in her opening, is like the thin blue
19 line. And that's a phrase that's used to describe police
20 officers sometimes, the thin blue line.

21 It's not some brotherhood of corruption. The thin
22 blue line is described as the line that protects us, as
23 law-abiding citizens, from anarchy and from the criminal
24 element. That's what the thin blue line is. And I would
25 submit to you that's what the thin green line is in this case.

1 There is a very thin green line down there in Fabens.
2 There's a very thin green line that protects us from drug
3 traffickers like Osvaldo Aldrete-Davila.

4 But they wanted to invoke some sort of brotherhood
5 amongst these agents, that they won't rat on each other, and
6 they have to go to extremes like offering immunity to get the
7 truth out of them.

8 Well, what evidence did you ever hear that there were
9 conversations, Hey, let's not report this? Or that there is
10 any unspoken understanding, You better not snitch on one
11 another?

12 What evidence did anybody hear about that? I
13 certainly didn't hear about it. What I heard about, when
14 somebody asked Agent Compean, Hey, what happened? He told them
15 what happened. I didn't hear any evidence about some sort of
16 brotherhood where they agree not to snitch on each other.

17 In fact, what I heard is the agents said, I didn't
18 think I did anything wrong by not reporting it. Arturo Vasquez
19 said, I assumed it was reported.

20 The other agent said, Well, I thought I might be in
21 trouble for -- for -- well, because they didn't believe me, and
22 thought I was fabricating something.

23 Well, what about the initial thing that supposedly --
24 this horrible criminal offense of not reporting the discharge
25 of a firearm?

1 Remember the policy, it's an obligation on the people
2 that hear it, the people that know about it, and the people
3 that shoot.

4 MS. KANOF: Objection, Your Honor. That's a
5 misstatement of policy.

6 THE COURT: I'll sustain the objection.

7 MS. STILLINGER: You can remember the evidence.
8 That's what I remember. You can remember it individually,
9 collectively. You'll remember the evidence.

10 They certainly thought they weren't covering up any
11 kind of assault, any kind of intent to kill. None of those
12 agents that failed to report this were trying to do any of
13 those things, including these two.

14 And the Government did their best, by the way, to get
15 all the damaging evidence out of them. If there was that kind
16 of evidence, damaging evidence, I'm sure they would have gotten
17 it out of them. They gave them immunity agreements, they
18 threatened with prosecution.

19 And I understand Mr. Gonzalez is saying, as I
20 anticipated he would, Well, that's the only way we can get to
21 the truth, by giving the immunity agreements and by putting a
22 little pressure on them.

23 Well, isn't there also a terrible risk that testimony
24 would be fabricated when you do that? Wouldn't you like to see
25 some testimony that hasn't been bought by the Government with

1 an immunity agreement? Some testimony that is just -- Agent
2 Yrigoyen. He didn't have an immunity agreement. He was a good
3 witness.

4 Supervisor Arnold, he came in here, told you how he
5 saw it. He felt these guys were doing a good job at work that
6 day.

7 Now, Supervisor Richards, he doesn't have an immunity
8 agreement. On the other hand, he's the one with the
9 responsibility for filing those reports that day. Remember the
10 agents only have to make an oral report. But the supervisor is
11 the one who is on the line for the responsibility. And guess
12 what? He's saying he didn't know about it. What a surprise.

13 THE COURT: Five minutes.

14 MS. STILLINGER: Thank you.

15 I would say we heard two weeks of nonissues, and that
16 was to obscure the fact that everything depends on Osvaldo
17 Aldrete-Davila's testimony.

18 The origination of the case, I know why -- I
19 anticipated they would say it's a smoke screen. But, given the
20 relationship between Rene Sanchez and Aldrete-Davila, how
21 likely is it that Sanchez helped him with his story? How
22 likely is that? He doesn't report -- when he finds out about
23 this, he doesn't report to his superiors, I know who the drug
24 trafficker is. He re- -- he's out there investigating the
25 viability of a lawsuit. And then he lied about it.

1 Now, why am I saying he lied about it? Do I believe
2 Aldrete's testimony that, yes, they met, and Sanchez gave him
3 advice on a lawyer and told him how to file his lawsuit, all of
4 that? Aldrete-Sanchez (sic) is not really worthy of belief.
5 But what is his motive to lie on those issues?

6 He's got a big motive to lie about not having a gun.
7 He's got a big motive to say, I never brandished anything,
8 because he's wanting that \$5 million.

9 But what's his motive to lie about Rene Sanchez giving
10 him all this advice? I think the way this case was instituted
11 is extremely significant.

12 And, by the way, that initial lie -- he told a lie
13 about how this happened at first, Aldrete-Davila. He says it
14 happened -- I was just trying to cross into the country, and
15 they illegally shot me in the back.

16 Of course, he knew very soon that that lie would be
17 found out because, of course, the agents would be interviewed,
18 and there was a big load of drugs.

19 That lie, by the way, ended up in every report
20 Christopher Sanchez wrote. Now, let me make this very clear.
21 I'm not saying Christopher Sanchez was trying to mislead
22 anybody. But he found out that was a lie a week after it was
23 told to him, and he put it in every report he wrote, told --
24 for the rest of the case -- in April, May, and September. He
25 put that in there.

1 And he did it, not because he was trying to mislead
2 anybody, but that's how he learned to do it when he was in
3 customs. Where is the policy that says you can put a lie in
4 the first paragraph of your report?

5 No, that's the way I was taught.

6 He's not trying to mislead anybody, but he's putting a
7 false statement in a report that he knows is false.

8 I'm giving you that example, because that's how
9 important intent is. Christopher Sanchez wasn't trying to
10 mislead anybody, but it could be looked at quite differently by
11 somebody else that wanted to come in and pick apart his work.

12 You can look at Aldrete-Davila's demeanor, his
13 testimony. Did he seem honest or truthful to you? He sat
14 there and testified about how it happened. We know he told
15 lies in the past. We know he protected people he wanted to
16 protect. The people that hired him, the people that picked him
17 up, the people that were making threats to shoot Border Patrol
18 agents. He was allowed to protect -- he kept getting the
19 immunity agreement. Even though he breached it over and over
20 again, he kept getting that immunity agreement.

21 And he didn't have to answer any questions about what
22 happened before February 17, 2005, or what happened after
23 February 17, 2005.

24 THE COURT: Two minutes.

25 MS. STILLINGER: Thank you.

1 And did he appear even a little remorseful for what he
2 did?

3 You know, what I think was wrong with the
4 investigation in this case is Agent Sanchez approached it as --
5 like a murder case. What happened? That wasn't the question
6 in this case. The question was, Why did it happen?

7 We have law enforcement officers and we have a drug
8 trafficker. Why did that happen?

9 I'm not even sure if he asked Aldrete-Davila, Did you
10 have a gun, until that conversation came up in April. That
11 wasn't important to him at the time, because he had an idea
12 about how it happened, and he didn't care what had happened.

13 And you know why they didn't even try to interview
14 either of these two before they had the arrest warrants?
15 Because they didn't care. They had their minds made up. It
16 didn't matter what they said.

17 Now, I have some questions maybe Ms. Kanof will answer
18 when she gets up and talks to you.

19 Why did she want you to think they were doing
20 something wrong in following this van?

21 Why does she want you to think Border Patrol doesn't
22 investigate drug crimes?

23 And why did she want you to think this man was shot in
24 the back?

25 You heard the medical testimony. It was a dramatic

1 moment when her witness, when she asked her witness, Could it
2 have happened like this?

3 And he said yes.

4 Were they trying to mislead you, or is that how they
5 understood the evidence before today?

6 Now, there's so much more I could have talked about.
7 I'm going to go to the last page of my comments, because I am
8 out of time. The judge is about to tell me to sit down. I
9 told you I would keep talking until then.

10 Agent Ramos -- I just want to leave you with this
11 thought. He's been assaulted, he's had his hand broken on the
12 job, he's been stuck with a pin -- with a needle, a hypodermic
13 needle, on the job. He's been shot at. He's not bitter and
14 he's not jaded, because he kept going out there and doing his
15 job.

16 And he didn't sit back and say, Oh, I don't want the
17 trouble of crossing this ditch. He went out there and did it.
18 And because he didn't follow an administrative regulation, he
19 assumed something was reported, when he should have ensured
20 that it was reported, he's being treated like a criminal.

21 And I think it is shameful what's happened in this
22 courtroom. And I think it's shameful the way he's been
23 treated. He shouldn't be in here in this courtroom. I think
24 the system has failed Agent Ramos up to this time, but I have a
25 great deal of trust in you-all, as a jury, that you will find

1 him not guilty on all charges and fix that.

2 Thank you.

3 THE COURT: Go ahead, Mr. Antcliff.

4 MR. ANTCLIFF: Thank you, Your Honor. May it please
5 the Court? Counsel, ladies and gentlemen.

6 CLOSING STATEMENT

7 BY MR. ANTCLIFF:

8 Who cares? Who cares? That's what you heard from
9 Mr. Gonzalez. That is your Government at work. Who cares?

10 Well, I'll tell you who cares. I care. That agent,
11 Compean, sitting right here, he cares. I certainly hope that
12 you care. You swore an oath to care. Who cares? Let's talk
13 about it.

14 This is an upside down politically correct nightmare
15 for my client. This prosecution does stink. I agree with
16 Ms. Stillinger. The Government has told you they just want to
17 let drugs in. We don't need to be chasing anybody.

18 Supervisor Richards told you, We don't pursue
19 vehicles. The Government is worried about following vehicles
20 that might or might not contain aliens or drugs. What is that?
21 It's the Border Patrol's job. The thin green line is thin in
22 Fabens. Nine agents that day working that shift for 25 miles,
23 about 25 miles. I don't recall now the distance. That's a lot
24 of line to cover out there, to stop drugs and illegal aliens
25 and terrorists, and whatever else the Border Patrol is supposed

1 to do.

2 These two agents were doing their job. The other
3 seven agents were doing their job. But we're here because the
4 Government got a little overzealous.

5 It's a dangerous place. You heard testimony from
6 agents that it's scary out there, that they're afraid. That
7 it's dangerous.

8 Agent Yrigoyen, who I thought was very credible, said,
9 I just want to go home at the end of the day. That's the
10 setting for this case.

11 So what does the Government bring to prove to you
12 beyond a reasonable doubt these 12 charges in this indictment?
13 Let's talk about it.

14 You have assault with intent to commit murder, with
15 intent to commit bodily injury with a dangerous weapon,
16 discharge of a firearm during a crime of violence.

17 You've got to be kidding me.

18 You have tampering with official proceedings. Five
19 counts of that?

20 Depravation of civil rights.

21 If that is not a little bit of overkill, I don't know
22 what is.

23 So who did they bring?

24 First we hear from Rene Sanchez, who testifies that he
25 gets a call from his mother-in-law, and an agent has been

1 shot -- excuse me -- an individual has been shot in the back,
2 and he wants to find out what's going on.

3 So he does a little investigation through -- after his
4 supervisor tells him it's okay. And he reports it up the
5 chain, and we wind up with Agent Sanchez, here, getting
6 involved, to figure out what went on.

7 That's the genesis of this prosecution.

8 Who comes next? A drug smuggler. And I don't
9 remember the exact order in which people testified in this
10 case. But you've got a drug smuggler -- because that's what he
11 was. I agree with that, as well -- who's going to tell you
12 that, I'm just a poor drug smuggler. I was bringing dope
13 across because I needed the money, and I got shot. That's what
14 he's told you, basically.

15 I don't agree with the Government's theory of the
16 case, but that's okay. You don't have to either. You can --
17 what you do is going to determine justice in this case. When
18 you go back into the room and deliberate, that's where justice
19 is in this case. And it doesn't matter what you find, whether
20 you find them guilty or not guilty. Justice is what you say it
21 is, not what the Government asks you to -- or demands you to
22 do. Not what Ms. Stillinger and Ms. Ramirez and I and
23 Mr. Peters ask you to do. What happens in that room, that's
24 justice.

25 You saw Agent Juarez testify. I actually felt kind of

1 sorry for Agent Juarez. And Agent Sanchez testified that
2 different levels of education and those kind of things affect
3 people. Agent Juarez tells you that he gave a number of
4 statements; I think, ultimately, it was four. Three in
5 writing, or maybe two in writing, one orally, and then his
6 testimony in the courtroom.

7 And from the first to the last it changed
8 dramatically. First, when he gets there, I went right to the
9 van, I looked in, I saw the dope, I was checking for radios and
10 guns.

11 Last? No, I watched Agent Compean shoot at
12 Mr. Aldrete-Davila. He didn't see whether Alderete-Davila had
13 a gun. That's interesting, in and of itself. He never saw
14 Agent Ramos out there, but he certainly saw Mr. Compean that
15 day. We go from the first to the last.

16 What does Agent Sanchez think about his testimony? I
17 don't believe it to this day, ladies and gentlemen. That's
18 what he tells you. The Government, I anticipate, is going to
19 come back up here and say, Well, he didn't really mean that.

20 I am friends, and have been, with Mr. Gonzalez, for a
21 while. Did he really mean, Who cares? Probably not. I think
22 he does care about what happens in this case. Did he misspeak?
23 Certainly. People make mistakes.

24 Mr. Compean gave a statement in this case. He made
25 mistakes in it. It was 1:00 in the morning when he gave that

1 statement. He had gotten roused out of bed by Agent Sanchez
2 and whoever else was with him from OIG that -- OIA, whatever
3 it's called, that day -- that night, excuse me. He made a
4 mistake. People make mistakes. I've made my share.

5 Agent Juarez' testimony was incredible, as far as I
6 was concerned. I hope that it was for you. You cannot change
7 that much and not have it be incredible. He had an immunity
8 agreement and knew it, and a lawyer, when he gave his first
9 statement -- excuse me. He didn't have a lawyer when he gave
10 his first statement. He had an immunity agreement.

11 Then he got a lawyer, gave another statement, which
12 was fairly non-conflictual with the second -- the first
13 statement. Those two kind of matched up.

14 In September, after --

15 MS. KANOF: Objection, Your Honor. It was in May.
16 The third statement was in May.

17 MR. ANTCLIFF: Not on this defendant. But you will
18 recall what it was -- excuse me -- witness.

19 In September, when he gave the third statement, after
20 Agent Vasquez gave his -- or approximately the same time, I
21 don't know, gives a statement, and he meets with Agent Sanchez
22 and the prosecutor here. His story changes tremendously. So
23 does Agent Vasquez', for that matter.

24 I think you have to ask yourself, Why did his story
25 change? He says, I didn't want to be known as a snitch.

1 That is flat out unbelievable to me. He told the
2 truth in the first statement that he gave.

3 How do we know it's the truth? He says, When I got
4 there, I went straight to the van. All of his testimony that
5 day was, I was excited about the drug bust. He's a relatively
6 young agent, on the job for a year and a half at the time of
7 this arrest. And he's pumped up about the drugs. That's what
8 he wants to see. He looks in the van. He's not looking
9 around.

10 He hears shots. That's his testimony. I hear shots,
11 while I was looking in the van, and I think it's the Mexican
12 military or hunters. Because, in my experience, they've been
13 down there before.

14 That has the ring of truth to it, ladies and
15 gentlemen, given what we know about what a scary place it is
16 down on the border.

17 Instead, he changes his story.

18 Agent Vasquez comes next. He tells you -- it's Arturo
19 Vasquez -- that he's seven to eight miles away when he hears
20 the telephone call, and he unlocks the C.C. Bills gate. And we
21 have, I don't know, five, ten pictures of the C.C. Bills gate.
22 Why?

23 Mr. Gonzalez would have you believe that we, the
24 defense in this case, is all about misdirection and confusion
25 and putting on shameful testimony. But we have five or ten

1 pictures of the C.C. Bills gate. What difference does that
2 make? Now, we're in the realm of who cares. I certainly
3 didn't care to look at the C.C. Bills gate for an hour. I
4 don't know if you did either.

5 Why is it there? It doesn't make any sense. This
6 time what the Government did, they didn't -- what they tried to
7 do was fit their theory of the case, in September, to Agent
8 Juarez and Agent Vasquez. It hasn't worked at all, so far.

9 Agent Vasquez testifies that Mr. -- Agent Compean told
10 him about the shooting. Supposedly, nobody is talking out
11 there. We've got a big gaggle of agents on the south -- excuse
12 me -- the north side of the drainage ditch, including two
13 supervisors, and nobody is really talking about the shooting?

14 Agent Compean tells Agent Vasquez that he shot at
15 Aldrete-Davila while he was out there. There's certainly one
16 where it was reported.

17 Now, is he a supervisor? No.

18 He also tells, I think it was Men- -- he told another
19 agent, David Jacquez, that he shot that day. So they were
20 certainly talking about it. Those two agents were both on the
21 north side of the ditch.

22 They all go back later to the Border Patrol station,
23 and apparently nobody is talking about it. The supervisors are
24 there that day. They don't hear anything and don't ask any
25 questions.

1 Interesting to me is that they don't ask any
2 questions. Supervisor Richards asks, is my client -- is Agent
3 Compean -- Are you okay? That's the only question asked that
4 day, that I can figure out, is, Are you okay? He asked it two
5 or three times out in the field and at the station. Are you
6 okay?

7 That would indicate to me that there is some evidence
8 of an assault on the person of Agent Compean, and he's
9 concerned. So he asks, Are you okay?

10 He doesn't ask that of Agent Ramos that day. Why not?
11 Because there's no evidence of an assault on him. That's the
12 only question he asked.

13 He didn't ask, How fast was the van going when you
14 guys were chasing it down Jess Harris Road, because he didn't
15 care. I don't care. I don't think anybody cares, except maybe
16 Aldrete-Davila, who was trying to get away, as to how fast they
17 were going. Nobody was looking at speedometers. Nobody was
18 looking at watches.

19 My client was on the stand in this case for five, six,
20 seven hours? I don't know. You guys can gauge that. He's
21 being cross-examined about events that took place probably for
22 two minutes -- probably for 30 seconds. He's trying to explain
23 every action he took. He grabbed him in the back. He grabbed
24 around the waist. He did this, he did that.

25 You can't explain those -- you're talking a year later

1 when he gave his statement, when everybody's statement was some
2 30 days after that event, I agree.

3 Did they report it on that day? No.

4 But past experience taught to Agent Ramos' people out
5 there, I don't have to do anything. It's going to be reported.
6 They will ask me for a memo.

7 The culture of the Border Patrol, it seems to me, was,
8 defer to your supervisor. Everybody struck me, when they were
9 testifying, It wasn't my place to ask.

10 What's that?

11 I didn't want to ask Agent Richards whether or not
12 this, or I didn't want to ask Supervisor Arnold that.
13 Everybody seemed to be deferring. They all assumed.

14 Is that a bad thing? Maybe. I don't know. But they
15 certainly assumed that this shooting had been reported. There
16 was talk going on out there that day about it.

17 After Agent Vasquez, you heard from Agent Oscar
18 Benavides. He's going to tell you, and he did, about radio
19 traffic. I don't know why we had to have a witness testify
20 about radio traffic. Everybody had something to say. There
21 was certainly nothing wrong with talking on direct as opposed
22 to the repeater.

23 I thought it interesting that Supervisor Richards told
24 you from the witness stand that he got on a cell phone. Nobody
25 made a big deal about that. I mean, apparently, it's not a

1 violation of policy to talk on a cell phone. That's not
2 recorded either.

3 I think that misdirection and confusion were the words
4 of the day for this prosecution.

5 Let's talk about radio traffic. Let's talk about
6 vehicle pursuit, all of those things that don't matter. That's
7 what we were talking about from agents like Oscar Benavides.

8 Following him, I wrote down notes about Agent Jose
9 Luis Mendoza. This was the guy who told you he had no idea why
10 he was on administrative duty for the last year. All of them
11 told you whether they had an immunity letter or not, including
12 Agent Yrigoyen and Supervisor Arnold, Agents Jacquez, Juarez,
13 Mendoza, Vasquez, that they didn't do anything wrong, in their
14 opinion. But some of them are still on administrative duty as
15 of this day.

16 The reason for that, Chief Barker told you, is that
17 once this prosecution is over, then the Border Patrol will take
18 a look at those people who are on indefinite suspension right
19 here, and those people who are on administrative duty, to
20 determine what's going to happen to them through the Border
21 Patrol.

22 The reason that we brought up violations of policy is
23 because that's what went on in this case. The Border Patrol
24 has policies for tons of stuff. It's a bureaucratic Government
25 agency. They have a policy on discharge of a firearm. They

1 have a policy on pursuit. They have policies on everything.

2 You heard all that ad nauseam.

3 Violations of those policies carry administrative
4 penalties. Those penalties range from reprimands up to
5 suspensions and possibly termination. Some of that may happen
6 as a result of the investigation the Border Patrol finally does
7 into this case. I don't know. But are those things criminal?
8 No, they're not.

9 Following Agent Mendoza, who did testify that, when he
10 arrived, the driver's door was open and he saw Agents Juarez
11 and Vasquez standing next to it. Now, that supports Agent
12 Juarez' first statement, that, I went straight to the van to
13 check out the dope, to look under the seats to see if there's a
14 gun.

15 The first statement that Agent Juarez gave, and the
16 first statement that Agent Vasquez gave, is supported by the
17 evidence from the other agents who testified.

18 The last statement he gave, which the Government
19 believes, semi, because Agent Sanchez doesn't believe him to
20 this day, but which supports their theory in this case, is
21 ridiculous and not corroborated by any other agent.

22 Agent Juarez told you that he saw Agent Compean
23 standing somewhere -- I'm not quite sure -- shooting. He says
24 he saw a magazine drop to the ground.

25 Agent Compean tells you that, no, that's not the way

1 it happened. We rolled down the levee. He shot from a knee
2 position, that he didn't -- what he did say, the one thing they
3 did agree on, apparently, is that the magazine dropped to the
4 ground.

5 How did he see that? How did Agent Juarez see that,
6 if he did? He didn't see it, ladies and gentlemen. He talked
7 to Agent Vasquez, who told you that he and Juarez were friends,
8 that they carpooled together.

9 And Agent Compean told you that he did a magazine
10 exchange -- excuse me -- he told Agent Vasquez he did a
11 magazine exchange out at the C.C. Bills gate, apparently, and
12 he tells Agent Juarez. That's how he knew.

13 These people were telling him what they needed to
14 know. And he gave a statement, because he told you he was
15 nerv- -- not nervous. When he's being questioned by
16 Mr. Gonzalez here, he told you, I'm not nervous. Yeah, he
17 wasn't nervous. He was terrified that he was going to be
18 prosecuted for a false statement or for what he had done that
19 day.

20 Following Agent Mendoza is Agent Jacquez. He told you
21 about the shooting. This is the other individual who says that
22 Agent Compean told him that he had fired shots that day. This
23 also -- his testimony was big on shotgun versus baton. Yet
24 another effort at confusion, as far as I'm concerned.

25 Because if I was all alone on the south side of that

1 ditch and somebody I believed had drugs was coming at me in a
2 van, which didn't appear to be stopping real quick, I think I
3 would have gotten the shotgun out and stood there, too, all
4 alone.

5 You're going to stand there with a baton? I don't
6 think so, ladies and gentlemen. He did what he had to do to
7 protect himself and to be in a position to stop the suspect.
8 So he points the shotgun at him, Agent Compean does.

9 He doesn't see any other agents out there. He's
10 trying to stop the drug smuggler and to arrest him. Nobody
11 else is coming yet.

12 When he does see somebody, he only sees them from the
13 waist down, because he's focused on this guy.

14 What happens? The guy boogies. How fast do you think
15 that happened? Do you think it happened over the space of two
16 minutes? I don't. I think it happened over the space of about
17 30 seconds, from the time he arrived at the ditch to the time
18 he was gone to the river after the shots. I think that was 30
19 seconds. If you think it's not a long time, ladies and
20 gentlemen, let's test that theory. Right now we'll wait 30
21 seconds.

22 (Attorney timing 30 seconds on his watch.)

23 MR. ANTCLIFF: There you go. Chasing down a drug
24 smuggler, who ultimately points a weapon at you, 30 seconds is
25 an eternity. Everything happened in a very short period of

1 time out there.

2 This was the first time that Agent Compean's ever
3 fired his weapon in the line of duty, other than
4 qualifications.

5 The Government has made a big deal about that. He
6 told you, and so did Agent Sanchez from the stand, that they're
7 trained, when they go out and qualify, to pick up their brass.
8 He told you -- when I asked him, What in God's name possessed
9 you to pick up the brass? What were you thinking?

10 I don't know. I just did it.

11 They're taught to pick up their brass. And the only
12 time he fired his gun prior to that was at the range, where you
13 have to pick up your brass. It's instinct. He just picked it
14 up, along with his magazine.

15 When he realizes that he's got it, he pitches it in
16 the ditch. That's what happens to it.

17 Agent Vasquez did not see brass that day, or casings,
18 whatever you want to call them. He saw bullets, because Agent
19 Compean was reloading the magazine that had emptied out.

20 You know, I find this interesting, too.
21 Aldrete-Davila tells you that -- this is the one thing I think
22 he actually got right -- that he hears shots, and there's a
23 pause, and he hears one more shot.

24 Agent Juarez says that Agent Compean, boom, boom,
25 boom, boom, boom, fires off a bunch of rounds. Then he reloads

1 the magazine, boom, boom, boom, fires some more, so that we get
2 to 14. Given that, there's only 11 rounds in the magazine, and
3 one in the chamber. So to get to 14, he had to fire some out
4 of his second clip.

5 Don't you know that there would have to be a pause for
6 a magazine exchange? So what you would have heard is, boom,
7 boom, boom, boom, boom, pause. Boom, boom, pause, boom,
8 from Agent Ramos.

9 But that's not what anybody testified to. There was
10 one pause between the shootings.

11 There wasn't a magazine exchange and shooting
12 additional. That testimony was also not believable.

13 Following that, we heard from Lorenzo Yrigoyen, who
14 seemed to me also to be a credible witness. This is the guy
15 who told you that things happen very fast out in the field,
16 that it's a dangerous place, that he takes the precautions he
17 can, because he wants to go home at the end of the day.

18 Don't you know, they want to go home at night, too.
19 All of them do. It's a dangerous place. He said he couldn't
20 tell if the man was limping. He watched him go away. He
21 couldn't tell, because the field had been plowed, and he was
22 running through it.

23 Agent Compean -- there's going to be a big issue, I'm
24 sure, that is going to come up from Ms. Kanof, that Agent
25 Compean says, Well, Nacho might have hit him. Well, I thought

1 we might have hit him, or something along those lines.

2 It's a statement made at 1:00 in the morning under
3 duress, before he's getting -- while -- after he's been
4 arrested. He's trying to remember what had happened 30 days
5 before. If he sees the guy limping, maybe it appeared to him
6 that way, because he's crossing the field, like Agent Yrigoyen
7 said. Who knows?

8 He told you that he saw a white car with two people in
9 it. One of them got out, came and helped the driver, took him
10 over to the blue van, where they took off.

11 Interestingly enough, Agent Compean tells you he saw
12 the white car loaded down in the 76 area. He didn't see
13 anything come out of it. It certainly looked like it was
14 loaded with drugs, to him. He didn't see the people move it to
15 a blue van. He sees two people going back across the river
16 later, and then the blue van comes.

17 He sees drag marks through the ditch, and water, where
18 a person might have stood and dripped. That, ladies and
19 gentlemen, is a reasonable suspicion to believe that there's
20 dope in the blue van. He makes the call, agents converge on
21 the area, and then this happens.

22 What he did was right. He told you that he certainly
23 regretted, as did Agent Ramos, not reporting the shooting.

24 Was it a bad shoot? No.

25 Would you shoot, if you thought somebody had a gun

1 pointed at you? I know I would. And that's what they did.
2 They had to make that decision (snapping fingers) that fast.
3 That fast, ladies and gentlemen.

4 I ain't trained to do that, and probably most of you
5 aren't, either. They made the decision based on what they saw.
6 You, taking a look at it under the law that the judge has given
7 you, have to decide whether their actions were correct, based
8 on what a reasonable officer would have done under those same
9 circumstances. A reasonable officer would have shot. Just
10 because Agent Compean is not that good a shot shouldn't be held
11 against him, either.

12 A lot was made about the conversations that Supervisor
13 Richards had with Agent Compean. Are you okay, in the field.
14 Are you okay, at that bathroom. Are you okay, at the -- at the
15 computer terminal.

16 He did testify that, if he was aware that there was
17 dirt kicked into the face of Agent Compean, he would consider
18 that an assault.

19 Supervisor Arnold said the same thing.

20 Agent Compean told you that what he asked that day
21 was, Were you assaulted? Because if you were, well, then, I've
22 got to fill out an SIR, and we've got to call the FBI, and
23 we're all going to be here all night testifying.

24 That was an indicator to him that he didn't want an
25 assault report done. He had a cut on his chin, a cut on his

1 thumb, between his thumb and finger, and he had dirt all over
2 him. And he thought, You know what? I'm all right. Yeah, I'm
3 okay, is what he told the guy.

4 That's what he wanted to hear. So that's the end of
5 the assault.

6 And he's not charged, certainly, with not reporting an
7 assault. I don't know why this is a big deal. I haven't
8 figured it out. But he's not charged with not reporting an
9 assault.

10 You know, Supervisor Richards, the only real questions
11 he asked that day are ones that might have created paperwork
12 for him. You heard a lot of testimony that he's a stickler for
13 paperwork, and that he wants to do the right thing and follow
14 policy and all of those things.

15 But, given the tenor and the tone of the questions
16 that he was asking my client, it was clear he didn't want to
17 stay there that night or do paperwork.

18 Supervisor Arnold testified next, and I thought also
19 another fairly credible and honest agent. He told you what was
20 on his mind. He was the one who told you that, Yeah, we kind
21 of don't follow the pursuit policy. And I think we were
22 winding down the big pursuit nightmare at that point. But he
23 said, No, we don't really follow that policy out there.

24 Arnold heard tons of calls on the radio. He heard the
25 blue van called out. He heard somebody say -- and he thought a

1 lot of these were Agent Ramos -- We're at the lights in Fabens
2 right now. I'm going to light it up and see what happens.

3 Well, we've got a failure to yield. I'm going to
4 deactivate my lights and get a direction of travel. He heard
5 all of those calls.

6 Supervisor Richards didn't hear any of them. Isn't
7 that interesting? Supervisor Richards didn't hear anything on
8 the radio, to the extent that he was criticizing his agents for
9 the lack of radio traffic on that day out in the field.

10 He also said, We've got to catch these guys.
11 Gentlemen, we need to catch the dopers, in order -- along with
12 the dope, so that we can prosecute them. Otherwise, they just
13 keep coming back.

14 That wasn't the first time he had said that. They
15 knew that they were supposed to catch dopers out there. That's
16 their job, ladies and gentlemen.

17 Chief Barker came after that. And I've skipped the
18 doctors, because Ms. Stillinger talked briefly about their
19 testimony.

20 Chief Barker put up there -- I mean, he testified,
21 basically, that Agent Compean said, I didn't report it because
22 I knew I was going to get in trouble. The agents are always
23 wrong. That's what Agent Compean told Chief Barker.

24 And maybe -- and apparently, the only testimony we
25 have, the agents are always cleared. How can you -- if the

1 agents are always cleared, excuse me, why would you not report
2 it? Because it's an administrative nightmare, and you get
3 suspended and go on -- or admin duty, and wait for whatever
4 happens to happen, if there's an investigation. Sometimes
5 there is, by the testimony we have. Sometimes there's not.

6 So he didn't want to deal with those things, and he
7 doesn't report the shooting.

8 Is it unfortunate? Yes.

9 If he had it to do over again, would he? Certainly.

10 Does it require a felony level conviction in this
11 case? Absolutely not.

12 Should it cost him his job? Maybe. But we are not
13 here to decide his job.

14 You know, when I said that it was an upside down case,
15 things happened during the course of this trial that struck me
16 as almost the opposite of the normal course of events in a
17 criminal trial, at least from a defense perspective.

18 At one point Mr. Gonzalez stood up, while
19 Mr. Aldrete-Davila was on the stand and said, This man is
20 entitled to the presumption of innocence.

21 You've got to be kidding me, ladies and gentlemen.
22 He's got an immunity agreement for bringing a ton of dope into
23 the country, for being here illegally. He's got a reason to
24 lie, and he's saying he's entitled to the presumption of
25 innocence? I don't think so.

1 That's the kind of thing that turns this case on its
2 head.

3 You know, as a defense lawyer, I'm not generally
4 looking for people to be law and order oriented on a jury. And
5 my job is, generally, to confuse and misdirect. But in this
6 case, I believed my client. I think from the testimony --

7 MS. KANOF: Objection. Personal opinion, Your Honor.

8 THE COURT: All right. Sustain.

9 MR. ANTCLIFF: It's argument, Your Honor.

10 The testimony from the agents out there all was that
11 they did nothing wrong, in their opinion. I don't think they
12 did, ladies and gentlemen.

13 Let's talk a little bit about the charge in this case.
14 And there are some areas that I would like you to consider
15 while you're in the deliberation room back there.

16 On page 9, about the middle of the page, it says, The
17 weight of the evidence is not necessarily determined by the
18 number of witnesses testifying as to the existence or
19 nonexistence of any fact. It is the quality and nature of the
20 evidence that should determine the weight that you give it.

21 And certainly, I would ask you to think about Agent
22 Juarez' testimony when you're -- and Agent Vasquez'
23 testimony -- when you're considering the quality and nature of
24 the evidence that you have in this case, whether it's
25 believable or not.

1 On page 15, the judge tells you that you should
2 consider and weigh much more carefully evidence that comes from
3 somebody who's got immunity from prosecution.

4 And how many people have immunity from prosecution in
5 this case? Aldrete-Davila, Agent Juarez, Agent Jacquez, Agent
6 Vasquez. That seems like an awful lot.

7 In order for you to find that Defendant Compean is
8 guilty of the tampering counts, the instruction that I would
9 ask you to pay attention to in there is that the defendant
10 acted corruptly, that is, knowingly and dishonestly, with the
11 specific intent to impair the objects' availability for use in
12 an official proceeding.

13 He told you from the stand that he didn't know why he
14 picked them up. I think I know why he picked them up. I'm
15 willing to bet he really did not know when he did it. I don't
16 think that he had any specific intent at that moment to cause
17 you not to have them.

18 And, speaking of that, of what value are they? The
19 only thing we would have learned from that is exactly where the
20 shots might have happened and how many there were. But he told
21 you that he fired between 10 and 11 rounds, which is consistent
22 with the evidence and what we heard. He told you what he fired
23 at.

24 It wouldn't have told you whether or not
25 Aldrete-Davila had a gun that day.

1 The footprints that we talked about for a while
2 didn't -- wouldn't tell you whether or not he had a gun that
3 day.

4 The only ones who can tell you that he did are sitting
5 over here. The Government has to prove that he didn't have
6 that. I don't have to show that he did.

7 Did he have a gun? Absolutely.

8 For the deprivation of civil rights claims, which --
9 another amazing charge, on page 39 --you have to find that the
10 defendants acted willfully, with a bad purpose or evil motive.

11 There is zero evidence that these two individuals
12 acted with a bad purpose or an evil motive out there. They
13 were doing their jobs. They saw a gun, or what they perceived
14 to be a gun, pointed at them, and they took a shot.

15 This is a case about unasked questions. Nobody asked
16 anything of anybody that really mattered. Supervisor Richards
17 that day only asked if my client was okay. He didn't ask
18 whether or not -- he didn't ask any other questions about an
19 assault. He didn't ask any other questions about the shooting,
20 that everybody was apparently talking about. He didn't ask
21 questions about anything.

22 Everybody deferred to the person higher up. That's
23 what I want you to remember when you're going back there.

24 Ms. Kanof is going to get up, and she's got about an
25 hour to talk to you now about what her theory of the case is

1 and what the Government thinks that they've proven to you.

2 And, because the Government has the burden of proof,
3 which is a high burden -- beyond a reasonable doubt is a very
4 heavy burden. And, you know, that's as it should be in this
5 country. It ought to be very difficult to put somebody in
6 jail, to convict them of a felony, and so it is. The
7 Constitution requires that heavy burden.

8 And so she's going to get back up here and tell you
9 what she thinks. Remember this. Everything I have told you
10 isn't worth anything. It's not evidence of anything.

11 What Ms. Stillinger and Mr. Peters said isn't
12 evidence. What Mr. Gonzalez and what Ms. Kanof is going to say
13 is not evidence. That came right there, from the people who
14 testified in this court, and about 100 exhibits and lots of
15 maps. I mean, I didn't count them all, but there's lots here
16 for you to look at. I don't know that any of them mean all
17 that much, but you can look at them.

18 Remember, justice is what you say it is, ladies and
19 gentlemen, regardless of what anybody at these two tables say.
20 When you go back to deliberate, and you take a good look at all
21 of that evidence, and you have Ms. Kanof's words ringing in
22 your ears, I would ask you to remember that the only evidence
23 came from the witness stand.

24 I certainly would ask you to consider the credibility
25 of Agents Compean and Vasquez weighed against everybody else.

1 I certainly would ask you to consider the credibility
2 and reason to lie that the dooper had in this case, and there
3 were a number of them.

4 I find it interesting that Agent Sanchez -- not this
5 one, Rene Sanchez -- comes up and tells you, No, right off the
6 bat, I didn't do anything to help Aldrete-Davila except get him
7 over here so that he could be treated. I didn't help him find
8 a lawyer, I didn't help him start a lawsuit, I didn't help him
9 get immunity.

10 Then Aldrete-Davila comes in and tells you, Yeah, we
11 saw each other last year in Reynosa, and he did help me get
12 immunity, and was helping me with getting a lawyer, and he was
13 helping me file a lawsuit with the facts related to that.

14 And so we call Agent Sanchez back again. And what
15 does he say? No, no, no that's not true.

16 Was it true? I don't know. Probably not, which means
17 that Aldrete-Davila, yet again, was feeding somebody a bunch of
18 lies.

19 In the end, this case does come down to one thing, and
20 that is the decision that the Government made to believe
21 Aldrete-Davila as opposed to these two and any other agents.
22 That decision prompted prosecution that you're here on today.
23 I know it has taken a lot longer than we expected, certainly
24 longer than you expected. But, in order to do justice,
25 sometimes it turns slowly. You've heard the old saying that

1 the wheels of justice grind slowly. Well, apparently, that was
2 true in this courtroom. They ground pretty slowly.

3 But we're here now. You're about to go back, as soon
4 as Ms. Kanof is done, and deliberate. When you're done, I
5 would ask you to find Agent Jose Alonso Compean not guilty of
6 all of the counts in the indictment.

7 THE COURT: Attorneys, please approach the bench.

8 (Bench conference off the record.)

9 THE COURT: All right. We're just going to take a
10 short five-minute break, but make it quick.

11 Ladies and gentlemen, you have not heard all of the
12 argument. And so, again, we will take a real short break, and
13 we will be back to finish up.

14 (Recess; open court, parties present, jury not
15 present.)

16 THE CLERK: Court is back in session.

17 THE COURT: You may be seated.

18 (Open court, parties and jury present.)

19 THE COURT: You may be seated, ladies and gentlemen.

20 You may proceed, Ms. Kanof.

21 MS. KANOF: Thank you, Your Honor.

22 CLOSING STATEMENT

23 BY MS. KANOF:

24 Okay. I'm going to try to get you to lunch as fast as
25 I can. I know everyone is hungry, but this is very important.

1 I add my thanks to Mr. Gonzalez', on behalf of the
2 United States and the United States Attorney's Office, and tell
3 you that, in this country, in this free country, there are two
4 things that you can do to participate in your Government. One,
5 I hope you will do tomorrow, if you haven't already done that,
6 and that is the right to vote and express your opinion of who
7 should represent you. And the other is to sit on jury service.

8 This was a very difficult trial, a very emotional
9 trial, and tempers flared occasionally. I will ask you, if
10 there's any conduct that you found unprofessional on behalf of
11 the prosecution team, that I -- that I apologize. But please
12 don't hold it against the evidence in this case, because
13 there's lots of evidence in this case.

14 (Speaking Spanish). That's what Osvaldo heard first.
15 It has deteriorated so much, with those two agents on the
16 border, that they're calling people of their same ethnic
17 background Mexican shits.

18 You know, ladies and gentlemen, this is the best
19 country in the world. It is free. And there are people
20 fighting overseas to keep it free and to protect what makes it
21 free.

22 One of the things that makes it free, and that's a
23 little piece of paper called the United States Constitution,
24 and a little attachment to it called the Amendments to the
25 United States Constitution.

1 And what makes this country so great is that it
2 doesn't matter why you're here. It doesn't matter who you are,
3 if you're not here legally, if you're here trafficking in
4 marijuana, you are all entitled -- we are all entitled to be
5 wrapped safely in the protections of the Constitution of the
6 United States.

7 Other than our soldiers protecting our borders, there
8 is only one other entity in the United States that is allowed
9 to legally kill someone, who has a license to kill, and that is
10 a law enforcement officer. And if you give somebody that
11 license to kill -- the license is an oath. We all have taken
12 oaths in here. The jury has taken an oath, every lawyer that
13 practices law takes an oath, the judge takes an oath. The
14 defendants took an oath to follow those rules.

15 Everybody in this society has to follow rules. And if
16 you want to be a law enforcement officer, if you want to have
17 that license to kill, you better follow those rules.

18 And so Chief Barker tells you, There's lots of rules.

19 And there's got to be, because the authority to take a
20 life should be taken seriously, because we want to make sure
21 agents have the legal authority to take that life.

22 Ladies and gentlemen, if that bullet hadn't stayed in
23 Osvaldo's right leg, today you would not have known who shot
24 him.

25 Why would you hide that?

1 The authority to take a life -- he wasn't killed by
2 the grace of God. And just because -- oh, by the way, he
3 didn't have a ton of marijuana. I think Mr. Antcliff said
4 that. But just because a boatload of marijuana -- and he
5 did -- doesn't mean that they can be judge, jury, and
6 executioner, because they do not have the right to do that.

7 One of the reasons we talked about the pursuit policy
8 was because it's one of those rules. But we also talked about
9 a lot of other rules. And I'm going to -- and I'm going to
10 examine the evidence with regard to the fact that, on February
11 17, 2005, Mr. Ramos and Mr. Compean intentionally and knowingly
12 ignored the rules that make you a Border Patrol agent, the
13 rules you have to follow in order to have that license to kill.

14 The crux of this case, ladies and gentlemen, is
15 whether or not this was a good shoot or a bad shoot. Because
16 if it was a good shoot, don't you know they would have reported
17 it?

18 And how do you know that? Mr. Compean told you, and
19 several agents told you, the day before this happened, on
20 February 16th, 2005, they had firearms qualifications. And
21 Mr. Compean told you what happens -- he's had it at least 15
22 times -- at firearms qualifications. Aside from learning to
23 hit a target, they have to sit in a classroom and have
24 refresher training.

25 Mr. Ramos also, on cross-examination, told you, Yeah,

1 you know, I taught firearms policy at those firearms
2 qualifications. And that refresher training includes the
3 pursuit policy. That refresher training includes the necessity
4 to report a shooting within one hour. Not a shooting, not even
5 a shooting. The discharge of a firearm.

6 Think of how strict this rule is. If you're at home
7 and you're off duty and you think, Ah, it's Saturday, I might
8 as well clean my gun, and you forget there's a bullet in the
9 chamber and it's expelled, you have one hour to call your boss
10 and tell him.

11 You have to have strict rules to have an orderly
12 society, and you have to follow them if you want to be a Border
13 Patrol agent. And, on that day, neither defendant was acting
14 in a capacity of those rules.

15 Another rule that they did not follow, and I will talk
16 about that a little bit more when I get to talking about the
17 facts of the case, is the rule of deadly force. Because the
18 rule of deadly force determines whether it's a good shooting or
19 a bad shooting.

20 You know, Mr. Compean testified that the reason he
21 didn't tell anybody that -- well, he told Luis Barker -- the
22 reason that he didn't tell anybody about the shooting is
23 because, well, they always side with the aliens.

24 Of course, the agents are always cleared when they do
25 it in an hour. The agents are always cleared. Oh, but, you

1 know, we're going to shoot somebody in the back and not talk
2 about it, because it's too much paperwork.

3 The marijuana is a very important piece of evidence in
4 this case. And you'd think it was a piece of evidence that
5 went to Osvaldo's credibility. But, really, it's not. It's a
6 piece of evidence that convicts the defendants, and here is
7 why.

8 You have a van full of marijuana, and you have their
9 story. Don't you know they would have been believed? Their
10 bosses would have said, Oh, my God, look at all the marijuana.
11 Of course it happened the way they said it happened.

12 And we are going to talk about it, because of the way
13 they said that it happens is mutually inconsistent with the two
14 of them. That's why we have this diagram. We'll discuss it in
15 a little while.

16 But, you know that -- that dia- -- all they had to do
17 is point to that marijuana and tell their story, if they could
18 have gotten their story straight, and it would have been ruled
19 a good shoot. It's always ruled a good shoot. There is only
20 one reason for them not to have reported it, and that's because
21 it was not a good shoot. That's because, on the 16th they had
22 target practice, and on the 17th they had target practice.

23 Now, why not report it? Mr. Ramos said, Well, I heard
24 one yell, Shots, so I assumed it had been reported. Assumed it
25 had been reported.

1 He was a firearms instructor for five years. He
2 taught this. You don't get to assume somebody reported it,
3 because you have a license to kill. You have to go and say, I
4 shot my firearm.

5 Why?

6 So they can take your firearm, they can test your
7 firearm. They give you another one right away. They leave you
8 out in the field.

9 And Mr. Compean said, I was afraid they would not
10 believe me, because there was no suspect. The suspect's a
11 doper. Does he honestly think they're not going to believe --
12 maybe they believe aliens over Border Patrol agents initially,
13 but they're cleared.

14 But does he honestly think that they were going to
15 believe somebody, with all that marijuana, over him? No, he
16 doesn't. That marijuana is the best evidence of a good shoot.

17 But he did have somebody to corroborate him. He had
18 Mr. Ramos. You know, lots of agents testified that they saw
19 them coming up, you know, over the back side of the levee
20 together. And both defendants want you to believe something
21 totally incredible, that they didn't talk about it down here,
22 that they didn't have a discussion, that they didn't have an
23 opportunity to get a little bit of their story straight. And
24 maybe not a lot, because there's so many conflicts. Either
25 they forgot, or they didn't discuss the right issues.

1 This is the case, around the office, called the case
2 of las comadres. And that's because, except for two women who
3 have been childhood friends, you wouldn't know about this. We
4 wouldn't know about this.

5 Think about it. Would you want us to ignore it? No
6 shoot is reported. Mother-in-law, best friends with the
7 mother, tells son-in-law, Hey, my girlfriend's son was shot in
8 the butt on February 17, by the Border Patrol. And he -- the
9 Border Patrol agent looks and sees there's no evidence of that.

10 Well, that's kind of strange. So he calls somebody.
11 And Nolan Blanchette, who's down here, he hasn't heard about
12 it.

13 So he makes a report to his boss, who tells him to
14 investigate it. And what he finds, when he goes into the
15 computer, is not a report of a shooting. He finds the I-44,
16 which is the report of the seizure of the marijuana. So he's,
17 like, Well, there's the marijuana here, but there's no report
18 of a shooting.

19 So he talks to Aldrete-Davila himself.

20 Ladies and gentlemen, we live in El Paso, Texas.
21 There is a substantial likelihood that somebody in your
22 neighborhood is a dope dealer. That is even more likely in San
23 Isidro, Mexico. The fact that these two people knew each other
24 is not a coincidence. Because if it was a coincidence, you
25 would still not know about it. The two moms wouldn't have

1 talked. No. The fact that they knew each other is why you're
2 here.

3 Now, on that day, neither Mr. Ramos nor Mr. Compean
4 did anything consistent with Border Patrol policy. First, in a
5 strict adherence to Border Patrol policy, a legal adherence to
6 Border Patrol policy is imperative.

7 Look. Nobody is saying, and certainly not the
8 Government, that they shouldn't be able to protect themselves,
9 that they should not be able to react quickly, that they should
10 not be able to use their training. Just report it, so that a
11 determination could be administratively made. And don't think
12 for a minute they don't know that that's what happens to it.
13 That's why they didn't report it.

14 Supervisors of Border Patrol are basically an
15 extension of the public. You know, they take that information,
16 they pass it on, they pass it on. It's investigated. But that
17 day the defendants turned themselves out of their Border Patrol
18 uniforms and into vigilantes.

19 Four policies they violated. The first one is the
20 pursuit policy. You know, why is that important? Yeah, you
21 know, we spent lots of time listening to cross-examination
22 about the pursuit policy. And, in and of itself, it's not a
23 big deal. But, you know, they learned about it the day before
24 in firearms class. They couldn't remember it that long?

25 You know, when Richards gets out to the scene, the

1 first thing is, I want to hear more stuff on the radio.

2 Mr. Ramos, the most important thing to exceed that
3 speed limit was to be able to articulate the danger. If
4 you're -- you know, if you're going to do something, you assume
5 Border Patrol is following illegal aliens. They're allowed to
6 stop dope. You want them to stop dope. They're not allowed to
7 investigate it, they have to turn it over to a dope agency.

8 But one of the reasons they don't go speeding around
9 anywhere, not even in Fabens, which is relatively quiet, is
10 because there has to be a danger, such a serious danger of a
11 felony that they know has been committed, or a misdemeanor,
12 that the driver, they knew committed that, made it a greater
13 threat not to catch him than it was to let him go free in the
14 public.

15 You know, it's uncontroverted. Both Mr. Ramos and
16 Compean said, All Osvaldo wanted to do is get home. He was
17 never a threat to them. They knew, in their experience, this
18 guy is hightailing south.

19 But they had a big van, and they thought there might
20 be a lot of dope in it, and they might get a little notch on
21 their belt with their friends.

22 He didn't articulate that danger. He did not use
23 sector communications. He was supposed to call sector
24 communications and tell them, You know, I want to go in hot
25 pursuit. Here is why.

1 The first thing they're supposed to do is give the
2 license plate of the vehicle. Yeah, lots of times they're not
3 driving -- dopers are not driving their own vehicles. But what
4 if he was, and he was wanted for a felony? That would have
5 been, Hey, Mr. Richards is here. I'm authorizing you for hot
6 pursuit.

7 He did call out -- he claimed he saw him, but he
8 didn't call out a description of the guy he was chasing. He
9 couldn't articulate the reason for the pursuit.

10 The second thing they violated was the deadly force
11 policy. And I'll get to that again later. But there are less
12 restrictive means of, you know - of stopping a person that's
13 not a threat to you. And, like I said, I'll talk about that a
14 little bit later.

15 The first time -- remember, the first time anybody
16 hears about this case is Saturday, March 4th of last year, when
17 Mr. Sanchez gets a phone call. He's new to El Paso.

18 And, by the way, this is not an inexperienced agent.
19 He might have been inexperienced at that time in the Department
20 of Homeland Security Office of the Inspector General, but he
21 was a very experienced investigator, and he has a lot of life
22 experience, as well, as you heard, in the Gulf War. You know,
23 he wasn't snowed by these people.

24 Yeah, they lied. Some of them lied about some things.
25 But you know, I'm going to pose a challenge to the jury. Don't

1 believe anything that isn't corroborated. Don't believe
2 anything that either someone else didn't say, including the
3 defendants, or you don't at least have some physical evidence
4 or a reason to believe.

5 The third thing that they did not do was give the
6 sector evidence team an opportunity to come out. Again,
7 Mr. Ramos was on the sector evidence team. He was trained. He
8 knows how important lots of those things are. Maybe
9 Mr. Compean forgot that they're supposed to call out an
10 evidence team, but certainly Mr. Ramos didn't. And, if they
11 had, those casings would have told most of the story.

12 Arturo Vasquez, by the way, didn't lie. The first
13 time he told the entire story with one exception. It wasn't
14 until the second time he was interviewed that he added that
15 Compean said, That bitch took me to the ground and threw dirt
16 in my face. But his first statement was intact, including the
17 casings issue.

18 The reason you have so many pictures of the C.C. Bills
19 gate is because that's where Compean shows Vasquez the casings.
20 And there's a picture -- the casings are up here (indicating).
21 There's four of them, and then a fifth one down here.

22 And what's so important about that is, it's
23 corroboration. Remember, don't believe anything without
24 corroboration.

25 Juarez is here (indicating). He says he sees Compean

1 from the waist up shooting his gun -- and if I could draw, I
2 wouldn't have gone to law school -- here (indicating). The
3 placement of the casings is consistent with that story. And
4 remember, Vasquez doesn't talk to anybody before he gives the
5 first statement.

6 And this is where he places the casings immediately.
7 Not down here (indicating), where they say they shot, okay, but
8 up here, consistent with seeing that.

9 You know, casings fly to the right, lots of testimony
10 about that. And the real scary casing is this one, because
11 that really tells you he was up here. There's no way a casing
12 could have jumped all the way over there. And they told you,
13 you don't find a lot of .40 caliber Berretta casings out there.
14 Those were the ones.

15 And I'll get back to that in a while. But, ladies and
16 gentlemen, Vasquez' story -- I mean, Juarez' story is
17 corroborated by Vasquez placing the casings there. It's also
18 corroborated by Osvaldo.

19 And I know, you know, you have to take somebody who's
20 committing crimes testimony lighter, and I expect you to, than
21 other people. But that counts for the defendants, as well.

22 They destroyed the casings. They destroyed the
23 ability to look at tire tracks.

24 This story that Compean had, that Osvaldo jumped out
25 of a moving van going 30 miles an hour? Well, a little bit of

1 the picture that Richards took at the scene has tire tracks,
2 and you see that he broke. How could he be braking at the
3 edge, if he had jumped out? Okay?

4 Again, corroboration. It's not the kind of
5 corroboration we would have had, if they had told it on the day
6 that they discharged their firearms. But it is corroboration.
7 But you would have known a whole lot more if they had secured
8 the scene for a SET team.

9 Why does he say that he jumped out of the van?
10 Because he tells Christopher Sanchez that Osvaldo was limping,
11 and he thought he was hit. But then he tells Chief Barker, If
12 I had thought he was hit, I would have reported it.

13 Now, aside from the fact that, If I thought he was hit
14 I would have reported it being inconsistent with, You always
15 side with the aliens, he's got, now, months later to figure out
16 what he told Chris that first night, that he knew -- he didn't
17 say he knew, but he thought -- and you know he knew -- that
18 they had hit him.

19 And why is that important? It corroborates Osvaldo's
20 story.

21 Casings, casings, casings. Mr. Vasquez meets him at
22 the C.C. Bills gate, and Vasquez is coming -- going onto the
23 levee, and Compean is coming off of the levee. You know, the
24 levee road here (indicating), you can only do it at certain
25 points. And they meet at the C.C. Bills gate. And there's --

1 well, there's differing testimony about what happened at the
2 C.C. Bills gate, because Mr. Vasquez says, I'm coming on, I've
3 opened the gate, I'm coming on. And Compean gets out of his
4 vehicle. He comes up to me, and he shows me nine casings.

5 And he takes his clip out -- now, what's interesting
6 by the way, is he shows him the casings, tells him he had to
7 shoot, but never tells Vasquez that Osvaldo had a gun. They
8 never tell anybody. They don't tell Yrigoyen, and they don't
9 tell Mendez. They don't tell anybody on that day.

10 Don't you think the first thing they're going to do is
11 run over and say, Hey, he shot at us. I thought he was
12 shooting at us. Makes them look good, cleans up their story,
13 and it's a good shoot.

14 Now, the very fact they never told a living soul,
15 until Mr. Sanchez interviewed Mr. Compean on the 18th of March
16 that Osvaldo had a gun, tells you the truth. He didn't. And
17 this story of the cell phone and maybe something in his hand,
18 the reason I demonstrated that with the doctor is because
19 Mr. Ramos and Mr. Compean say Osvaldo -- Osvaldo ran to the
20 left, and Osvaldo says he ran to the right. And I, you know,
21 didn't know what the story was going to be about how the injury
22 occurred. But he's not left-handed. That's the most important
23 thing.

24 Compean says Osvaldo puts dirt in his face with his
25 left hand. He says that he turned like he was going to shoot

1 with his left hand. And most importantly consistent with his
2 story -- not necessarily the truth, but his story -- he grabs
3 him by the back of the shirt and by the left side.

4 Well, if Osvaldo has -- you know, was left-handed, he
5 would have felt a cell phone, a gun, in his belt. He would
6 have felt it when he was tussling with him, or it would have
7 fallen out. There was no gun.

8 You would have been able to look and find bullets.
9 You know, the bullets hit the ground. What happened to the
10 bullets? Because three weeks later, when they went out there
11 with a metal detector, they couldn't find any bullets.

12 And we know that Mr. Compean shot lots of bullets that
13 did not hit a target out in that open vega.

14 You would have found foot signs. And the reason for
15 this, again, is the direction that Osvaldo ran. You also would
16 maybe have seen that he fell, maybe have found blood where he
17 fell -- not a lot, but they can find tracings of blood. But
18 they didn't do that, either.

19 Ladies and gentlemen, the reason you don't have that
20 evidence for this trial or any other purpose is because of the
21 defendants, not because of Osvaldo.

22 They did not follow the shooting policy. That's the
23 fourth policy they failed to follow. You must report that
24 accidental discharge.

25 You know, I'm going to talk a little bit about

1 immunity. There's an old prosecutor saying -- and I am an old
2 prosecutor -- when you cast a play in hell, you don't get
3 angels as witnesses.

4 The Government didn't cast this play. The defendants
5 did. They're the ones that chose not to report that shooting
6 and to cover up evidence. And if it's important to you to know
7 what happens out there, if it's important to you to know that
8 even though we have drug dealers out there, we're following the
9 United States Constitution, then they've got to talk about it.

10 And the only way we were going to get these guys to
11 talk about it was to -- not give them immunity, give them a
12 proffer letter. What you tell us today won't be used against
13 you. And, yes, we make a judgment.

14 But when Juarez finally talked about it -- by the way,
15 Juarez is never inconsistent; he just keeps adding stuff. He
16 doesn't lie, he fails to tell everything. When he finally
17 tells that story that's consistent with Vasquez, it's
18 consistent with Osvaldo, and to some degree consistent with
19 Mr. Compean, he tells it to his lawyer, not to us.

20 And maybe he got a strike of conscience and maybe he
21 didn't. Maybe he thought, though, They're going to figure this
22 out, and I'm really in trouble. But he tells his lawyer, and
23 his lawyer tells us. And, yes, Mr. Gonzalez was very
24 frustrated with him. Wouldn't you have been?

25 Now, in order to pierce that -- that thin green line

1 is not just protection between -- well, it's supposed to be a
2 protection between this country and illegal immigration, that
3 very boring thing they're supposed to do.

4 You know, Mr. Ramos told you how boring it was. You
5 know, I don't like to catch aliens. He admits it. Oh, I know
6 it's my primary responsibility, but there is just -- there's
7 just too much paperwork to have to report.

8 This is what they do with most of them. They stand
9 out there as a presence to try to turn them back. And then if
10 they can't turn them back and they catch them, they have to
11 deport them. And they do other things with them, as well, but
12 it is an awful lot of paperwork.

13 And, clearly, Mr. Ramos doesn't like that paperwork.
14 He wants to play the cat and mouse game. He wants to catch the
15 loads. Why don't you go to the Drug Enforcement
16 Administration?

17 Well, I don't want to do that. I want to be a Border
18 Patrol agent.

19 Well, if you want to be a Border Patrol agent, then
20 get out there and keep the aliens out. Don't hurt them, don't
21 shoot them, just keep them out. Or deport them, if you can't
22 keep them out.

23 Was there a gun or wasn't there a gun? Because if you
24 conclude, ladies and gentlemen, that there was no gun, or
25 reasonable belief that there was no gun, the defendants are

1 guilty beyond a reasonable doubt of all 12 counts.

2 So, let's examine the evidence. You have evidence,
3 because evidence just isn't what somebody sees or hears. The
4 judge tells you in the charge there's something called
5 circumstantial evidence. And the judge also tells you that,
6 when you go back in the jury room, you take a very important
7 tool with you. It's called your common sense.

8 So evidence is also a reasonable deduction from what
9 happened. You can believe, beyond a reasonable doubt, by using
10 your common sense about what happened that day.

11 Remember, if they would have reported it, we wouldn't
12 be here. And if they reported it, it's because it was a good
13 shoot. They didn't report it because it's a bad shoot.

14 Mr. Ramos testifies, I heard an exchange of gunfire.
15 He's down -- this is the water (indicating), so I don't think
16 he's in the water at the time. But he's somewhere down here in
17 the ditch and can't -- certainly can't see Mr. Compean over
18 here. Okay? And he says he hears gunfire. An exchange. He's
19 an expert. He knows people are shooting at each other. He
20 uses a unique term of art, exchange. He uses that so that
21 you-all will think that he thought that Osvaldo was shooting at
22 him.

23 Everybody else just hears some shots -- not everybody
24 else. Only two other agents hear shots, Juarez and Vasquez.
25 Okay? Let's not -- let's not jump to that conclusion that

1 everybody heard shots and everybody was talking about it,
2 because that's simply not true. Juarez and Vasquez are the
3 only ones that heard shots. Partly because of the noise of the
4 trucks that were coming, partly because of the timing, and it
5 was over when the majority of people arrive.

6 But Ramos testifies he was down here (indicating), and
7 he hears an exchange of gunfire. So he runs up, what, 40 feet,
8 50 feet, I don't know, 100 feet, however long, crosses over.

9 And when he gets over here, Compean's not magazine
10 exchanging. Compean is not on his knees shooting, because he
11 already -- he already heard the shots. Remember, he already
12 heard the shots. Compean's laying down, and he thinks he's
13 been shot, according to him. Okay? He hears the shots over
14 here, he's laying down, he thinks he's been shot. He doesn't
15 say, Has he been shot?

16 MS. STILLINGER: Your Honor, object to the
17 mischaracterization of the witness. Mr. Ramos never testified
18 that he thought he was laying down. I specifically asked him
19 that question.

20 THE COURT: The jury will recall what the testimony
21 was.

22 Go ahead.

23 MS. KANOF: You are the final arbiters. But what I
24 recall hearing was, He was on the floor, and I thought he had
25 been shot. Not on his knees. Not standing up after a magazine

1 exchange. On the floor of the vega, and I thought he had been
2 shot.

3 So he doesn't call out and say, How are you? Are you
4 okay? Are you shot? He doesn't check his partner. He goes
5 running after Osvaldo.

6 Now, this is really important. Okay? Very important.
7 Because Compean doesn't say that at all. Compean says -- and
8 I'm going to talk about the slip and fall over here later. But
9 Compean says, No, I didn't shoot here. I don't know how those
10 casings got there. I shot down here. But we tumbled -- okay,
11 is it credible? Osvaldo is over six feet tall, he's thin, he's
12 young, he's sly.

13 Mr. Compean, who wanted you to think he was thinner
14 then, turns out he wasn't, slips over here (indicating).
15 Osvaldo beats feet back south. I mean, he is gone. And that's
16 what really happened.

17 But he wants you to believe he's able to recover, put
18 his shotgun down, run all the way up here and catch him, with
19 all that equipment on, being heavier, shorter, a little older,
20 and then catches him and grabs the back of his shirt, and then
21 tries to pull him down like this (indicating), and then they
22 tumble down here.

23 And then they have some kind of struggle where --
24 first he says Osvaldo threw dirt in his face, then he says
25 Osvaldo pushed dirt in his face with his left hand. And then

1 he says, Oh, but it didn't get in my eyes. I was able to see
2 perfectly that he had a gun. It didn't get in my eyes.

3 And then he gets up on his knees and starts to shoot.
4 He shoots until his clip is empty. He fumbles, he can't get --
5 you know, he's shooting at what? Okay?

6 Fumbles, can't get his clip out, so he stands up so --
7 ladies and gentlemen, remember, Ramos does not see Compean
8 shooting. It's over by the time he runs. Okay? So, by the
9 time he runs, Compean's not only on his knees, he's on his
10 feet, because he's already shot at least 12 of those shots.

11 But Ramos says he's lying on the floor of the vega?
12 No. He's up, fumbling with his magazine.

13 Remember, by the way, there's a car up here, because I
14 want to maybe get back to the fact they could have taken cover
15 if he was shooting, and all that kind of stuff.

16 But anyway, this is totally impossible. Their stories
17 don't even match. Because, according to Ramos, the shooting is
18 over by the time he gets here, and he's down on the ground.
19 According to Compean, he popped up and then started shooting.
20 It's an impossibility. Like I said, you'll know from the
21 evidence.

22 He said, When I saw him on the floor, I thought he had
23 been shot, injured. Then I did not hear anymore shots.

24 That's an impossibility, from the way they testified.
25 He didn't call out. He ran after the threat.

1 I guess it's individual to a law enforcement officer
2 whether they are going to want to protect their partner or
3 whether they're going to run after, you know, somebody they're
4 kind of upset with because they eluded them.

5 But one of the things that Ramos did a lot was assume.
6 Okay? He assumed somebody was going to report it. You know
7 what else he assumed? That Osvaldo threw dirt in Compean's
8 face.

9 Because remember, according to them, Oh, we didn't say
10 a word to each other. We never talked about it. We walked up
11 there completely silent. Except that as soon as he gets up
12 there he tells Richards -- you know, they get up here
13 (indicating), Compean stays here (indicating). Ramos walks --
14 initially, Ramos walks down, wades through and comes up.
15 That's his seizure. He's going to catch that dope.

16 And recall that, when he gets over there to Richards,
17 he tells Richards, The driver threw dirt in his face. He was
18 assaulted. The driver -- how does he know that? He didn't see
19 it. Okay?

20 The struggle -- they both say the struggle was over by
21 the time he got over here (indicating). He sees him dirty.

22 And when I asked him, Well, how did you know he threw
23 dirt in his face?

24 Oh, I assumed. I assumed somebody reported it. I
25 assumed he -- I assumed he had a gun, maybe.

1 Well, that's not the standard. You don't get to
2 assume somebody has a gun. Remember, Osvaldo is not
3 left-handed.

4 Of course they talked. Okay.

5 They get there -- all this has happened. And, by the
6 way, Ramos had a 96 percent on his qualifications the day
7 before. He has previously -- aside from being on the SET team,
8 on the evidence team, a firearms instructor, he was on the
9 equivalent that Border Patrol has of the SWAT team, and he
10 knows he's a good shot. He shoots only once. And he wants you
11 to believe that the only reason he shot once is then he
12 disappeared?

13 Ladies and gentlemen, it is totally irrational to
14 think that that injury did not hurt and did not stop Osvaldo at
15 least temporarily, like he told you. He fell while he was
16 still on the vega. He's laying on the ground, and that's when
17 he turns around. And what does he see? He sees the two agents
18 looking at him holstering their weapons -- together, by the
19 way, not the way they say it happened -- turn their backs on
20 him and walk away.

21 He thought he was going to get arrested. He was ready
22 to put his hands behind his back for handcuffs. And you know
23 what? If they had done that, it would have been a good shoot.
24 If they had gone up to him -- run up to him when he fell, when
25 he was no longer a threat, and put handcuffs on him, they could

1 have taken him to Thomason, and then they could have taken him
2 to the jail.

3 And, yes, Mr. Gonzalez and I would prefer to be
4 prosecuting a drug transporter, which is what our bread and
5 butter is. But this is more important. It is them that
6 prevented our ability to do that.

7 So Ramos comes all the way back. He's over here
8 (indicating). All of these agents are here (indicating). And
9 does he tell even one of them, That Mexican you-know-what had a
10 gun. We had to shoot at him. Not one person does he tell.
11 Not Juarez, not Vasquez, not Yrigoyen, not Mendez, not
12 Richards, not Arnold. Nobody. Not Mendoza. Tells nobody.

13 What is human nature? If it was a good shoot they
14 would have told them about it. They didn't tell them about it.

15 Even today -- because the use of force policy says
16 that they don't -- they have to perceive a threat -- reasonable
17 perception of a threat. You know, they're going to tell you, I
18 thought that day that he had a gun, but I'm not really sure
19 today. But that day I thought -- because that will get it for
20 them with a shooting review committee. All they have to do is
21 say, I thought he had a gun, and I knew he had a whole bunch of
22 dope. Clear me. And they would have been cleared. They
23 didn't tell them about it because it was not a good shoot.

24 Mr. Compean is actually very forgetful on the stand.
25 He is waiting up here (indicating) for him with a shotgun, for

1 the dooper. The van is here (indicating). It stops there on
2 the tire tracks. He didn't jump out of it when it was running.
3 And he's got that big old shotgun.

4 And they have -- I guess he didn't have his pepper
5 spray with him that day. But you know what's real interesting
6 about that is that they admit he was not a threat. He said, I
7 had the advantage. I was on top of him. I had the shotgun.
8 He's not a threat.

9 In opening statement, I thought he was going to be --
10 Compean was going to be afraid of Osvaldo when he was in the
11 ditch. But it turns out that that's not what it was.

12 I have the advantage. I wasn't afraid. He's pointing
13 the shotgun at him. And you have Juarez who has arrived. You
14 have Ramos who has arrived.

15 You know what Mr. Sanchez doesn't believe -- and you
16 can believe it if you want, or you don't have to believe it if
17 you don't want to. But what Mr. Sanchez doesn't believe is
18 that neither of them said, Hit him, hit him, in English.
19 Remember, you have to have corroboration.

20 Osvaldo says he heard them say, Hit him, hit him. He
21 does speak some English. In fact he said, you know, Take it
22 easy, guys. Take it easy. He testified -- he told you that.
23 He was talking to Compean.

24 He says he turns around and he sees two agents with
25 guns. They are Ramos and Juarez.

1 Juarez says he didn't pull his gun. I don't know
2 about that. But he is there and he does see this, because it's
3 corroborated.

4 Compean himself tells Christopher Sanchez, on March
5 18th in his statement, I heard somebody say, Hit him. The
6 defendant himself says it.

7 What was unbelievable was that Juarez doesn't hear
8 Ramos say it. And when Ramos testifies, he doesn't hear Juarez
9 say it. One of those guys said it. Okay?

10 Why? Is that inside policy? No, it's not. Is he a
11 threat to him? He's down here in the ditch.

12 You know, Ramos testified, to get out of that ditch,
13 he had -- the reason he doesn't see Compean slip, which is very
14 incredible, is because he was using his hands to climb up.

15 Osvaldo didn't use his hands to climb up. Isn't that
16 healthy firearm instructor, SWAT team guy, healthy enough to
17 climb up that ditch without using his hands? Because Osvaldo's
18 hands were in the air. Okay?

19 That's what you don't believe about Juarez. What
20 happens is, Juarez tells very little of what he does. And then
21 the very next thing is Chris interviews Vasquez, who gives the
22 whole story out at the C.C. Bills gate.

23 And then he thinks, You know what? Juarez isn't
24 telling the truth. He saw this, and he's protecting someone.
25 And he finally does admit that. But you don't have to believe

1 everything he says, just what's corroborated.

2 Now, Osvaldo, according to everybody, is very evasive.
3 You know, he does some kind of zigzag down there in the ditch.
4 He's trying to do what? Go home. If he had a gun, he could
5 have pulled out the gun and shot them right there, I mean,
6 before he turns around and sees the two agents.

7 If he was a threat -- they knew he wasn't a threat.
8 They see these guys all the time. They just don't want to get
9 caught.

10 So Osvaldo is down in the ditch. When he finally does
11 come up here, he (speaking Spanish) I mean, he hits him. I
12 mean, he tries to hit him.

13 And he tells Christopher Sanchez a story that makes no
14 sense to Agent Sanchez. He tells him that he takes the shotgun
15 and turns it down to push him back, even though he hears people
16 telling him to hit him. Very inappropriate conduct. There's
17 no reason for it.

18 He says -- and when Chris says, Well, couldn't you
19 have reached up and pulled the trigger?

20 Now, when he testifies, No, no. He was, like, doing
21 some kind of swinging motion. Because, you know what? He
22 doesn't want you to think he's that inappropriate, he was that
23 reckless.

24 And he slips. Oscar Juarez says he slips and gets --
25 he slips completely down.

1 You know -- remember, by the way, Juarez slipped.
2 Okay? It's very slippery. Another piece of corroborating
3 evidence.

4 Well, Juarez says, when he's up there, he slips also,
5 when he gets to the edge. Certainly, trying to hit somebody
6 with a gun is going to make you slip. He slips and he falls,
7 still here on the levee, partially on the edge of that ditch,
8 and gets all dirty. That's where all the dirt came from.

9 Okay?

10 And he wants you to believe, Mr. Compean, that he only
11 slipped to his knees. He's graceful and careful and capable
12 with that big shotgun in his hand, that he gets back up
13 immediately, puts the shotgun down, and goes running after this
14 guy.

15 Everyone says the same thing. Osvaldo, Juarez, Ramos,
16 and Compean. The guy is evasive. He jumps around him, doesn't
17 attack him, doesn't push him down. He has -- now, Osvaldo has
18 the advantage. He's either laying down, as Juarez said, or
19 he's on his knees, as he said. Osvaldo could have just pushed
20 him over. He's incapacitated for a minute. He could have shot
21 him then. He could have done anything he wanted to him, but he
22 doesn't. He just wants to go home. He doesn't want to hurt
23 these guys. He doesn't have a gun. So he hightails it back to
24 Mexico.

25 And Mr. Compean, says, Oh, no, no, no. I'm able to

1 recover, run all the way over here, grab him, tumble down, have
2 this struggle, and then get up in time on my knees to see him
3 turning around with a hand that he doesn't write with or
4 doesn't use, doesn't draw with, and see him with something
5 shiny in his left hand. The something shiny did not -- the
6 something shiny didn't come up until he was under arrest.

7 Now, another extremely incredible -- meaning not
8 credible -- piece of evidence. Compean himself says, You know,
9 I was taught that in firearms. I was just picking up my
10 casings not even thinking about it.

11 Let's put those two stories together. Ramos says,
12 after he shoots, he doesn't think he hit the alien, but only
13 shoots once. He comes back and checks Compean, and he's in
14 shock. Compean is in shock. And he's going like this
15 (indicating) with his hands on his clothing to see if he's shot
16 and making sure he's okay, because he's in shock. And they
17 don't talk about it?

18 And then Compean doesn't think he's in shock because,
19 according to him, he wasn't laying down. He had gotten on his
20 knees and shot both times, and gotten up and tried to change
21 his magazine and shot again. And they're walking back, and
22 he's -- he's picking up casings. And Ramos says he doesn't
23 notice it.

24 One of the agents -- most of the agents said they were
25 in tandem, they were very close to each other. But the agents

1 who said they weren't exactly near each other said Ramos was
2 behind Compean. Wouldn't he have seen him pick up those
3 casings?

4 Now, when he talks to Chris on the 18th at his home,
5 he says, I picked up casings on the levee. This is the levee
6 (indicating). He doesn't say, I picked up casings on the vega.
7 He doesn't say, I picked up casings on the side of the levee.
8 He says, I picked up casings on the levee. Exactly what
9 Vasquez said. Exactly where the casings were found by Vasquez.

10 Now, they are pretty excited that they got a big load
11 of marijuana. You know, you don't believe everything a dooper
12 says. But it was amazing for Osvaldo to say, I -- it could
13 have been heroin or cocaine.

14 Ladies and gentlemen, that's an awful lot of heroin or
15 cocaine. That's really a serious crime. He didn't -- you
16 know, he was willing to admit that was a possibility. And,
17 yeah, it makes him a little bit more credible.

18 When -- don't see the casings, they get here
19 (indicating). And then Compean says, When Richards yells out
20 to him, Are you okay? He comes down and stands back where he
21 was when he slipped and when he was holding the shotgun, and
22 throws the casings in the water.

23 There were nine agents out there. Not one of them saw
24 that happen. Especially Mr. Richards, who came to the edge to
25 ask him if he was okay.

1 Why does he want you to think he threw the casings in
2 the water? Because he doesn't want you to believe Vasquez, who
3 saw the casings. That action at the C.C. Bills gate kind of
4 says it all about the veracity of Mr. Compean.

5 Vasquez says Compean gets out of his vehicle, comes
6 over and shows him and says, I got nine. He says it in his
7 first statement. I got nine. I think there's five more out
8 there. One, two, three, four, five, first of all. Second of
9 all -- now Mr. Compean says, Oh, no, no, no. It's the -- I was
10 reloading my magazine. Well, that's kind of an odd time to be
11 reloading your magazine, first of all.

12 And, second of all, he claims he stayed in his truck.
13 Okay? I'm not a truck person. But it seems to me that if
14 you're going to take your magazine out and then take bullets
15 out and reload it, you would do it down here (indicating),
16 because -- you know, the window is about here. Would you be up
17 here, you know, reloading your magazine, so that Vasquez could
18 see it and be confused that it was casings?

19 It seems to me the most comfortable place would be
20 down here (indicating). Again, I don't know. But again,
21 you're allowed to make reasonable inferences from the evidence.
22 And it's just not credible that he's putting bullets in a
23 magazine.

24 Now, how do we know there's not a gun? Well, first of
25 all, because they didn't report it. You know, had refresher

1 training the day before.

2 Second of all, because that marijuana would have been
3 their best evidence that there was a gun, and they had lots of
4 marijuana to prove it.

5 Third of all, they didn't tell any of their friends.
6 And that's interesting, because they did tell them other stuff.
7 They told them that there was dirt thrown in their face. They
8 told them -- he told Vasquez that bitch took him down.

9 By the way, he tells Vasquez, That bitch took me down
10 and threw dirt in my face. Okay? That's obviously the story
11 that they discussed down here (indicating). But what's
12 important about that is, why is he telling Vasquez that? He
13 doesn't want to admit that Osvaldo had a gun or didn't have a
14 gun. But he wants Vasquez to think he was in danger, so he
15 will keep his secret. So he makes it sound -- he makes Osvaldo
16 sound like that bitch that took him down. Remember, he is the
17 one that takes Osvaldo down. But he says Osvaldo took him
18 down. Okay? Because Osvaldo was never an aggressor.

19 He tells Yrigoyen -- he sees Yrigoyen and Mendez --
20 you know, this is really horrible. There's a car up here.
21 It's Compean's. And then another car comes up here, Yrigoyen
22 and Mendez'. They show up pretty late. And these guys, you
23 know, holstered their weapons, and they're just kind of
24 casually walking up, picking up casings.

25 And Yrigoyen and Mendez have arrived. Okay.

1 Mr. Ramos, over and over, The vega is dangerous. The vega is
2 dangerous. There's bushes there. They can hide. The vega is
3 dangerous.

4 Even if you believe that he thought he knew so much
5 about that gun that was in Osvaldo's hand, that he was no
6 longer a threat where he was, what about the other drug dealers
7 that were part of this deal on that dangerous vega? Their
8 behavior, the way they walk, their casual demeanor, their
9 saying it's okay to their friends immediately tells you they
10 were not in danger. And if they were in danger, shame on them
11 for not telling Yrigoyen and Mendez to take cover behind these
12 vehicles.

13 They see a white car. They think it's the other drug
14 dealer. You know, maybe he's got some big powerful gun, that
15 other drug dealer.

16 No. That's not what happened, because they would have
17 warned them, and they wouldn't have turned their backs to that
18 vega.

19 They're -- they -- that's Yrigoyen and Mendez.

20 Jacquez. Okay? By the way, interestingly enough,
21 Jacquez and Vasquez both trained with Compean. He was their --
22 I forgot what you call it -- training agent, rode in the car
23 with him. And that goes to that thin green line of not wanting
24 to be a snitch. They had some loyalty to him.

25 But Jacquez said that Compean told him that he tried

1 to hit the driver with the shotgun. Jacquez corroborates
2 Osvaldo. He corroborates the, Hit him, hit him. He
3 corroborates what Juarez said.

4 Jacquez said that the Defendant Compean told him, I
5 tried to hit him with the shotgun, but missed and slipped, and
6 the driver got around me.

7 That's what Osvaldo says.

8 Nobody told Jacquez to say that. He says it in his
9 first statement.

10 And what did he not tell Jacquez? The driver had a
11 gun. I was afraid of him. My client was in fear. He doesn't
12 tell him about a chase. He doesn't tell him about the tumble.
13 He never says he was in fear.

14 How else do we know there was no gun? The location of
15 the casings. You know what they say, Location, location,
16 location.

17 You know, when he tells -- Compean tells Vasquez that
18 he exchanged magazines, that word "exchange" is a term of art.
19 It means he took one magazine out, he replaced it with another
20 magazine. He tells you that's not what he did. But he told
21 Vasquez that was what he did. And that's what Juarez saw.

22 Corroboration. Juarez saw it, Compean admitted it to
23 Vasquez, and Compean then admits it to Special Agent Sanchez.
24 I exchanged magazines. The first new story in front of the
25 jury. No, no, no, I didn't exchange magazines.

1 The most incriminating piece of evidence against
2 Mr. Compean, telling Mr. Vasquez, By the way, when you're out
3 there, I think there's five more.

4 He knew exactly what he had done. He couldn't pick
5 these up on the top of the levee road, because all those people
6 were watching. Yrigoyen and Mendez are up there with him. He
7 tells Vasquez, I have five more. When you go out there to
8 babysit the tow truck, I have five more.

9 Vasquez knows exactly what he means. Remember, he
10 rode with him. And then Vasquez does exactly what he asks. He
11 picks up the five casings, destroys them -- you don't have any
12 evidence for that purpose -- and then gets on his personal cell
13 phone and calls Compean to tell him the dirty task is done.

14 And Mr. Vasquez identified his own cell phone records
15 and identified that phone call for you. It was made. It's
16 corroboration.

17 That's just -- I mean, ladies and gentlemen, that
18 tells you everything, to ask somebody to go find the rest of
19 your casings. They don't teach them in firearms to ask
20 somebody else to go pick up your casings and destroy them.

21 Failure to report the discharge, putting others in
22 danger, not telling anybody they had a gun, and leaving their
23 friends up there as sitting ducks, if you believe their story,
24 that it was dangerous.

25 The other very telling thing is the failure to report

1 the assault. Assuming for a minute that Mr. Compean was
2 assaulted, and assuming for a minute that Mr. Ramos assumed
3 that he was assaulted -- because he certainly didn't see it, so
4 he had to assume it. Why not tell him, I was assaulted? Why
5 not -- you know, he's got -- he's dirty. He's got a cut on his
6 chin. The cut on his -- the cut on his hand, by the way, is
7 here (indicating). He shoots with a gun, cut on his hand.

8 The reason that they tell Richards -- or that --
9 that -- and Richards and Arnold both say it, that he assures
10 them that he doesn't want the assault reported, is the exact
11 thing that he said.

12 Now, Richards and Arnold -- who they liked. The
13 defense likes their testimony, or at least Arnold's --
14 testifies, you know, Compean is coming out of the bathroom. He
15 goes in and sits down in the processing room. He's preparing
16 the I-44.

17 And Richards asks him again, because he's concerned,
18 Were you assaulted? Because he's all dirty. Of course, he
19 thinks something happened to him.

20 And he -- Oh, no. No, no, no. I won't tell him.
21 Because then Richards told me, Well, you know, we're going to
22 have to call the FBI, and they are going to have to come out
23 and interview you, and it's going to be a really long night,
24 and it's a lot of paperwork, and you really don't want to do
25 that.

1 You bet they didn't. You bet they didn't want the FBI
2 out there investigating what happened. Because the FBI might
3 have gone immediately to that scene and secured what was left
4 of it and found -- found the blood where Osvaldo fell and found
5 the tire tracks and found the bullets.

6 They didn't report the assault because they didn't
7 want attention to be drawn to what they did, because it was a
8 bad shoot. They violated Osvaldo's rights under the
9 United States Constitution, the same rights that they have
10 sitting here.

11 I think I've talked a little bit about the slip.
12 What's important about that slip, by the way, is that if you
13 believe Osvaldo -- Compean, when he talks to Chris, Juarez, and
14 the physical evidence, then when Osvaldo -- oh, and in fact,
15 what he tells Chris is, He made a side-to-side motion and then
16 got around him to the left.

17 He was never -- there was never any threat. He never
18 had to use deadly force, because that guy was gone. And that's
19 what's important about that slip.

20 THE COURT: Five minutes.

21 MS. KANOF: Thank you, Your Honor.

22 Ladies and gentlemen, there's no death penalty for
23 marijuana under these circumstances. And if you believe that
24 the reason that they did not tell anyone that Osvaldo had a
25 gun, if you believe that it was a bad shoot and that's why they

1 didn't talk about it, then you have to convict them.

2 If you believe it's a good shoot, you still have to
3 ask yourself, Why didn't they tell anybody about it?

4 They intentionally, knowingly, willfully, and
5 corruptly acted on that day. They did not act as Border Patrol
6 agents. They acted as vigilantes.

7 Border Patrol agents have a license to shoot to kill.
8 When you look at the assault counts, they are guilty of all
9 three of them. Why? Well, you know there's bodily injury,
10 because there's definitely a loss of -- permanent loss of use,
11 or protracted loss of use of his ability to urinate.

12 Intent to kill. He doesn't have a gun. You know he
13 doesn't have a gun, Osvaldo, that is. And they're taught to
14 shoot to kill.

15 Their behavior was egregious. They used their weapons
16 in a rank violation of the rules of the Border Patrol and of
17 the United States Constitution.

18 Tampered with future proceedings. Mr. Ramos was a
19 firearms instructor. He knows what happens when you report it.
20 They investigate it. It's a federal law enforcement official
21 procedure. But that's not the only procedure they tampered
22 with. They tampered with the ability for that evidence to be
23 reviewed by a Grand Jury, and they tampered with your ability
24 to view that evidence.

25 In fact, but for the moms -- but for the moms, we

1 wouldn't have this case all.

2 Both of them destroyed evidence, failed to report the
3 shooting, prevented the evidence team from -- impeded,
4 interfered with, concealed.

5 Ladies and gentlemen, you have an opportunity --
6 there's an old saying, Power corrupts; absolute power corrupts
7 absolutely. They had too much power that day. Maybe, because
8 they were hyped up from having had quads the day before. Maybe
9 because that's just who they are.

10 But we're not going to throw away the United States
11 Constitution. We're not going to wad it up and put it in the
12 trash can because Osvaldo was transporting marijuana that day.
13 Because if you do that, then we have no expectation of living
14 in a free society.

15 The rules apply to everybody, ladies and gentlemen,
16 even to Mr. Ramos and to Mr. Compean. And I will ask that you
17 find them guilty beyond any doubt, not just a reasonable doubt,
18 of committing all 12 of these offenses alleged in the
19 indictment.

20 THE COURT: Ladies and gentlemen of the jury, you have
21 now -- it is now time for you to step down from the jury box
22 and begin your deliberations. You have heard all of the
23 evidence, you have heard the closing, and you have received the
24 Court's charge.

25 At this time, the Court will ask you to go ahead and

1 retire to the jury room and begin your deliberations, and we
2 will await your verdict. Thank you.

3 I need the last two alternates to remain. Everybody
4 else can go.

5 (Jury retires to deliberate.)

6 THE COURT: You may be seated.

7 Ladies and gentlemen, Ms. Armendariz-Reynolds and
8 Ms. Chavez -- is that right?

9 JUROR: Yes.

10 THE COURT: All right. You were what we call
11 alternates. In other words, you were here in case it turned
12 out, during the course of the trial, one of the jurors was not
13 going to be able to serve.

14 As you can see, all 12 of them have gone back to begin
15 deliberations, and so now the trial is now done, and you are
16 now going to need to deliberate. That may be a relief, I don't
17 know. But I certainly want to let you know how much all of us
18 appreciate the time you were here. It's two weeks. And I
19 don't want you to think that time was wasted.

20 As you have seen in other trials, occasionally
21 something happens. And if -- you're entitled to a jury of 12
22 people. And if something had happened and all 12 people could
23 not have served, your role would have been very important. So
24 please understand it was not a waste. We very much appreciate
25 the time you served here.

1 You are now released from the -- all instructions the
2 Court gave you. I want you to know, if you are -- you are
3 welcome to stick around. I don't know how long they will be
4 deliberating. If you want to know what happens, if you would
5 give Mr. Martinez your phone number, we will be happy to call
6 you and let you know what happens.

7 But in the meantime, on behalf of everyone, we thank
8 you. And you're free to go.

9 (Alternate jurors released.)

10 THE COURT: Again, you may be seated --

11 All right. The jury is out deliberating. I -- for
12 all of you attorneys, I don't know if you're going to wait
13 here. I mean, obviously, you probably want to go to lunch.
14 They are certainly going to go to lunch first. And so they
15 will be back in about an hour. If everybody wants to go to
16 lunch and then be back, that's fine.

17 If you are going to your offices, you need to make
18 sure that Mr. Martinez has a phone number where he can reach
19 you. If you give me a phone number that puts us to some
20 secretary or some assistant, that doesn't reach you. So if you
21 have a cell phone or something that you will carry, it's
22 important, because I've had lots of questions in the past, and
23 I don't want to be holding the jury up 20 minutes while I look
24 for you.

25 So if you give us a phone, that's fine. But if you're

1 not going to be available, then you need to wait around. All
2 right?

3 And we stand in recess until we have a verdict.

4 (Recess; open court, parties present, jury not
5 present.)

6 THE CLERK: Court is back in session.

7 THE COURT: You may be seated. All right, ladies and
8 gentlemen. We have received a note, and it indicates --
9 basically says, We would like to go home tonight. Did I read
10 their minds or what?

11 So I am going to call them in. Does anybody have any
12 objection to them going home?

13 MS. STILLINGER: No.

14 MR. ANTCLIFF: Absolutely not.

15 MS. KANOF: No.

16 THE COURT: I'm probably going to have them come back
17 at 8:30.

18 So you can bring them in.

19 (Open court, parties and jury present.)

20 THE COURT: You may be seated.

21 Ladies and gentlemen, you should pretty much stay in
22 the same order. We've just let the last two go.

23 Ladies and gentlemen of the jury, it's my
24 understanding you would like to go home this evening. Is that
25 correct?

1 FOREPERSON: Yes, ma'am.

2 THE COURT: We're going to recess for the evening. I
3 only want to caution you. You have already begun your
4 deliberations. What that means is, when you reconvene, you
5 need to wait until everyone gets there to begin deliberating
6 again. All 12 of you must be present for your deliberations.

7 Between now and tomorrow morning you need to continue
8 to follow the rules of the Court which is, you're not to
9 discuss this case with anyone. You're not to read about this
10 case.

11 And we will see you back here tomorrow morning at
12 8:30. See you back tomorrow at 8:30, so you can resume with
13 deliberations.

14 Thank you. See you in the morning.

15 (Jury in recess for the evening.)

16 THE COURT: You may be seated.

17 Anything we need to take up?

18 MS. KANOF: Not from the Government.

19 MR. ANTCLIFF: No, Your Honor.

20 MS. STILLINGER: No, Your Honor.

21 THE COURT: See you tomorrow morning.

22 The Court stands in recess.

23 (Transcript continues in Volume XVI.)

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I N D E X

1		
2		PAGE
3	Closing Statement by Mr. Gonzalez	8
4	Motion for Mistrial	20
5	Motion Denied	20
6	Closing Statement by Mr. Peters	32
7	Closing Statement by Ms. Stillinger	44
8	Closing Statement by Mr. Antcliff	70
9	Closing Statement by Ms. Kanof	95
10	Jury out to Deliberate	135
11	Alternate Jurors Released	136
12	Note from the Jury	137
13	Certificate of Court Reporter	139

14
15
16
17

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19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter. I
21 further certify that the transcript fees and format comply with
22 those prescribed by the Court and the Judicial Conference of
23 the United States.

24

25 Signature: _____ Date: _____
 David A. Perez, CSR, RPR

David A. Perez, CSR, RPR