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1 THE COURT: You may be seated.

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

4 MS. KANOF: Good afternoon, Your Honor. Debra Kanof  
5 and Jose Luis Gonzalez for the United States. We're ready for  
6 sentencing.

7 MS. STILLINGER: Mary Stillinger and Steve Peters  
8 representing Mr. Ramos. We're ready, Your Honor.

9 MR. ANTCLIFF: Chris Antcliff and Maria Ramirez for  
10 Mr. Compean, also ready.

11 THE COURT: All right.

12 Before we get started, I want to say that there was  
13 filed a motion for new trial. It was filed, I think two days  
14 ago. The Court does not have a written decision that will be  
15 given to you. I -- within the next couple of days. However,  
16 the Court is going to deny the motion for new trial. So we  
17 will proceed to sentencing.

18 And we have both defendants here today. I'm -- the  
19 way I'm going to proceeded is that I will take Mr. Ramos first.  
20 He can present whatever he wishes to present regarding his  
21 sentencing.

22 Then Mr. Compean, and he can present whatever he  
23 wishes regarding the sentencing.

24 So if Mr. Ramos and his attorney would approach the  
25 podium.

1 (Defendant Ramos sworn by the Clerk.)

2 THE COURT: Mr. Ramos, you are here today, having a  
3 jury make a decision finding you guilty on Count 2, assault  
4 with a dangerous weapon, and aiding and abetting. Count 3,  
5 assault with serious bodily injury and aiding and abetting,  
6 which carries a statutory penalty of ten years of  
7 incarceration, a \$250,000 fine, three years of supervised  
8 release, and a \$100 special assessment.

9 Count 4, discharge of a firearm in commission of a  
10 crime of violence carries a ten-year minimum mandatory  
11 sentence, a \$250,000 fine, five years' supervised release, and  
12 a \$100 special assessment.

13 Count 8, tampering with an official proceeding, Count  
14 9, tampering with an official proceeding, both carry a 20-year  
15 sentence, a \$250,000 fine, three years of supervised release,  
16 and a \$100 special assessment.

17 And Count 12, deprivation of rights under color of the  
18 law, carries a ten-year sentence, a \$250,000 fine, three years  
19 of supervised release, and a \$100 special assessment.

20 So we are here this afternoon for your sentencing. Do  
21 you understand that?

22 DEFENDANT RAMOS: Yes, ma'am.

23 THE COURT: Now, before today, a Pre-sentence  
24 Investigation Report was prepared. Have you had the chance to  
25 go over that with your attorney, Ms. Stillinger?

1           DEFENDANT RAMOS: Yes, ma'am.

2           THE COURT: And, Ms. Stillinger, did you receive a  
3 copy of the report and have a chance to go over it with your  
4 client?

5           MS. STILLINGER: Yes, Your Honor.

6           THE COURT: All right. And I actually show that there  
7 was a report, and I believe there are, I think in this case,  
8 three addendums. And I just want to make sure you've gotten  
9 all of those.

10          MS. STILLINGER: Yes, Your Honor.

11          THE COURT: All right. You did file some objections.  
12 You may proceed.

13          MS. STILLINGER: Your Honor, there are two guideline  
14 objections pending. There were a number of factual ones that I  
15 don't think we need to spend our time on.

16                 There are two guideline objections pending, and I  
17 would say the more significant is paragraph 97 of the  
18 Pre-Sentence Report which is the two-level upward adjustment,  
19 pursuant to 2J 1.2(b)(3). That is the two-level upward  
20 adjustment for destroying, altering, fabricating a substantial  
21 number of records, documents, or tangible objects.

22                 Your Honor, this case, as the Court is aware -- I just  
23 think factually this just doesn't apply.

24                 In this case, there was no destruction, alteration, or  
25 fabrication.

1           I understand that the Government's theory is that, by  
2 failing to report the discharge of his firearm, that was an  
3 obstruction of justice. I understand the jury found that.

4           But that has nothing to do with the language of this  
5 application -- I mean, the language of this upward adjustment,  
6 which talks about destroying, altering, or fabricating.

7           I mean, there's really the two issues, which he didn't  
8 destroy, alter, or fabricate. And there certainly were not a  
9 substantial number of records. Even if you could somehow take  
10 his omission to report a discharge of his firearm, which  
11 resulted in a missing record, which I don't think is what this  
12 upward adjustment is meant to cover. But even if it were, it's  
13 not still a substantial number of records. It would be one  
14 record, Your Honor.

15           So I think, factually, this upward adjustment does not  
16 apply.

17           THE COURT: All right.

18           Response by the Government?

19           MS. KANOF: Your Honor, the Government supports and  
20 agrees with the pre-sentence report from the probation  
21 department.

22           THE COURT: All right. And then just let me ask a  
23 question, because I have both arguments before me.

24           On the issue of this plus two, how is -- if, as the  
25 jury has found, there was obstruction, how is this failure to

1 file a report not a fabrication of a Government record?

2 MS. STILLINGER: Well, a fabrication, I think, is an  
3 affirmative act.

4 THE COURT: Well, an affirmative act of not putting in  
5 a -- what happened at the scene as -- putting in what happened  
6 at the scene in one version, as opposed to what truly happened  
7 in the scene, is another version. Is that not a fabrication?

8 MS. STILLINGER: Well, Your Honor, Mr. Ramos didn't  
9 write the report of that incident.

10 THE COURT: All right.

11 MS. STILLINGER: Which I think is an important  
12 distinction for the Court.

13 THE COURT: All right.

14 MS. STILLINGER: Mr. Compean actually wrote the report  
15 of that incident.

16 THE COURT: Okay.

17 MS. STILLINGER: So there is no document that  
18 Mr. Ramos wrote that omitted this fact.

19 THE COURT: All right.

20 MS. STILLINGER: There is simply no affirmative act.  
21 He was required to make an oral report of the discharge of a  
22 firearm. And that's what he didn't do.

23 THE COURT: All right.

24 Any response any further?

25 MS. KANOF: Your Honor, I believe the testimony on

1    behalf of the defendants was that they discussed what would go  
2    into the report.  And the beginning of the I-44 Border Patrol  
3    report of apprehension or seizure names the agents for which  
4    the report is being written and has both defendants' names.

5           THE COURT:  All right.  Next objection?

6           MS. STILLINGER:  The next objection, Your Honor, goes  
7    to abuse of position of trust.

8           Your Honor, I'm aware that, generally, this upward  
9    adjustment would apply to a law enforcement officer who does  
10   something in his official capacity as a law enforcement  
11   officer.

12           It occurred to me, and I must say it occurred to me a  
13   little bit later in the process, that, as that adjustment is  
14   applied to the obstruction of justice, this didn't -- he  
15   doesn't hold a particular position of trust within Border  
16   Patrol.  He is -- the guideline talks about his level of  
17   supervision, his level of education, his control over others.

18           He's an agent.  He's not a supervisor.  He's not a  
19   manager.  He is not actually, within the agency, put in any  
20   particular position of trust with respect to his supervisors.  
21   This was a failure to report something to his supervisors.  And  
22   I think, under the unique circumstances of that offense, that  
23   upward adjustment would not apply.

24           THE COURT:  All right.

25           Response by the Government?

1 MS. KANOF: Again, Your Honor, the Government agrees  
2 with the PSR.

3 THE COURT: All right.

4 MS. STILLINGER: Those are the only objections we had,  
5 Your Honor, as to the guideline calculations.

6 THE COURT: All right. And I do want to make sure  
7 that I go over those calculations with you, Mr. Ramos.

8 As far as -- and, in the calculations, the -- you were  
9 placed at a Total Offense Level of 26 with a Criminal History  
10 Category of I. So the guideline range as to Counts 2, 3, 8, 9,  
11 and 12 are 63 to 78 months of incarceration, three to five  
12 years of supervised release, a 12,500 to a \$125,000 fine, and a  
13 \$100 special assessment per count.

14 As to Count 4, it is a mandatory 120 months of  
15 incarceration, three to five years -- I'm sorry -- yes, three  
16 to five years' supervised release, and \$100 per count.

17 Let me clarify, Counts 2, 3, 8, 9, and 12 carry two to  
18 three years of supervised release.

19 So now you also have a motion for downward departure,  
20 I believe, and a motion for variance. Do you want to take  
21 those up at this time?

22 MS. STILLINGER: Yes, Your Honor.

23 THE COURT: Go ahead.

24 MS. STILLINGER: Your Honor, I would like to start  
25 with what I think is one of the more significant issues for the

1 Court, which is whether or not the Court can consider the  
2 ten-year mandatory sentence in Count 4, in fashioning the  
3 sentence as a whole. And I know I suggested that in my written  
4 motion to the Court. Of course, this pertains to the variance,  
5 not the downward departure.

6 I am aware that there is case law that says that is  
7 not the grounds for a downward departure. And it's a  
8 pre-Booker case that says that.

9 Ms. Kanof has responded saying there's no authority  
10 that it is grounds for even a variance from the sentencing  
11 guidelines.

12 And I was fortunate to find a case this afternoon,  
13 shortly before coming to Court, that says that it is,  
14 Your Honor. It's United States versus Walters. And that's at  
15 418 F3d. 461. It's a Fifth Circuit case in 2005.

16 Your Honor, that case had to do with a 924 C charge,  
17 as well as a 922 G1 charge, another type of firearm charge.

18 Of course, the 924 -- in that case, it was not a  
19 discharge of a firearm, so we were talking about a 60-month  
20 mandatory sentence in the case.

21 The District Court made the statements at the time of  
22 sentencing that, of course, he had to give him the five years  
23 on the 924 C. The guidelines on the other count were 15  
24 months. And the District Court -- and that was the bottom of  
25 the guideline range.

1           The District Court said, I hate to do it. It seems  
2 like 65 months -- 75 months for the two combined is way too  
3 much time for what happened in this case, but I have to do what  
4 I have to do. That was pre-Booker, of course.

5           And he felt locked in. He didn't think there -- he  
6 could not consider the 924 C as a basis for a downward  
7 departure on the other charge.

8           A Booker challenge was made on appeal to the Court of  
9 Appeals, and they -- they -- the appeal was only based on  
10 appealing the 15-month sentence, of course, because there  
11 really was no appeal in the particular case on the five-year  
12 sentence. And the Government was arguing it was harmless  
13 error, because they couldn't really take into account the  
14 five-year sentence in deciding the 15-month sentence.

15           And the Court of Appeals said, No, he could. He  
16 could. He said on the record he thought 75 months was too much  
17 time. Under 3553 he can consider the whole thing at once. And  
18 so they remanded for a resentencing in that case.

19           THE COURT: All right.

20           MS. STILLINGER: Your Honor, I think that is a very  
21 important point for the Court. And I apologize for giving that  
22 case law to the Court at the last minute. But from my  
23 perspective, and what I put in the motion for downward  
24 departure and for variance, it's mandated by 3553. And 3553  
25 talks about a sentencing that is adequate but not excessive.

1           How could that be determined without reference to the  
2 sentence that he receives on Count 4, Your Honor?

3           I did file a fairly substantial factual pleading  
4 regarding my motion, Your Honor. And I -- I did that in part  
5 so I -- I knew the Court would read it, and I didn't want to  
6 take up the Court's time in going -- in rehashing this whole  
7 thing.

8           But, Your Honor, I would like to start with something  
9 that -- that -- that was brought out at trial, and this is the  
10 standard for an officer using deadly force.

11           And what the standard is -- this is from the  
12 immigration firearms policy. And I believe this was introduced  
13 into evidence, Your Honor.

14           This is, in judging an officer's use of deadly force,  
15 when judging it afterwards. It says, The reasonableness of a  
16 belief or decision must be viewed from the perspective of the  
17 officer on the scene, who may often be forced to make split  
18 second decisions in circumstances that are tense,  
19 unpredictable, and rapidly evolving. Reasonableness is not to  
20 be viewed from the calm vantage point of hindsight.

21           Now, Your Honor, I do want to be clear. I tried to be  
22 clear in my motion, and I would like to be clear with you. I'm  
23 not asking the Court to set aside the jury's verdict. I  
24 understand the jury's verdict. Even if I wanted the Court to  
25 set it aside, I know the Court won't set it aside.

1           What I'm suggesting to the Court is the Court look at  
2 the totality of the circumstances of the offense. It's very  
3 clear, from -- that the conduct of the victim is a circumstance  
4 that warrants, not just a variance, but a downward departure.

5           I think it's significant that United States versus  
6 Koon, or Koon versus United States, I believe, is the case on  
7 downward departures. And it is a case that has some  
8 similarities with the present case.

9           The victim -- and I know Ms. Kanof talked about the --  
10 that case, of course, that's the Rodney King case. And, in --  
11 that case was highly publicized. Everybody in the  
12 United States probably saw the video of Rodney King on the  
13 ground being beat up by officers.

14           Factually, it's very distinct from the facts in this  
15 case. In that case, there was a downward departure based on  
16 the victim's conduct. And I'm suggesting it's appropriate in  
17 this case.

18           Not because Mr. Aldrete is a bad guy. That's not our  
19 theory that, because he's a drug dealer, or because he entered  
20 illegally, he deserved to get shot in the back. That is not  
21 our theory.

22           Our theory is that, by his conduct, his conduct in  
23 suspicious activity at the riverside, driving -- driving away  
24 from the Border Patrol agents, not stopping when he was  
25 supposed to stop, getting out of the vehicle when he was told

1 to stop, not stopping, acting aggressively towards Agent  
2 Compean, tussling with Agent Compean, then later not stopping  
3 again when he was told to stop by Mr. Ramos, all of that  
4 activity -- and I'd like to remind the Court, when the doctor  
5 testified -- his name escapes me right now, but the  
6 Government's witness, I think who removed the bullet -- and  
7 Ms. Kanof asked him, Could the victim have been like this when  
8 he was shot?

9           And the doctor said, Yes, he could have been. That's  
10 consistent with the wound coming in here and exiting here.

11           And I think she was pointing to the witness stand.

12           The physical evidence supports that Mr. Aldrete was  
13 turned around, not running away and shot in the back, as it's  
14 also been described, running away, shot in the back. He was  
15 turned around towards Mr. Ramos at that moment he was shot.

16           Whether he had a gun in his hand, whether he had a  
17 cell phone in his hand, whether he had nothing in his hand,  
18 that behavior, in the totality of the circumstances, was very  
19 threatening behavior.

20           And I will say again, I'm not asking you to set aside  
21 the jury's verdict. The jury has spoken, I would say,  
22 equivocally. But we respect the verdict as it stands in this  
23 Court.

24           But, Your Honor, not because he's a drug dealer, not  
25 because he's an illegal alien, because of his conduct that day,

1 he made for a very dangerous, tense situation.

2           And if Mr. Ramos made an error in judgment when he  
3 shot -- it's happened. Maybe he made an error in judgment.  
4 Maybe he shot too soon. If that could be, I would ask the  
5 Court to consider that, in my estimation, is the worst-case  
6 scenario in this -- in the case.

7           There's simply no evidence that there was any  
8 premeditation. And, in fact, I mean, if there were  
9 premeditation, why wouldn't he have shot Mr. Aldrete when he  
10 was in the ditch, when he was confined in the ditch? Why  
11 wouldn't he shoot him then?

12           Why hasn't he ever shot anybody in the last ten years  
13 as a Border Patrol agent? He's been carrying a gun, he's been  
14 out there by himself roaming the levees out by Fabens. Why has  
15 he never done that before, if it was his intent to go out and  
16 shoot somebody?

17           I think it is abundantly clear and -- and, really, I  
18 would say, even -- I know we all went back and talked to the  
19 jurors after the verdict in this case. Not that that's  
20 admissible evidence, but I think it was clear the sentiment of  
21 the jurors was not that these are homicidal maniacs, that they  
22 were bad guys going out to shoot somebody that day. They  
23 thought they shouldn't have shot.

24           I remember someone saying, We know they were just out  
25 there doing their jobs, but they shouldn't have shot. And they

1 sure -- they sure shouldn't have failed to report it.

2 Your Honor, what I'm asking you to do is to look at  
3 the totality of the circumstances. The conduct of the victim  
4 is really overwhelming in this case, the scene set by the  
5 victim.

6 I know I said in closing argument, but I would just  
7 like to remind you. I know I said this in closing argument.  
8 But if I got stopped by a police officer driving down the  
9 street, and the police officer said to me, you know, I'd like  
10 to see ID, put your -- or put your hands on the wheel.

11 Let's say the police officer was nervous about me for  
12 some reason. Put your hands on the wheel.

13 And, instead of putting my hands on the wheel, I  
14 reached inside to get my cell phone and pulled something shiny  
15 out, I might get shot.

16 And, you know, what? Maybe I'd file a lawsuit and ask  
17 for a lot of money, but it would not be unreasonable. It might  
18 be something that later you could -- you could look back on and  
19 say, The officer was too quick on his trigger.

20 But, Your Honor, there is simply no evidence to  
21 support that this was a crime of violence, in the sense that it  
22 was intended in any way.

23 Your Honor, one of the things I had wanted to do, and  
24 I found myself frustrated in this effort. I had wanted to  
25 present the Court with some analysis of what usually happens to

1 officers in the case of bad shootings.

2 I know, of course, we saw in the paper this morning  
3 that -- that some officer -- and, typically, these things are  
4 given to the grand jury, and the jury decides whether or not  
5 they're going to indict.

6 I know we saw in the paper this morning some officers  
7 were just cleared for a shooting recently.

8 I remember looking into -- there were some Border  
9 Patrol agents that killed a young man downtown a few years ago,  
10 and there was a lot of outrage about that, because the man was  
11 armed. He was a young man armed with a stick outside of the  
12 Catholic diocese home.

13 And so I did a lot of research to find out what  
14 happens when there's a bad shoot. What -- how are officers  
15 treated? Because I think -- to make an argument that this is  
16 very disparate treatment, Your Honor. I think the sentence  
17 Mr. Ramos and Mr. Compean are facing is disparate, compared to  
18 what usually happens in the case of a bad shoot.

19 Your Honor, the irony is that I was not able to gather  
20 a lot of data, because there is so little actual prosecution of  
21 those officers, Your Honor. Sometimes they are disciplined at  
22 work. Sometimes they are fired from their jobs. There's so  
23 little prosecution of the circumstances of a bad shoot.

24 Your Honor, I -- I will go through and address some of  
25 the other bases for my motion for downward departure. I think

1 the victim's conduct is a very significant one.

2 One of the other bases is that -- it was set out in  
3 Koon and approved by the Supreme Court, specifically approved  
4 by the Supreme Court, is the susceptibility to retaliation in  
5 prison.

6 I know Ms. Kanof has responded saying, number one,  
7 they would be segregated, they would be protected. I'm sure  
8 that was true in the Koon case, too. They were -- that was a  
9 federal case. They were going to a federal prison, so I'm sure  
10 that that was true in that case.

11 Number two, the Government has said, Well, Mr. Ramos  
12 is being held up as a hero. It's the Government that's on the  
13 hot seat in this case. And so why would anybody want to hurt  
14 Mr. Ramos in prison?

15 Your Honor, Mr. Ramos is being held up as a hero by  
16 probably the law-abiding public. He's not being held up as a  
17 hero by the people in prison.

18 And, on the contrary, I've represented law enforcement  
19 officers before that go to prison for various things. If a law  
20 enforcement officer has acted corruptly, that is, has somehow  
21 collaborated with a criminal, he might not get treated that  
22 badly in prison. Because, hey, he was working for the other  
23 side.

24 But an officer who has upheld the law, put himself on  
25 the other side of the criminals and, in fact, ended up shooting

1 one, is not going to be treated well in prison. I mean, it's a  
2 very different situation, Your Honor, than a law enforcement  
3 officer who has been corrupted and has joined the other side.

4           The people who are supporting him are not the ones in  
5 prison. The people in prison -- and I'd just like to remind  
6 the Court, Aldrete-Davila testified that he and his friends  
7 were talking about retaliatory shootings of Border Patrol  
8 agents after this happened. That there was some conversation  
9 about, Hey, should we go shoot some Border Patrol agents? That  
10 was evidence in this trial, Your Honor, that they were already  
11 talking about retaliation back then.

12           And whether it's members of his family, members of his  
13 drug organization, or just other drug dealers, I think there's  
14 an extraordinarily high possibility that Mr. Ramos would be  
15 subject to some sort of violence in prison.

16           I know the Bureau of Prisons will segregate him,  
17 Your Honor. I know he will not be able to be in this area, in  
18 this geographic area, because of their policies. And, frankly,  
19 Your Honor, I think that's another reason that could be a valid  
20 basis for downward departure. He is going to be separated from  
21 his family, which will be a great hardship on his family. He  
22 will be segregated, which will be a hardship on him, because of  
23 his status as a law enforcement officer.

24           And I think those are -- are very important bases for  
25 a downward departure, Your Honor.

1           Your Honor, I would like to address the aberrant  
2     conduct. And the Government filed a pretty forceful response  
3     to my section of the brief on that.

4           Mr. Ramos -- I mean, this -- this came out, of course,  
5     before trial. Mr. Ramos has been arrested for family violence.

6           I submitted to the Court two statements in response to  
7     the Government's -- in response to the Government's response.  
8     I submitted to the Court, and I gave a copy to Ms. Kanof, two  
9     statements, one from Monica Ramos, Mr. Ramos's wife, and one  
10    from Joe Loya, Mr. Ramos's father-in-law.

11          I submitted their statements, Your Honor, because they  
12    were the alleged victims of these arrests. These -- we're  
13    talking about the family violence arrests, for which there was  
14    never a conviction. Two were declined. They never even made  
15    it into a courtroom. They were declined prior to even getting  
16    to Court. One did get to a courtroom and was later dismissed.

17          Your Honor, Ms. Ramos, among other things that she  
18    says about her husband, says she was never scared of him, that  
19    she exaggerated those incidents. She was not afraid of  
20    Mr. Ramos. She was mad at him.

21          I -- I understand the Government's response will be,  
22    Well, that's what battered women always say.

23          Your Honor, there is no evidence of family violence  
24    besides these police reports. I know, if the Court spent any  
25    time looking at them, you know that there's no evidence of any

1 injuries. I know, if you spent time looking at them or looking  
2 at the statements, you know that Mr. Loya, in a peak of anger,  
3 made the physical assault on Mr. Ramos, and that's how that  
4 started. It was -- it was not Mr. Ramos being the aggressor in  
5 that case.

6 I suggest to the Court that the people that were  
7 there, meaning Mr. Ramos, his wife, Mr. Loya, family members,  
8 are in a much better position than the Government to talk about  
9 what happened in those incidents, to talk about what kind of  
10 man Mr. Ramos is.

11 And most significantly, Your Honor, they are apples  
12 and oranges. I mean, whether you have a fight with your wife,  
13 whether you yell at your wife, whether she calls the police  
14 because she gets that mad at you, has nothing to do with your  
15 conduct as a Border Patrol agent, Your Honor.

16 In ten years as a Border Patrol agent there have been  
17 no incidents of abuse towards any prisoner, any subject being  
18 chased, anything like that.

19 I know that -- that when you have an abusive cop, an  
20 abusive officer, there is typically a history of that. There's  
21 typically a history of overreaching, of throwing your weight  
22 around. And that simply does not exist in this case.

23 Your Honor, I almost didn't request a downward  
24 departure on the basis of aberrant conduct because, in our  
25 estimation, Mr. Ramos was doing the same thing he would do any

1 other day. He was being a good cop that day. He was chasing  
2 somebody, which is what he always did, despite the fact that,  
3 perhaps, it was a technical violation of Border Patrol policy  
4 at that time. It certainly was their practice. He was taking  
5 the initiative to do his job.

6 And, really, what strikes me in the case, Your Honor,  
7 is that sometimes we get frustrated with Government employees  
8 that just get their paycheck. They don't go the extra mile,  
9 they don't care, they're protected by civil service. They  
10 don't want to take any risk. They just want to get their  
11 paycheck. And people complain about those kinds of things a  
12 lot.

13 And then you have somebody like Mr. Ramos, who took  
14 the initiative. Recall, that day, that there were three agents  
15 that arrived on the north side of the ditch. And all three of  
16 them saw Mr. Compean was the only one on the south side of the  
17 ditch that stood between Aldrete-Davila and the border. And  
18 Compean wasn't backing off. He was there.

19 And Mr. Ramos is the only one that said, Maybe I  
20 should go help my fellow Border Patrol agent.

21 You know what? He didn't need to do that. He could  
22 have just stayed on this side, on the north side of the ditch,  
23 just like the other guys did, and he would be safe. He would  
24 be protected. He wouldn't be risking his physical safety. He  
25 wouldn't be risking violations of policies.

1           But he did what he was trained to do. He believed  
2 that was his job, and he was doing it at his best.

3           Your Honor, that was my conflict with requesting the  
4 departure on aberrant conduct, because I thought this really  
5 wasn't aberrant. That's how Mr. Ramos did his job. He gave  
6 his all. He believed in his job. He was proud of his job, and  
7 he gave it his all.

8           And he wasn't the kind of person to hold back because,  
9 Oh, I might get hurt. I think some of that is evident from  
10 some of his past experiences, of having a hand broken, getting  
11 stuck with a needle. He'll do his job. And if there's some  
12 risk to him, he understands that. That's what he took on when  
13 he became a Border Patrol agent.

14           Your Honor, but I -- I did raise this aberrant conduct  
15 issue, Your Honor, because again, I have to accept the jury's  
16 verdict, and I have to accept the verdict that they believed he  
17 shouldn't have shot his weapon that day.

18           To the extent, again, that he used bad judgment, that  
19 he engaged in misconduct that day, Your Honor, that was  
20 aberrant conduct. He had never done anything like that in his  
21 ten years as an agent, Your Honor.

22           Your Honor, I would like to talk a little about  
23 what -- one of the factors that I referred to as promoting  
24 respect for the law. It's one of the factors under 3553, a  
25 need to reflect the seriousness of the offense, promote respect

1 for the law, provide just punishment for the offense.

2           And, Your Honor, this is, in some ways, the most  
3 difficult factor in this case. I know I -- I've represented to  
4 the Court before that I think the public's opinion in this  
5 respect is very important.

6           Obviously, I -- I've said it before, I'll say it  
7 again. I'm not asking the Court to bow to public opinion. I  
8 wouldn't expect that of this Court or any other Court.

9           But I believe the language in this statute implies  
10 that there is some idea that the public should be satisfied  
11 with the sentence. I think that's what it's talking about when  
12 it says, Promote respect for the law, provide just punishment,  
13 reflect the seriousness.

14           There's some idea that the public should be satisfied  
15 with what's going on.

16           And I know that's not how you sentence people, based  
17 on public opinion. But I think the Court can take note of  
18 public sentiment. And I would just give one example,  
19 Your Honor, which -- and, believe me, I'm not raising a cruel  
20 and unusual issue in this case. This is merely an analogy. I  
21 know cruel and unusual punishment specifically does not apply  
22 in this case.

23           But I know Ms. Kanof said, when we had a hearing  
24 before, Since when does the Court look to public opinion when  
25 you're deciding a sentence?

1           Well, the Court does look to public opinion when they  
2 decide what is cruel and unusual punishment. That's exactly  
3 what the Court looks at. The Court looks at, What do they do  
4 in all of the states? What do they do in other countries? Is  
5 it cruel and unusual to execute a minor, for instance?

6           There certainly is precedent for taking into account  
7 what public standards are, Your Honor. That is an analogy.  
8 It's not a perfect analogy.

9           But my point is, there has been an extraordinary  
10 outcry in this case. And I -- I expect that the Government  
11 would say, Sure, but those people don't know the facts of the  
12 case. And I agree, they don't know all the facts of the case.

13           They have heard some of the facts of the case. The  
14 Government has put out a pretty lengthy press statement about  
15 their version of the facts of the case. The defendants have  
16 said some things about their version of the facts of the case.

17           I don't think anybody is arguing that these Border  
18 Patrol agents are perfect. I think what they're arguing, that  
19 what has got people so upset, is the draconian sentence in this  
20 case.

21           Your Honor, I know that you're -- that you're locked  
22 in to ten years. I know that, and you have no discretion in  
23 that.

24           What I am pointing out to you is you do have  
25 discretion on those other counts. The pre-sentence --

1 probation is not apparently an option in those, but the Court  
2 could give a downward departure all the way to one day on those  
3 other counts. And I know that's an extraordinary departure.  
4 It's not unprecedented.

5 I -- I would remind the Court we saw Lynne Stewart, a  
6 lawyer in New York, get almost a 28-year departure on Monday,  
7 in the Southern District of New York -- completely different  
8 facts.

9 I'm merely saying there is no -- there is no  
10 guideline. Every case is different. And the Court has an  
11 awesome responsibility to fashion an appropriate sentence. And  
12 sometimes extreme circumstances call for extreme action and  
13 extreme results. And, in this case, I'd say an extreme  
14 departure, Your Honor.

15 I think that those factors, the need to reflect the  
16 seriousness of the offense, promote respect for the law,  
17 provide just punishment. I know that there are obstruction of  
18 justice counts, Your Honor. And we know, from looking at the  
19 Pre-Sentence Report, the guidelines on those counts are much,  
20 much lower than the ten years that Mr. Ramos is looking at for  
21 the 924 C.

22 I think that the ten years is -- is -- is much more  
23 than enough to reflect the seriousness of the offense, promote  
24 respect for the law, and provide just punishment.

25 Your Honor, I did go through the other elements of

1 3553, the deterrence aspect, the protection of the public  
2 aspect. I really think that -- that every one of those factors  
3 is overwhelmingly mitigating towards Mr. Ramos. There's no law  
4 enforcement officer who will say -- if Mr. Ramos were to come  
5 out of this Court with a ten-year sentence, there is no law  
6 enforcement officer who will say, Hey, open -- open day on  
7 aliens. We can shoot whoever we want. He only got ten years.

8 I'm being a little sarcastic but, Your Honor, it's --  
9 it's a little extreme to think that any law enforcement officer  
10 would not be deterred by what has happened to these agents in  
11 the case.

12 Your Honor, finally, I would like to speak about  
13 Mr. Ramos. I have left this for last.

14 Mr. Ramos testified. You were able to learn a lot  
15 about his life when he testified. He talked about his service  
16 in the Navy, his honorable discharge, his work with Border  
17 Patrol.

18 Your Honor, the support from his family throughout  
19 this case has been notable, from the time of the trial through  
20 today. There's obviously not enough room in the courtroom to  
21 accommodate all of the people that are supporting Mr. Ramos.

22 I will agree all those people may not know him  
23 personally. But everybody who does know him personally has  
24 given their support. I am overwhelmed by the people who have  
25 given him support.

1           And -- and these are not -- I think the Government has  
2 an impression that this is some sort of lynch mob, this is some  
3 sort of group that just wants to protect our borders at all  
4 costs.

5           And I know that -- I know the Court's gotten a lot of  
6 letters, Your Honor. I got a lot, too. I -- in reviewing  
7 them, I found that most of them, the people mention that they  
8 had already sent copies to you.

9           I did get a new round of letters, of e-mails, just  
10 recently, in this last week, as we were coming towards the  
11 sentencing. And I don't think that I need to share all of  
12 those with you, because I -- I think the Court understands what  
13 the public position is in this regard.

14           I haven't heard anything on the other side of it. I  
15 haven't heard the civil rights groups that I heard when Border  
16 Patrol agents shot a young unarmed man downtown a few years  
17 ago. I haven't heard any victim's rights groups speaking out.

18           There are lots of those kinds of groups that speak out  
19 when law enforcement officers exceed their authority.

20           Aside from Congressman Reyes, who spoke in the  
21 newspaper today, I haven't heard anyone speak against these  
22 agents.

23           In my experience representing law enforcement  
24 officers, when there is a bad agent, the other officers step  
25 back from him. They know. They have a feel for these things,

1 and they step back from somebody when they're a bad agent.

2           Mr. Ramos's co-workers had an enchilada dinner, a fund  
3 raiser for him, shortly after their arrest, Mr. Compean and  
4 Mr. Ramos. These agents have been with them from the  
5 beginning, and they're with them today.

6           I was told that all of the agents in the Fabens  
7 station requested leave today so they could be here and show  
8 their support for Mr. Ramos and Mr. Compean. They were not  
9 given that permission, apparently.

10           Those are people that know Mr. Ramos, Your Honor.  
11 That's why I'm focusing on those, because I know -- there are,  
12 maybe, some people that are supportive, who have sent letters  
13 or e-mails that maybe are a little extreme in their views, and  
14 maybe they're commenting on immigration policy, rather than on  
15 Mr. Ramos's particular situation.

16           But the people that know him, his co-workers that he's  
17 worked with for years, his family members, they support him 100  
18 percent, Your Honor. They know he's not the kind of man to go  
19 out and commit a crime. He's dedicated his life to the exact  
20 opposite.

21           I think the Court has got to take note of that. He is  
22 a very good family man, Your Honor. I have -- I know you've  
23 seen his wife come into court with him every time. I know that  
24 you may have even seen the newspapers, and you know the family  
25 speaks out for Mr. Ramos. Her steadfast support of her husband

1 is awesome, in the sense that I am in awe of how she's able to  
2 be strong and support her husband with the impending -- not  
3 knowing what the future holds for him.

4 That's not the kind of support that -- we say you  
5 don't find friends, you don't find supporters like that at the  
6 last minute when you need them, that kind of support. How you  
7 live your life comes back to greet you when you're in a  
8 situation like Mr. Ramos. And it comes back to you whether  
9 you've lived your life in the way that people are going to  
10 stand up and speak favorably for you or not.

11 And, in this case, it's obvious that Mr. Ramos has  
12 lived his life the way that he has garnered the admiration of a  
13 lot of people, Your Honor. And I think that's something that  
14 the Court can and should take into account in fashioning an  
15 appropriate sentence in this case.

16 Your Honor, I'm sorry, but I would like to address  
17 one -- one other factor, briefly, Your Honor.

18 THE COURT: All right.

19 MS. STILLINGER: Which really -- I'm sorry, it's not a  
20 factor. It's something that the Government mentioned, and I --  
21 and I just barely had time to read it before we came to court.

22 The Government has -- has made, at our last hearing,  
23 and in the pleadings they filed today, they have made quite a  
24 bit of accusing Mr. Ramos of manipulating the press, in order  
25 to affect sentencing.

1           And I would like the Court to know that I have told  
2 Mr. Ramos from the beginning that I would not expect the press  
3 to influence you one little bit.

4           I would also like you to know that it was Mr. Ramos's  
5 family that got that ball started rolling. And I don't think  
6 anybody can blame his family for doing that.

7           The circumstances of this case are unusual. If it was  
8 my family member, I would do whatever I could to help that  
9 person, and I don't think that Mr. Ramos can be blamed for  
10 that.

11           He's not misled anybody. The facts of his domestic  
12 violence arrest were in the newspaper before trial. They are  
13 public record. They're filed in the motion in limine. I don't  
14 think anybody that has heard anything about this case -- I've  
15 asked some people, Would it affect you if you knew he had been  
16 arrested a couple of times for family violence, if those cases  
17 were dismissed?

18           No, what does that have to do with this case?

19           I would just like to point out, Your Honor,  
20 Ms. Kanof -- the Government has made accusations that Mr. Ramos  
21 has been less than honest with the press, that he was nominated  
22 for agent of the year. Ms. Kanof, I think in our last hearing,  
23 said that that was not true. In her pleading today she  
24 explains it, that that happened after his arrest in this case.

25           I don't know when it happened, and perhaps it did

1 happen after his arrest in this case. Regardless, it was not a  
2 false statement of Mr. Ramos to say that.

3           The information about the bullet, that Mr. Ramos at  
4 one point said he didn't know if it was his bullet.

5           You know what? He doesn't know if it's his bullet.  
6 But that was not our defense. We stipulated that the bullet  
7 removed from Mr. Aldrete-Davila's body was Mr. Ramos's bullet,  
8 because that wasn't our defense.

9           Obviously, Mr. Compean never hit Mr. Aldrete-Davila,  
10 and that's not our defense. That was not the defense we choose  
11 to take at trial.

12           And again, that has nothing to do with the public  
13 perception of Mr. Ramos.

14           I think the efforts to -- to blame Mr. Ramos for the  
15 press, to accuse him of lying, to accuse him of manipulating,  
16 are really an attempt to take away from the sincerity of the  
17 support he's gotten. I do think that sincerity is something  
18 the Court can consider, Your Honor.

19           If I could just have one moment to speak to my client  
20 before we continue?

21           THE COURT: Sure. Sure.

22           MS. STILLINGER: Thank you.

23           (Ms. Stillinger and Mr. Ramos confer.)

24           MS. STILLINGER: Your Honor, I would like to -- I said  
25 I wasn't going to go over everything in my memo that I filed.

1 I may have gone over everything. But I would ask the Court to  
2 consider everything I filed in there.

3 I would also ask the Court -- I know the Court has  
4 denied my motion for new trial.

5 THE COURT: Right.

6 MS. STILLINGER: And again, I respect the Court's  
7 ruling. I would like the Court to take into account those  
8 jurors' feelings, though, when you're fashioning the sentence  
9 in this case.

10 Those feelings of the jurors were sincere feelings.  
11 They're not something that came up after national media hit  
12 this case. They -- all three of the people, the jurors that I  
13 was able to talk to, related that they had feelings of immense  
14 regret immediately after serving on this jury. And whether the  
15 Court can address that or not, obviously, not addressing it by  
16 a motion for new trial, but I think that is something that the  
17 Court can take into account, when deciding the nature and  
18 seriousness of the offense, Your Honor.

19 So, Your Honor, on behalf of Mr. Ramos, even more so  
20 on behalf of his family, I am requesting a downward departure.  
21 I think a ten-year sentence on Count 4 and the very minimum on  
22 the other counts, which I think would be one day to run  
23 concurrently, would be the appropriate sentence in this case.

24 THE COURT: All right. Request -- request for  
25 location?

1 MS. STILLINGER: I don't actually think -- I mean, he  
2 would like to be here, but I know that's not going to happen,  
3 Your Honor. So I guess what I would request is as close to  
4 El Paso as possible.

5 THE COURT: All right.

6 MS. STILLINGER: Your Honor, of course, I -- well, I  
7 can wait for the Court to pronounce sentence before I make my  
8 motion for bond pending the appeal, but...

9 THE COURT: All right. And just so you're aware, and  
10 on behalf of -- for Mr. Compean's benefit, the Court intends to  
11 hear from both sides. I will render the sentences at the very  
12 conclusion. And so, at that conclusion, then, we can take up  
13 the issue of bond.

14 Mr. Ramos, what did you want to tell the Court?

15 DEFENDANT RAMOS: I have nothing to say at this time,  
16 Your Honor.

17 THE COURT: All right.

18 DEFENDANT RAMOS: Thank you.

19 THE COURT: All right. You understand you do have the  
20 right, but you have nothing you wish to say?

21 DEFENDANT RAMOS: Yes, ma'am.

22 THE COURT: All right. Thank you.

23 Anything on behalf of the Government?

24 MS. KANOF: Your Honor, I just wanted to ask --

25 THE COURT: Can I ask you to approach the lecturn,

1 only because it's a little difficult to hear.

2 MS. KANOF: I did -- I did write a lengthy factual  
3 intensive response, and the Government will rely on that.

4 This is more of a legal issue.

5 In Mr. Ramos's motion for downward departure and  
6 variance, Ms. Stillinger divided it into two pieces. One was  
7 departure under the guidelines, and the other one was variance  
8 under 3553. Victim's conduct -- the motion put the victim's  
9 conduct arguments under 5K 2.10. But, in argument,  
10 Ms. Stillinger argued it as a 3553 variance.

11 The reason I responded the way I did was, I was  
12 responding to the six factors that are required for the Court  
13 to consider in order to make a downward departure under the  
14 guidelines. And they -- and I'm asking the Court, then, to  
15 take my argument in my response and move it into the 3553  
16 section.

17 Likewise, the Government responded to the aberrant  
18 behavior portion, which was alleged as a 5K 2.20 response,  
19 specifically with regard to Section B3, which -- I'm sorry,  
20 Section B1, 2, and 3, but particularly 3, which requires the  
21 Court -- it's actually called a requirement -- to look at three  
22 things.

23 I -- I concentrated on the third prong, which is a  
24 deviation from an otherwise law-abiding life. Thus, I was  
25 obligated to attach all the arrest reports and all of that

1 information pursuant to 5K 2.20, in order to do my job.

2           They are there for the Court's consideration. I'm not  
3 going to argue this a lot, except for the -- the police reports  
4 are very different than what was argued to the Court. There  
5 were injuries and photos taken of the injuries, and it talks  
6 about fear and other claims of violence. And the point of  
7 doing that was to respond to 5K 2.20 B3.

8           Again, the Government is going to ask the Court to  
9 take the Government's response and argument relating to the  
10 departure and move it into the variance under the 3553, because  
11 the way I heard it argued, I believe that's how she was  
12 presenting it to the Court.

13           THE COURT: All right.

14           Anything further, then, in the matter of --

15           MS. STILLINGER: Just -- just to clarify that,  
16 Your Honor, I -- I thought I was making clear in my motion,  
17 there are certain factors that are a basis for downward  
18 departure and would be even pre-Booker factors for downward  
19 departure. And I put those in a separate section, just to  
20 emphasize that, even before Booker came along, and before you  
21 were required to look at 3553, there were adequate -- these --  
22 these factors were adequate bases for downward departure.

23           But for the -- the point I was making is that all of  
24 those factors, of course, are 3553 factors, as well. While the  
25 reverse is not true, that all the 3553 factors can be downward

1 departure factors, certainly the downward departure factors can  
2 be considered under 3553, as well.

3 I just wanted to make that clear, Your Honor.

4 THE COURT: All right. So noted.

5 All right. Anything further, then, before we call --

6 MS. STILLINGER: No, Your Honor.

7 THE COURT: All right.

8 Mr. Compean.

9 (Defendant Compean sworn by the Clerk.)

10 THE COURT: You are Jose Alonzo Compean?

11 DEFENDANT COMPEAN: Yes, ma'am.

12 THE COURT: Mr. Compean, you are here this afternoon,  
13 having a jury find you guilty of Count 2 and Count 3; Count 2,  
14 assault with a dangerous weapon and aiding and abetting. Count  
15 3, assault resulting in serious bodily injury, and aiding and  
16 abetting, with a statutory penalty of ten years of  
17 incarceration, a \$250,000 fine, three years of supervised  
18 release, and a \$100 special assessment.

19 Count 5, discharge of a firearm in relation to a crime  
20 of violence, with a ten-year mandatory sentence, \$250,000 fine,  
21 five years supervised release, and a \$100 special assessment.

22 Count 6, tampering with an official proceeding; Count  
23 7, tampering with an official proceeding; Count 8, tampering  
24 with an official proceeding; Count 10, tampering with an  
25 official proceeding, all with a 20-year period of

1 incarceration, a \$250,000 fine, three years of supervised  
2 release, and a \$100 special assessment.

3 And Count 11, deprivation of rights under color of  
4 law, with a ten-year sentence, \$250,000 fine, three years of  
5 supervised release, and a \$100 special assessment.

6 We are here this afternoon in your sentencing -- for  
7 your sentencing. Do you understand that?

8 DEFENDANT COMPEAN: Yes, ma'am.

9 THE COURT: All right.

10 A Pre-sentence Investigation Report was prepared in  
11 your case. Have you had the chance to go over that with  
12 Mr. Antcliff?

13 DEFENDANT COMPEAN: Yes, ma'am.

14 THE COURT: And, Mr. Antcliff, did you receive a copy  
15 of the report and review it with your client?

16 MR. ANTCLIFF: I did, Your Honor.

17 THE COURT: And I actually show in this case there was  
18 a second addendum. And did you get all of that?

19 MR. ANTCLIFF: I got an addendum dated -- I don't have  
20 the date.

21 THE COURT: I have the second addendum. Let me see if  
22 I see what date it is.

23 MR. ANTCLIFF: I don't see a date on it.

24 THE COURT: Okay. And I don't, either. But as long  
25 as you have that second addendum, I think --

1 MR. ANTCLIFF: It addressed the objections that I  
2 filed.

3 THE COURT: Right.

4 MR. ANTCLIFF: I have that, yes.

5 THE COURT: All right. All right.

6 Then let me go over with you, then, the guide- -- you  
7 are placed at a Total Offense Level of 26, Mr. Compean,  
8 Criminal History Category of I.

9 The guideline range, then, for Counts 2, 3, 6, 7, 8,  
10 10, and 11 is 63 to 78 months of incarceration, two to three  
11 years of supervised release, a 12,500 to a \$125,000 fine, and a  
12 \$100 special assessment per count.

13 For Count 5 it's a mandatory 120 months of  
14 incarceration, three to three to five years of supervised  
15 release, 12,500, to \$125,000 fine, and the \$100 special  
16 assessment.

17 Do you understand all of that?

18 DEFENDANT COMPEAN: Yes, ma'am.

19 THE COURT: All right. And you did file some  
20 objections, a motion for downward departure and variance.

21 You may take those up, Mr. Antcliff.

22 MR. ANTCLIFF: Judge, following Ms. Stillinger is  
23 difficult. She was eloquent, I thought, and had a lot to say.  
24 To the extent, first, that I did not, I am adopting any of the  
25 arguments she made either in writing or before the Court today

1 on behalf of Mr. Ramos. They stand in very similar  
2 circumstances, as the Court is aware. And in my motions and  
3 objections I did not address some of the things that she did,  
4 and I'm adopting those on behalf of Mr. Compean today.

5 The first substan- -- and I made several objections  
6 to -- as did Ms. Stillinger -- to factual issues raised in the  
7 PSR. And I would ask for a ruling on those, although I'm not  
8 going to address them. I think that I did that adequately  
9 enough in the objections that I filed.

10 The first substantive objection that I filed on behalf  
11 of Mr. Compean is the same objection that Ms. Stillinger filed  
12 relating to the use of a two-level enhancement under 2J 1.2.  
13 And that is the guideline that enhances, I guess, for  
14 alteration, destruction, fabrication, of records.

15 I addressed the shell casings more than I did the  
16 omission of anything in a report that my client may or may not  
17 have written in this case, and I'll address those shell casings  
18 now.

19 I think first, Judge, that the characterization of the  
20 number of shell casings as substantial is incorrect. I don't  
21 know what substantial is. It's kind of like the Supreme Court  
22 said about pornography, you know it when you see it.

23 The shell casings in this case, I think, occurred --  
24 the shooting occurred in a very brief period of time. I think  
25 the testimony at trial was that little blink of an eye, maybe

1 it was 15 seconds. Given the circumstances of that day, maybe  
2 it was 30 seconds. I don't think it was that much. Everything  
3 happened all at once, with respect to the shell casings. And  
4 they all came out of his gun, with the exception of one, that  
5 came out of Mr. Ramos's gun, obviously.

6 I think that calling each of those an individual  
7 record is wrong. I think they are all one record, if they are  
8 a record, or a tangible object, or whatever we want to  
9 characterize them as.

10 Because I think they're one, I don't think substantial  
11 is the word that defines them, and I don't think that that  
12 guideline applies under those circumstances.

13 With respect to the omission of the shooting in a  
14 report, that report is designed for the seizure of the  
15 marijuana that was found in the vehicle, and that's all it  
16 addressed. I agree, and I know that my client, to this day,  
17 regrets not filing a report specifically about this offense --  
18 I mean, about the shooting. It put him in this situation, if  
19 you will.

20 But, not filing a report is what -- or -- that's what  
21 this guideline is designed to cover. The alteration,  
22 fabrication, destruction, whatever you want to characterize not  
23 filing a report as, if anything -- and I don't think it is  
24 anything under this guideline -- that's what it's designed to  
25 cover. Why do you need a two-level enhancement when you have

1 that specific conduct covered by this guideline?

2 So what I have by way of objection is that the shell  
3 casings are one, and the omission of a report is another.  
4 Those two circumstances are covered by this guideline, and the  
5 enhancement is inappropriate because of that.

6 THE COURT: All right.

7 Response by the Government?

8 MS. KANOF: Your Honor, the Government agrees with and  
9 supports the Pre-Sentence Report drafted by the United States  
10 Probation Department.

11 THE COURT: All right.

12 Anything further regarding the objections?

13 MR. ANTCLIFF: Because I did not -- you know, I looked  
14 at case law, Judge, and lots of it, over the last week and a  
15 half. And I did not file an objection related to the  
16 enhancements in a couple of these guidelines for adjustment for  
17 abuse of position of trust or special skill.

18 Ms. Stillinger and I talked about that objection  
19 repeatedly and whether or not it was a valid objection.

20 And, by the way, I think it -- it -- it's interesting  
21 that this report is so long and I could find so little to  
22 object to, and unfortunate, to some degree.

23 Because I'm adopting her arguments in that regard, as  
24 well, I think that abuse -- this enhancement does not apply  
25 under any of the counts in which it is listed in the PSI. I

1 think that he has to be compared to other Border Patrol agents  
2 rather than the public at large.

3 And when you compare him to those Border Patrol agents  
4 that are all out there, I don't think he had any special skill  
5 or trust. He was an average Border Patrol agent doing his job  
6 on that day. And he didn't have any special skill or trust  
7 above and beyond what every other Border Patrol agent has. And  
8 so I would join in that objection, as well.

9 THE COURT: All right.

10 Any response?

11 MS. KANOF: The same, Your Honor. We agree with the  
12 Pre-Sentence Report.

13 THE COURT: All right.

14 Did you wish to proceed, then, with the variance and  
15 the downward departure?

16 MR. ANTCLIFF: I did -- I do, Judge.

17 I, also, filed a comprehensive, I guess, for lack of a  
18 better word, motion for downward departure and variance on  
19 behalf of Mr. Compean. And, in fact, in the last, what, 12  
20 years, I don't think I filed one of such a comprehensive  
21 nature. This case got under my skin.

22 As you're aware, I got involved in this case at a very  
23 late date, just on the eve of trial. And it's a hard case to  
24 come to grips with. I've represented a lot of clients over the  
25 years, and this is a good man in a really bad situation, an

1     unfortunate situation.

2             The bases for the motion for downward departure and  
3     variance -- and I lumped them all together, because I want them  
4     considered as a motion for downward departure and for variance,  
5     and in any other capacity I can consider to lower what he's  
6     looking at. I lumped them all together.

7             The first basis, Judge, was for the victim's conduct.  
8     And I -- I don't think there's any doubt that you have the  
9     ability to depart downward or vary on the sentence that my  
10    client is looking at.

11            I set out in pretty good detail what the factors are  
12    in the policy statement, and I'm not going to go over them  
13    here. I would point out to the Court, though, that the  
14    guidelines are advisory, and I want to keep that in the back of  
15    this argument, while you listen to what I've got to say.

16            Under 5K 2.10 -- and I'm not just applying it to a  
17    departure, it's a variance, as well -- you are entitled to take  
18    into account the entire course of the victim's misconduct in  
19    this case, in determining both whether a departure is  
20    appropriate and the extent of departure.

21            You're also allowed to consider my client's  
22    unblemished record as a law enforcement officer and as a  
23    citizen of the United States.

24            Normally, that's not relevant under the guidelines,  
25    although I think it's relevant under 3553. But it is relevant

1 in this case, because it goes to the provocation of the victim  
2 to my client and vice versa. So the factors that you can  
3 consider under that departure or variance are multiple.

4 There aren't a whole lot of cases dealing with this  
5 issue out there. There aren't a whole lot of cases dealing  
6 with most of these areas of departure or variance, but they  
7 are -- and I did read the Government's response, Judge.

8 First, whether or not -- excuse me -- the size and  
9 strength of victim or other relevant characteristics. And I  
10 really, really dislike calling him a victim. I know everybody  
11 does, and I understand the jury's verdict, and we're abiding by  
12 it. And what I'm saying here is not an indictment for the --  
13 of the system, because I believe the system works. I've worked  
14 within it and its confines for years, and I believe it works  
15 most of the time. It doesn't always.

16 But, the size and strength of the victim or other  
17 relevant physical characteristics in comparison of those -- to  
18 those of the defendant; the persistence of the victim's conduct  
19 and efforts by him to prevent confrontation -- by the defendant  
20 to prevent confrontation; the danger reasonably perceived by  
21 the defendant, including the victim's reputation for violence;  
22 the danger actively presented to the defendant by the victim;  
23 any other relevant conduct by the victim that substantially  
24 contributed to the danger presented; and the proportionality  
25 and reasonableness of the defendant's response to the victim's

1 provocation.

2 I addressed each of those in my motion, and you heard  
3 all of that during the course of the trial. I will point out a  
4 few at this time.

5 The size and strength of the victim clearly goes to  
6 whether or not there was a physical confrontation between the  
7 victim and the defendant in this case. And there was -- there  
8 was. I think the testimony at trial established that there  
9 was. It wasn't much of one, but there was some confrontation  
10 between the two of them. And so you saw Mr. Aldrete-Davila and  
11 you saw my client, and you can take that factor into account.

12 The next is the victim's conduct, I guess is -- I  
13 mean, given the nature of what this -- this motion is about.  
14 The Government is big on pointing out in their response that my  
15 client -- and Mr. Ramos, for that matter -- at the time of this  
16 incident didn't know a whole lot of information.

17 But, I disagree.

18 They are experienced Border Patrol agents. My client  
19 at that time, I think, had six years on the job and then -- and  
20 several years in the Navy prior to that. Mr. Ramos, I think,  
21 had ten years at that time. They knew an awful lot about what  
22 was going on.

23 And here is some of what they knew. They knew they  
24 had a van leaving an area known for drug smuggling and illegal  
25 alien transporting in a suspicious area. They knew that

1 when -- and the Government also says my client didn't know any  
2 of this. But I would point out to the Court the radios were  
3 on, and he did. The evidence established what he knew at the  
4 trial.

5 They knew that when the lights went on and the agents  
6 tried to light up Aldrete-Davila, he took off. So they knew  
7 that they had a van leaving a suspicious area, more than likely  
8 illegal aliens or dope, and it was running.

9 That's probable cause. And I -- I think they had  
10 probable cause to act at that point. I don't think any of us  
11 disputed that during the course of the trial.

12 They knew -- my client knew that when that van arrived  
13 it was at high speed, and it ran into a ditch, that the guy got  
14 out and took off toward him, coming down the ditch and then up.

15 This is all going to victim's conduct.

16 That when he got to the top of the ditch, there was  
17 some testimony that he tried to give up. I didn't find it  
18 credible. Clearly, the jury did. There was a confrontation on  
19 the levee with the victim and my client, and then he ran again.

20 There was testimony that he turned, the vic- --  
21 Mr. Aldrete-Davila turned back and pointed something shiny at  
22 my client, and that's when he unloaded.

23 I think, Judge, you are allowed to consider his  
24 subjective beliefs in determining whether a departure or  
25 variance under this circumstance is appropriate, given the

1 totality of the circumstances and all of Mr. Aldrete-Davila's  
2 conduct.

3           The sad fact of the matter is that, had he stopped,  
4 like any normal citizen, we wouldn't be here today. But he  
5 didn't. That conduct contributed to what happened.

6           The other factors to be considered are the danger  
7 reasonably perceived by the defendant, including the victim's  
8 reputation for violence and the danger actually presented to  
9 the victim.

10           Now, the danger reasonably perceived, I just gave you.  
11 I know that I would have perceived it as a very tense,  
12 dangerous, scary situation, if somebody who I was attempting to  
13 arrest, we got into a scuffle, he got away, took off and turned  
14 around and pointed something shiny at me, and you have no time  
15 to decide what to do. Certainly, that is a reasonable  
16 perception of danger by my client.

17           The actual danger presented to him is, I think, the  
18 same. As it turns out, no gun was found. But he didn't know  
19 that at the time that he shot. The actual danger presented to  
20 him would come from all of Mr. Aldrete-Davila's actions prior  
21 to that. And I think there are a whole host of them, which I  
22 addressed in the motion, that you can consider.

23           With respect to his reputation for violence, I will  
24 admit that, at that time, my client didn't know  
25 Mr. Aldrete-Davila, nor I suspect did Mr. Ramos.

1           But I -- what they did know in that regard is that the  
2 border is a very dangerous place. They know what they're  
3 dealing with on a daily basis. They've made arrests of other  
4 drug smugglers. They've arrested illegal aliens. They've  
5 pushed back, as you heard the testimony, other people from not  
6 crossing over the border.

7           I think that the situation along the border you can  
8 consider relative to the victim's reputation for violence  
9 absent any -- I mean, it's a dangerous place down there, and  
10 that is a valid consideration in this case.

11           The second area that I went into, Judge, dealt with  
12 lesser harms. And this is a tough one. I didn't find hardly  
13 any case law dealing with it. This area of the guidelines  
14 has -- has a two-prong test. And I only really focused on the  
15 first one. The Government responded over several pages to the  
16 second prong, and I didn't really address that in my motion,  
17 and I'm not today.

18           But this Court has the ability to depart or vary if  
19 Agent Compean's conduct was for the purpose of avoiding a  
20 greater harm. Certainly, in this case, somebody turning around  
21 and shooting at him would be a greater harm that, if I was in  
22 his shoes, I would want to avoid. And I think that is a valid  
23 basis for departure and/or a variance.

24           What you are allowed to consider in that regard is his  
25 subjective view of what was happening, his perception of what

1 was happening that day. And that is a -- that's the primary  
2 reason I wanted to use this as a basis for a departure and/or a  
3 variance.

4 I addressed it in great detail. And I don't need to  
5 go any further with that one there, although I think it is a  
6 valid basis.

7 I had the same problem with aberrant behavior that  
8 Ms. Stillinger did, Judge.

9 But, in the end, in an abundance of caution, I  
10 included it. I understand what -- what is it, Subsection B, or  
11 whatever it is -- one of the subsections precludes that, in a  
12 crime of violence, it says you can't use aberrant behavior. I  
13 understand that.

14 I also understand that the guidelines are advisory and  
15 that, under normal circumstances, this certainly, in this case  
16 would be appropriate for an aberrant behavior departure and/or  
17 variance, because my client has never been in trouble with the  
18 law ever in his life.

19 He has been a law-abiding citizen his entire life. He  
20 has served his country admirably in the United States Navy,  
21 where he was honorably discharged, I think in 1999, and then he  
22 joined the United States Border Patrol.

23 He is -- in his professional life, as an adult, he has  
24 always acted as a public servant. And I think that his years  
25 of service in that regard are certainly worth the Court's

1 consideration in determining whether a -- whether to depart or  
2 vary from the guidelines in this case.

3           The last one that I put in the motion, Judge, was for  
4 duress. This also allows you to consider his state of mind, I  
5 guess. And that's why I was adding it in there.

6           I cited the guideline sections for each of these, like  
7 I told you in the beginning, but they go to the 3553 factors, I  
8 think, anyway.

9           His state of mind is the biggest factor relative to a  
10 duress departure and variance. We weren't there. And,  
11 notwithstanding the jury's verdict, they weren't there, either.  
12 They cannot, nor can we, know what he experienced at the moment  
13 when Mr. Aldrete-Davila turned around and pointed something at  
14 him. They have no idea what he felt.

15           And we can intellectually think we know. And -- and  
16 it's kind of like, you know, when you're in a stressful  
17 situation, you like to believe that you would do the right  
18 thing. Not everybody does. And I -- and that's not saying  
19 that he did something wrong, in my opinion, that day. The jury  
20 clearly believed that he did.

21           But, because we weren't there, you are allowed to  
22 consider what it must have been like in his mind, under those  
23 circumstances at that time. And that's what I'm asking you to  
24 do in fashioning what you believe to be an appropriate sentence  
25 in this case.

1           I understand, Judge, that your hands are tied in some  
2 respects, and that is truly unfortunate. We live in  
3 politically correct times, to some degree, and this case is a  
4 little bit upside down, in my -- in my mind.

5           I think I am adopting, Judge, the arguments made about  
6 924 C and -- and the susceptibility to retaliation in prison  
7 that Ms. Stillinger made, and the arguments that she made in  
8 that regard, as well.

9           That's all I have on that.

10          THE COURT: On the downward departure?

11          MR. ANTCLIFF: Yes.

12          THE COURT: Any response?

13          MS. KANOF: Your Honor, briefly, the Government did,  
14 of course, completely disagree with Mr. Antcliff's rendition of  
15 the facts and circumstances, but did say that in their written  
16 response.

17                 The only thing that I would point out to the Court is  
18 with regard to victim's conduct, what it really is is victim's  
19 provocation. And it is the Government's theory that the  
20 provocation was on the part of Mr. Compean. Because, at the  
21 time when Aldrete-Davila was trying to surrender, with his  
22 hands open and palms up toward him, Mr. Compean, instead of  
23 saying, Turn around so I can cuff you, swung his shotgun around  
24 and attempted to head butt him. An eyewitness said that. And  
25 then it is after that that he fell, and Aldrete-Davila took

1 off.

2 I think that departure ground requires actual  
3 provocation by some kind of act on the part of the victim,  
4 victim in quotes, because that's what it's called, is victim's  
5 conduct. But it's physical provocation, because that's why  
6 they talk about physical size and all of that.

7 And the physical provocation in the case was not on  
8 the part of Aldrete-Davila. He just wanted to go home. It was  
9 on the part of Mr. Compean.

10 MR. ANTCLIFF: I'm sorry, Judge, I've got to respond  
11 to that, if I may.

12 THE COURT: That's fine.

13 And, Mr. Compean, you can come on back up, because  
14 I'm -- I'm sure we have more.

15 Go ahead.

16 MR. ANTCLIFF: Victim's -- if his actions that day did  
17 not cons- -- and I'm talking about Aldrete-Davila -- did not  
18 constitute provocation, then I don't know what it is anymore.

19 Mr. Compean was trying to do his job and effect an  
20 arrest of somebody who was committing assorted crimes in the  
21 United States.

22 And this guy runs, has contact with a law enforcement  
23 officer, and runs some more, and he just wants to go home?  
24 Tough. That's my view.

25 He's doing his job. What Aldrete-Davila did that day

1 certainly was provocation, and it does not have to be just  
2 physical. That's one factor. There are six or seven of them  
3 in there.

4 THE COURT: All right.

5 Did you have -- did you want to take up any of the  
6 actual factors, as far as variance, Mr. Antcliff, before we  
7 proceed to allocution?

8 MR. ANTCLIFF: I thought that I was, Judge, by  
9 adopting Ms. Stillinger's, and --

10 THE COURT: That's fine.

11 MR. ANTCLIFF: -- incorporating all of my motion into  
12 a motion for variance. I've considered those addressed.

13 THE COURT: All right. Did you want to say anything  
14 in allocution before I allow Mr. Compean to add anything?

15 MR. ANTCLIFF: I have -- oh, yes.

16 THE COURT: Go ahead.

17 MR. ANTCLIFF: He's a good man who was doing his job.  
18 The jury did find otherwise that day.

19 I think Ms. Stillinger's right, Judge, that the  
20 penalty for this bad shoot is overwhelmingly inappropriate.

21 I've represented plenty of law enforcement officers in  
22 my career, and this is the first circumstance where a -- what  
23 the Government termed a bad shoot -- is about to result in --  
24 in -- I don't want to call it a miscarriage of justice, but I  
25 disagree with the result, obviously.

1           His family is also present in the courtroom. There is  
2 a room out in the hallway, I guess it's the jury assembly room  
3 in the federal courthouse, that is apparently full of overflow  
4 people who wanted to come in and be with both Mr. Ramos and  
5 Mr. Compean.

6           Yeah, I even addressed in the motion, Judge, he has  
7 three children, including a newborn. I think the baby is a  
8 month old. He has done, throughout his life, what he  
9 considered to be right. He's been a fairly black and white  
10 individual. It's either right or it's not, and he has acted in  
11 that capacity and conducted his life under that theory.

12           I would ask you to -- well, the ten-year sentence is  
13 just a killer. I don't -- I would ask you to consider not  
14 imposing a guideline sentence of any significance whatsoever,  
15 in light of -- I know your hands are tied with respect to the  
16 mandatory minimum.

17           I would certainly ask you not to impose a fine, as it  
18 would work a hardship on his family to have to pay one. And I  
19 also am going to request a designation as close to El Paso as  
20 possible where he can be kept safe.

21           THE COURT: All right. What did you want to tell me,  
22 Mr. Compean?

23           DEFENDANT COMPEAN: Nothing, ma'am.

24           THE COURT: All right.

25           Anything further on behalf of the Government?

1 MS. KANOF: Not on this matter, Your Honor. But we do  
2 need to be heard at the bench on a 3771 matter.

3 THE COURT: All right.

4 Well, actually, I was going to bring that up in just a  
5 minute.

6 MS. KANOF: No, but I think the Court -- I think we  
7 need to speak.

8 THE COURT: Approach the bench?

9 MS. KANOF: Yes, Your Honor.

10 (Bench conference:)^^^

11 THE COURT: Hold on. Hold on. Let me read it.

12 Okay. The Court has the statute in front of me.

13 Ms. Kanof, I'll let you go first, and then I'll let  
14 each of you respond as you wish. But please identify yourself,  
15 so that he can get this on the record.

16 MS. KANOF: This is Debra Kanof. I just wanted to  
17 point out to the Court that we failed to discuss those two  
18 sections, that Section D and error section in chambers, when we  
19 were talking about whether or not Mr. Boyaki -- that he had the  
20 right to make an allocution on behalf of his client,  
21 Aldrete-Davila.

22 And I just wanted the Court to know those two sections  
23 exist, so that the Court can make a decision.

24 THE COURT: All right. Response?

25 MS. STILLINGER: Mary Stillinger, on behalf of

1 Mr. Ramos.

2 I would say, still, after having read 3771 D1, I would  
3 interpret the attorney can assert rights. That still doesn't  
4 mean he can actually speak for the victim.

5 MS. KANOF: He says assert the rights in A. And A  
6 says he can speak.

7 THE COURT: What other rights would they be talking  
8 about --

9 MS. KANOF: Preserve the right.

10 THE COURT: -- in your opinion?

11 MS. STILLINGER: I think he can come to court and  
12 demand his client to be heard.

13 MR. ANTCLIFF: Full and timely restitution. All the  
14 rights listed there. That doesn't -- this is Chris Antcliff on  
15 behalf of Compean.

16 That doesn't mean he gets to speak in his stead, I  
17 don't think, Judge.

18 MS. KANOF: It says the crime victim or the -- this is  
19 Debra -- victim's lawful representative. And the attorney for  
20 the Government may assert the rights described in Section A --  
21 section(a)(1). Okay?

22 Let's go back down. Section for the right to be  
23 reasonably heard. I think that the statute's pretty clear on  
24 its face.

25 MS. STILLINGER: Your Honor, this is Mary Stillinger

1 again.

2 As an attorney, I can assert my client's right to  
3 testify. That doesn't mean I get to testify for him.

4 MR. ANTCLIFF: On behalf of Mr. Compean, I certainly  
5 agree to that, Judge. I assert my client's rights all the  
6 time, but I do not testify for any client.

7 MS. KANOF: It's not testimony. It's a victim impact  
8 statement.

9 MR. ANTCLIFF: Well, I don't see any -- he's not the  
10 victim.

11 MS. KANOF: Not to mention, Your Honor, under the  
12 circumstances -- I mean, there is -- there's an obvious  
13 reliability issue there.

14 MR. ANTCLIFF: I think there's also a conflict issue  
15 here, given that Mr. Boyaki is the lawyer on behalf of  
16 Mr. Aldrete-Davila in a \$5 million lawsuit against the  
17 Government. For him to get up here and assert -- or give a  
18 victim impact statement under those circumstances seems wholly  
19 inappropriate, and I object.

20 THE COURT: All right. Well, the Court is going to  
21 call up Mr. Boyaki. I will allow him, pursuant to 18 USC,  
22 Section 3771, to assert on behalf of his client -- assert  
23 Mr. Aldrete-Davila's rights. And if that means he says  
24 something, then he's going to say what he's going to say as the  
25 attorney. So I will find that, as his attorney, he may

1 represent him on this portion of the statute.

2 MS. KANOF: Your Honor, I'm sorry --

3 MR. ANTCLIFF: No. On behalf of Mr. Compean, I'm  
4 saying, are you -- is that in open court? That's what we're  
5 doing?

6 THE COURT: Yes.

7 MR. ANTCLIFF: I want to make sure we're not doing it  
8 at the bench. If we're going to do it, let's do it.

9 THE COURT: We're going to do it in open court, and I  
10 will call him up.

11 MR. ANTCLIFF: I object on behalf of Mr. Compean.

12 THE COURT: So noted.

13 MS. STILLINGER: And I do, as well, on behalf of  
14 Mr. Ramos. I would ask the Court for an opportunity to respond  
15 afterwards. Because I think, normally, that would come at the  
16 beginning of the hearing. We would have a chance to respond to  
17 the Court, if -- if we need to.

18 MS. KANOF: There is no response to the victim's  
19 impact statement. It's not an argument. It's the right of a  
20 victim.

21 THE COURT: I understand.

22 MS. KANOF: Your Honor, I wanted to ask, is the Court  
23 going to tell Mr. Boyaki -- in chambers, the Court told  
24 Mr. Boyaki the Court would not permit him to give the  
25 statement. Or is the Court going to explain to him --

1           THE COURT: I'm going to -- stay right here. I'm  
2 going to call him.

3           (End of bench conference; open court.)

4           THE COURT: Is Mr. Boyaki here?

5           Come on up, Mr. Boyaki.

6           (Bench conference:)

7           THE COURT: Hold on we've got to wait. I'm going to  
8 inform him of what the Court is going to allow.

9           Mr. Boyaki, I called you up here because I want you to  
10 be aware, after reviewing that portion of the statute, what  
11 I've been informed by the attorneys is, I will allow you to  
12 make a -- essentially a victim impact statement.

13           You can, you know, just say he is unavailable, or you  
14 can say whatever -- I guess, if he's put it upon you to  
15 actually make a statement, then I guess you can make a  
16 statement. But I wanted to advise you that, pursuant to this  
17 Court's ruling, I will allow you to make a victim's impact  
18 statement.

19           MR. BOYAKI: With that in mind -- I don't want to  
20 explain the situation here. If you will give me some guidance,  
21 I think it would be appropriate. I can -- I can do the other  
22 side of the coin, if the Court wants me to. If the Court  
23 thinks it would be too inflammatory, I will do nothing.

24           THE COURT: I will tell you this. You can do  
25 whatever -- I'm not going to give you any guidance. I think

1 it's the victim's choice to do what he thinks, and what you  
2 think on behalf of him is appropriate.

3 I will say to you, as I said before, the Court was  
4 present throughout the trial. The Court heard the testimony of  
5 the victim. And the Court is the one who's going to do the  
6 sentencing. So you say what you would like to say.

7 MR. BOYAKI: Okay.

8 (End of bench conference; open court.)

9 THE COURT: At this time -- Mr. Boyaki, you might as  
10 well stay up here, unless you have something you need to go  
11 get. The Court is going to allow, Mr. Boyaki, the victim  
12 impact statement.

13 MR. BOYAKI: Yes, ma'am.

14 Judge, as the Court knows, my name is Walter Boyaki.  
15 I represent Osvaldo, who is the victim in the case. And he  
16 is -- unfortunately, cannot be here today, because he is  
17 physically incapacitated, as the Court knows from the evidence.  
18 And we did not have the resources to get him over here with his  
19 physical incapacity, and especially with the crowding and all  
20 of the other problems that we have.

21 So, with that in mind, he has authorized me to give  
22 his impact statement.

23 THE COURT: All right.

24 MR. BOYAKI: If the Court would allow me, I would  
25 proceed.

1 THE COURT: You may proceed.

2 MR. ANTCLIFF: Judge, for the record, and before --  
3 I'm sorry to interrupt, Walter.

4 MR. BOYAKI: Sure.

5 MR. ANTCLIFF: Before he proceeds, I want to object on  
6 behalf of Mr. Compean on the following grounds. And they are  
7 that we have no evidence of his unavailability -- and I'm  
8 talking about Aldrete-Davila. And I do not think that the  
9 lawyer giving the victim impact statement on behalf of  
10 Mr. Aldrete-Davila is appropriate under these circumstances.

11 THE COURT: All right.

12 MS. STILLINGER: And, Your Honor, just for the record,  
13 I think we made our objections at the bench. But I would join  
14 in those objections, Your Honor.

15 THE COURT: So noted for the record. The Court will  
16 overrule the objections.

17 Go ahead.

18 MR. BOYAKI: Your Honor, I --

19 THE COURT: And I would only ask you to speak into the  
20 microphone.

21 Go ahead.

22 MR. BOYAKI: Yes, ma'am.

23 Your Honor, I think it is important for the other  
24 perspective to be told today. And I think it's important,  
25 because so many of the people that are here today have taken an

1 oath in various capacities to uphold and defend the  
2 Constitution of the United States, whether it's yourself, the  
3 U.S. Attorney, the Assistant U.S. Attorney, Mr. Sutton himself,  
4 some of the other lawyers, many of the Border Patrol people.

5 I know I took -- when I was in the Army, I took that  
6 oath myself. And I think when someone takes the oath to uphold  
7 and defend the Constitution of the United States, you have a  
8 different standard. It is a higher standard, and it is one  
9 where you cannot then say, I'll just take this statute and  
10 uphold and defend that one. Or I will selectively take this  
11 statute or this constitutional law and uphold and defend that.

12 MS. STILLINGER: Your Honor -- I'm sorry to interrupt,  
13 Mr. Boyaki. But this strikes me as not a victim impact, it  
14 strikes me as a legal argument.

15 MR. ANTCLIFF: It's lawyering.

16 THE COURT: So noted.

17 Go ahead, Mr. Boyaki.

18 MR. BOYAKI: Now, with that in mind, Judge, the  
19 standard, then, is they're asking the Court to not do its job,  
20 when these defendants did not do their job.

21 And the victim -- the impact, then, on the victim is  
22 he is extremely physically incapacitated. We're talking about  
23 bladder, urinary -- he doesn't have any. He has a bag. He  
24 cannot work. He will never be able to work.

25 And he has a position now where his operation --

1 there's like one place in the United States, much less in  
2 Mexico, that can do this operation. So you have a tremendous  
3 injury and tremendous damage done by people who are supposed to  
4 uphold and defend the Constitution of the United States, not  
5 part of it, not -- that's not the section they picked, but all  
6 of it.

7           So, instead of admitting what they did here -- and I  
8 was -- remarkably so, when you called on each individual  
9 defendant, I was expecting at least one of them to say,  
10 Your Honor, I'm sorry. I'm sorry I was there. I'm sorry this  
11 happened. Neither one of them said they were sorry.

12           We had allocution -- or argument by both counsel,  
13 extensive argument. I'm sure Ms. Kanof and Mr. Gonzalez noted,  
14 nobody agrees on the facts. They want to change the facts.  
15 They want to change everything. But at least, at some point,  
16 somebody should have said, I'm sorry. I'm sorry this whole  
17 thing happened. I'm sorry I was there. I'm sorry I pulled the  
18 trigger. I'm sorry I didn't report this. All of the things  
19 that would be critical to you doing your job or the rest of us  
20 doing their job.

21           So then we have that he is -- that the Border Patrol  
22 people were heroes. Well, the only heroes here are on this  
23 side of the courtroom, which is Ms. Kanof, Mr. Gonzalez,  
24 Mr. Sutton, for taking forward and going forward with a very  
25 unpopular and very unpleasant task, to uphold and defend the

1 Constitution of the United States.

2 This isn't Mexico. This is the United States.

3 If it were Mexico, we would have shot him, left him in  
4 the alley, and walked off. And that's essentially what they  
5 did.

6 So then to say that they were the victims, or they are  
7 the heroes, is ridiculous. And what needs to be said here is  
8 that you cannot take this, then, and make a political issue  
9 because the facts of the situation are so bad.

10 So I would ask the Court, to take into account these  
11 people thought they were judge, jury, and executioners, and  
12 they're not.

13 And if, in fact, you say you can shoot the person for  
14 marijuana, you can shoot them in the rear end, can you shoot  
15 the cocaine person in the head? Can you shoot the heroin --  
16 can you kill the heroin person? What is a bag of marijuana  
17 worth? A finger?

18 And it gets so ridiculous -- I have another case  
19 where, under the same facts, they didn't find anything but  
20 cheese. Well, what are you going to do for somebody who found  
21 cheese instead of drugs?

22 And that's the problem with, do we -- do we extend the  
23 boundary? Do we extend the goal line here, that -- where you  
24 can then be judge, jury, and executioner?

25 So the Court then, has to do its job. And its job is

1 to prevent chaos and the Border Patrol from taking -- or any  
2 law enforcement, for that matter -- from taking the law in  
3 their own hands and doing your job, their job, and their job,  
4 all -- all on their own, and then covering it up.

5 So I would just tell you, Judge, the easiest way to do  
6 it is to do your job and not have the possibility here of we  
7 put a bull's-eye on every illegal alien and say, Go get 'em.

8 And that's why I'm here today, to tell the Court that  
9 there is a victim here, and it's not sitting at that table.

10 And, in this particular case, we would ask the  
11 Court -- she's basically stuck with what the minimum guidelines  
12 are on the sentencing, and I think the guidelines are  
13 appropriate in this case. And if, in fact, anything  
14 Mr. Aldrete could do, I'm sure he would undo it. And I'm sure  
15 the first thing he would have told you is he was sorry, too.  
16 We don't make a better situation by two crimes. If he  
17 committed a crime, he's obligated. If they committed a crime,  
18 they're obligated.

19 Thanks very much.

20 THE COURT: All right.

21 Yes, sir?

22 MR. ANTCLIFF: On behalf of Agent Compean, Judge, I  
23 move to strike that as not being a victim impact statement.

24 THE COURT: Again -- go ahead.

25 MS. STILLINGER: Your Honor, I would move to strike

1 that, as well, but I would also like an opportunity to respond  
2 to it.

3 THE COURT: All right. Well, the Court is not going  
4 to allow you to respond.

5 And, regarding the request to strike, as we discussed  
6 up at the bench, the statute is clear that the victim may  
7 designate an attorney to make the impact statement. The  
8 Court's going to overrule your objections.

9 All right. Anything further, then, before the Court  
10 imposes sentence?

11 MS. KANOF: Nothing from the Government, Your Honor.

12 MS. STILLINGER: No, Your Honor.

13 MR. ANTCLIFF: No, Your Honor.

14 THE COURT: All right. I need Agent Compean and --  
15 I'm sorry -- Ignacio Ramos and Jose Alonso Compean to come on  
16 up and approach.

17 Gentlemen, although the Sentencing Reform Act of 1984  
18 requires a Court to impose a sentence within the applicable  
19 guideline range in an ordinary case, it does not eliminate this  
20 Court's discretion.

21 It is my duty, as Judge, to assess a fair and  
22 reasonable sentence by looking at many things that bear on the  
23 outcome, formed by my -- from my vantage point, as a person on  
24 a day-to-day basis who imposes sentences on many, many people.

25 Some of the factors that I can consider include the

1 nature and circumstances of the offense, the history and  
2 characteristics of the defendants, the need for the sentence  
3 imposed to reflect the seriousness of the offense, to promote  
4 respect for the law, to provide just punishment for this  
5 offense, to afford adequate deterrence to future criminal  
6 conduct, the need to avoid unwarranted sentencing disparities  
7 among defendants with similar records, the need to provide  
8 restitution, victim misconduct, susceptibility --  
9 susceptibility to abuse or retaliation in prison.

10           However, though this may apply to Counts 2, 3, 6, 7,  
11 8, 10, and 11, in the case of Mr. Compean, and to Counts 2, 3,  
12 8, 9 and 12, in the case of Mr. Ramos, it cannot apply to the  
13 mandatory minimum ten-year sentence that was imposed by  
14 Congress.

15           So, having said that, based on the information  
16 available to me, the circumstances of this case, and your  
17 particular circumstances, Mr. Ramos, to impose a sentence that  
18 is sufficient, but not greater than necessary to meet the goals  
19 of the sentencing, considering all of the factors listed, this  
20 Court will find that -- first of all, the Court is going to  
21 grant a downward departure based on victim conduct and  
22 susceptibility to abuse or retaliation in prison. And the  
23 Court is going to grant a variance, based on the nature and  
24 circumstances of the offense, the need for the sentence imposed  
25 to reflect the seriousness of that offense, and promote respect

1 for the law, provide just punishment for the offense, afford  
2 adequate deterrence to future criminal conduct, and avoid  
3 unwarranted sentencing disparities among defendants with  
4 similar records, the Court will find that a fair and reasonable  
5 sentence in this case is 12 months and one day on Counts 2, 3,  
6 8, 9, and 12, to run concurrently, and 120 months on Count 4,  
7 to run consecutive to those Counts 2, 3, 8, 9, and 12.

8           There will be three years of supervised release on a  
9 reporting basis. Once you are released, you remain under this  
10 Court's supervision for three years. During that time you have  
11 to obey all the standard terms and conditions adopted by this  
12 Court. You can commit no further crimes against the  
13 United States or any state or local government.

14           You will be prohibited from possessing a firearm or  
15 other dangerous weapon. You will be ordered to refrain from  
16 the unlawful use of controlled substances, and to submit to  
17 drug testing as required by the probation department.

18           You will be ordered to participate in an anger  
19 management and counseling program approved by the probation  
20 office, and all the other standard terms and conditions.

21           There will be a \$2,000 fine. There will be a \$100  
22 special assessment per count, for a total of \$600.

23           And the Court will make a recommendation for a  
24 facility as close to El Paso as possible.

25           In saying all of that, I do want to make sure that I'm

1 clear that the Court is overruling the objections regarding  
2 destruction or fabrication, the plus two, plus the plus two  
3 objection regarding abuse of a trusted position.

4 Anything further in the sentencing of Mr. Ramos?

5 MS. STILLINGER: No, Your Honor.

6 THE COURT: Anything further in the sentencing of  
7 Mr. Ramos before I proceed to Mr. Compean?

8 MS. KANOF: Your Honor, was the Court going to impose  
9 restitution?

10 THE COURT: Let me look at that in just a minute, and  
11 then I'll go over that, also.

12 Regarding Mr. Compean, again, based on the information  
13 available to me in the circumstances of this case and your  
14 particular circumstances, Mr. Compean, to impose a sentence  
15 sufficient, but not greater than necessary to meet the goals of  
16 sentencing, considering all of those factors, the Court is  
17 going to first of all find that -- is going to grant a downward  
18 departure, based on susceptibility to retaliation or abuse in  
19 prison.

20 The Court is going to grant a variance, based on the  
21 nature and circumstances of this offense, the history and  
22 characteristics of the defendant, the need for the sentence  
23 imposed to reflect the seriousness of the offense, in order to  
24 promote respect for the law, provide just punishment for the  
25 offense, afford adequate deterrence to future criminal conduct,

1 and avoid unwarranted sentencing disparities among defendants  
2 with similar records, the Court will find that a fair and  
3 reasonable sentence in your case, Mr. Compean, is 24 months of  
4 incarceration on Counts 2, 3, 6, 7, 8, 10 and 11. Those will  
5 run concurrently. And 120 months on Count 5, to run  
6 consecutive thereto.

7           There will be three years of supervised release on a  
8 reporting basis. Once you are released, you do remain under  
9 this Court's supervision for three years.

10           During that time you can -- must comply with all the  
11 standard terms and conditions adopted by this Court. You shall  
12 not commit another federal, state, or local crime. You will be  
13 prohibited from possessing a firearm or other dangerous weapon.  
14 You will be ordered to refrain from the unlawful use of  
15 controlled substances and to submit to drug testing as required  
16 by the probation department.

17           There will be a \$2,000 fine and a \$100 special  
18 assessment per count, for a total of \$600.

19           And again, the Court will make a recommendation for a  
20 facility as close to El Paso as possible.

21           I need the attorneys and probation to approach  
22 regarding the issue of restitution real quick.

23           (Off-the-record bench discussion.)

24           THE COURT: All right. Before I proceed to the issue  
25 of restitution -- come on back up, Mr. Compean, and Mr. Ramos.

1           Before I proceed to the issue of restitution, I want  
2 to point out, regarding Mr. Compean, on the special assessment,  
3 it is eight counts, so it's an \$800 special assessment. I  
4 wanted to be clear on that.

5           I also want to make sure that we're clear that the  
6 supervised -- first of all, the 12 months and one day, the 24  
7 months, all run concurrently on all of the counts as listed.

8           The supervised release, the three-year supervised  
9 release on behalf of both defendants does run concurrently,  
10 so -- on each count, so that that's clear.

11          And then, regarding the issue of the special -- I'm  
12 sorry, the restitution, the Court is going to deny any  
13 restitution. There will be no restitution.

14          MR. ANTCLIFF: Judge, in your recitation of the  
15 sentence, or the colloquy, whatever, you mentioned that you  
16 were granting the downward departure on behalf of Mr. Compean,  
17 and only noted that it was for the susceptibility issue that we  
18 addressed.

19          THE COURT: Right.

20          MR. ANTCLIFF: Were you also dealing with victim's  
21 conduct for him or not?

22          THE COURT: I was dealing with it. I didn't grant it  
23 on that grounds.

24          MR. ANTCLIFF: Thank you.

25          THE COURT: All right?

1           Anything further?

2           MS. KANOF:  Nothing from the Government, Your Honor.

3           THE COURT:  Anything further?

4           MS. STILLINGER:  Your Honor, I would like to make a  
5 motion for bond pending appeal.  I did not write out that  
6 motion, because I intend to -- as part of that motion, of  
7 course, one of the factors the Court has to consider is  
8 likelihood of success on appeal, and I had drafted that motion.  
9 Because the motion for new trial was pending, I wanted to make  
10 sure -- I didn't know if we would be dealing with that or what  
11 the status would be at the time.

12           So I would like an opportunity to submit a written  
13 motion for bond pending appeal, but I would like to make an  
14 oral motion at this time.

15           THE COURT:  All right.  First of all, do you want them  
16 to stay out at all pending reporting, or -- I mean, because  
17 that's really the first issue.  Bond pending appeal is -- I  
18 think, needs to be in a written motion, so this Court can  
19 consider it.

20           The Court does have discretion to allow the defendants  
21 to remain out, at least pending actual designation.

22           MS. STILLINGER:  Yes.  And I'm sorry, Your Honor.  Of  
23 course I would ask that Mr. Ramos be allowed to remain on bond  
24 pending self-surrender to the appropriate institution.  I would  
25 ask -- normally, I think the Court gives around about two

1 months. I would ask that that be extended to January, to get  
2 past the holidays.

3 THE COURT: All right.

4 On behalf of Mr. Compean?

5 MR. ANTCLIFF: Obviously, Judge, on behalf of  
6 Mr. Compean, I'm requesting a self-surrender, as far out as the  
7 Court believes would be appropriate. Certainly, after the  
8 holidays. And I do have a motion that Ms. Stillinger can  
9 adopt, if need be, for bond pending appeal.

10 THE COURT: All right. Well, I will tell you right  
11 now, the Court will take the motion to continue on bond pending  
12 appeal under advisement, and I will rule on that.

13 But, regarding the issue of self-surrender dates -- do  
14 we have somebody here from pretrial?

15 PRETRIAL SERVICES MR. ESTRELLA: Good afternoon,  
16 Your Honor. Carlos Estrella on behalf of pretrial services.

17 Both Mr. Ramos and Mr. Compean are currently being  
18 supervised by our offices, and both of them have been in full  
19 compliance. We respectfully recommend that they remain on  
20 bond, Your Honor, until further Court appearances or the date  
21 of self-surrender.

22 THE COURT: All right. Anything on behalf of the  
23 Government?

24 MS. KANOF: Your Honor, the Government does not think  
25 the defendants pose a flight risk at this time. And with

1 regard to any other prong that the Court should consider, we'll  
2 leave that to the discretion of the Court.

3 THE COURT: All right.

4 The Court, Mr. Ramos and Mr. Compean, will allow both  
5 of you to self-surrender. I am not -- just so we're clear, I'm  
6 not dealing with the issue of whether you can remain out on  
7 bond pending appeal. I will allow, at this point, both of you  
8 to self-surrender.

9 And do we have a date?

10 THE CLERK: Judge, January 17th is 90 days.

11 THE COURT: All right. So you will both be ordered to  
12 self-surrender, unless the Court makes a ruling on the issue of  
13 remaining out pending appeal. So, self-surrender by January  
14 17th, at 2:00 p.m., in the afternoon.

15 What that means for each of you, Mr. Ramos and  
16 Mr. Compean, is that between now and then -- that includes the  
17 holidays -- you cannot get into trouble. If you get into any  
18 kind of trouble, if you drink and drive, because you're  
19 celebrating, if there is any problems, you will be picked up  
20 immediately.

21 Do you both understand that?

22 DEFENDANT COMPEAN: Yes, ma'am.

23 DEFENDANT RAMOS: Yes, ma'am.

24 THE COURT: If the Court decides that you cannot  
25 remain out pending appeal, understand that what that also means

1 is, come January 17th at 2:00 p.m., you must self-surrender.

2 I understand it will be difficult, but you cannot --  
3 failure to appear, failure to self-surrender, would result in  
4 so many worse sequences. So understand you must  
5 self-surrender.

6 You can self-surrender either to the US Marshal's  
7 office, or if you have been designated, you can self-surrender  
8 to that facility.

9 Do you both understand that?

10 DEFENDANT COMPEAN: Yes, ma'am.

11 DEFENDANT RAMOS: Yes, ma'am.

12 THE COURT: All right. Anything further, then, on  
13 behalf of the Government?

14 MS. KANOF: No, Your Honor.

15 THE COURT: Anything further on behalf of the def- --  
16 oh, you both have -- let me -- you do have the right to appeal  
17 my decision, and that information is being given to your  
18 attorneys, Mr. Ramos and Mr. Compean.

19 Anything further on behalf of the Government?

20 MS. KANOF: No, Your Honor.

21 THE COURT: And, Ms. Stillinger?

22 MS. STILLINGER: No, Your Honor.

23 THE COURT: Mr. Antcliff?

24 MR. ANTCLIFF: No, Your Honor.

25 THE COURT: All right. Thank you. This Court stands

1 adjourned.

2 (Conclusion of proceedings.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
David A. Perez, CSR, RPR