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1 THE COURT: You may be seated.

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

4 MS. KANOF: Good morning. Debra Kanof and Jose Luis
5 Gonzalez for the United States, ready to proceed to trial.

6 MS. STILLINGER: Mary Stillinger and Stephen Peters
7 for Ignacio Ramos, Your Honor.

8 MS. RAMIREZ: Good morning. Maria Ramirez and
9 Christopher Antcliff on behalf of Jose Alonso Compean. And
10 subject to my prior motion, we are ready.

11 THE COURT: And --

12 MS. RAMIREZ: Prior motion to dismiss.

13 THE COURT: The Court has already ruled on that.
14 Ready to proceed?

15 MS. RAMIREZ: Yes, Your Honor.

16 We are outside the presence of the jury, and I just
17 want to make sure, are there any matters we need to take care
18 of before we bring in the panel?

19 MR. PETERS: We have one more proposed jury
20 instruction, and I would like to submit it to the Court now.

21 THE COURT: Are you saying jury as in voir dire?

22 MR. PETERS: No.

23 THE COURT: Thank you.

24 MS. RAMIREZ: Your Honor, we asked to join in that
25 proposed jury instruction.

1 THE COURT: All right. And it's Number 13, for the
2 record, right? Instruction 13?

3 MR. PETERS: That's correct, Your Honor.

4 MS. RAMIREZ: Your Honor, I had submitted amended
5 proposed jury questions to the Court. And the only other
6 questions I wanted the Court to ask the panel was if they knew
7 me, because I was a municipal court judge.

8 THE COURT: Taken care of.

9 MS. RAMIREZ: People get very upset when they're found
10 guilty of traffic tickets.

11 THE COURT: Ready to bring in the panel.

12 (Jury panel enters courtroom.)

13 THE COURT: Good morning, ladies and gentlemen. Let
14 the record reflect that the members of the jury panel, the
15 attorney for the United States, and the attorneys for the
16 defendants are here present and seated in the courtroom.

17 Mr. Martinez, would you go ahead and call the case?

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

20 MS. KANOF: Good morning, Your Honor. Debra Kanof and
21 Jose Luis Gonzalez for the United States. We're ready.

22 MS. STILLINGER: Good morning. Mary Stillinger and
23 Steve Peters for Ignacio Ramos. We're ready for trial,
24 Your Honor.

25 MS. RAMIREZ: Good morning, Your Honor. Maria Ramirez

1 and Christopher Antcliff on behalf of Jose Alonso Compean.

2 And, subject to our motion, we're ready.

3 THE COURT: All right. First, ladies and gentlemen, I
4 would like to thank all of you and let you know how much we
5 appreciate your time. We're going to try to go through this
6 trial and proceed as efficiently as possible.

7 My name is Kathleen Cardone. I'm a United States
8 District Judge here for the Western District of Texas sitting
9 in El Paso. We're here today for purposes of selecting a jury
10 for a criminal case.

11 Javier Martinez here is my courtroom deputy.

12 Ms. Hammer you've already met, and she is in charge of
13 our juries.

14 And then there's Mr. David Perez, seated right there,
15 who is my court reporter. And he will be taking down
16 everything that we say here in the courtroom today.

17 The case should take approximately five working days
18 to try. So, in other words, we should probably take this week
19 and perhaps the first part of next week to get this case tried.

20 I'm going to start by giving some instructions and
21 some principles that govern the conduct of this trial.

22 The burden of proof in a criminal case is on the
23 Government and never shifts to the defendant. The Government
24 must prove the defendant guilty beyond a reasonable doubt.

25 A reasonable doubt is a doubt based upon reason and

1 common sense, after careful and impartial consideration of all
2 of the evidence in this case. Proof beyond a reasonable doubt,
3 therefore, is proof of such a convincing character that you
4 would be willing to rely and act upon it without hesitation in
5 the most important of your own affairs.

6 Thus, if the Government does not meet its burden, then
7 the jury must return a verdict of not guilty.

8 It is the function of the jury in this trial to
9 determine the facts. In so doing, you are the sole and
10 exclusive judges of the credibility of the witnesses and the
11 weight to be given their testimony.

12 I, as the judge, will rule on the matter of -- on
13 matters of law and of the evidence. My job is to decide the
14 law and to be certain that both sides receive a fair trial. So
15 I will make a determination of what is proper for you to
16 consider; in other words, what is admissible evidence.

17 In just a few minutes we're going to begin the voir
18 dire. There are a few questions that I am required to ask you.
19 Our goal this morning is to seat jurors who can be fair and
20 impartial.

21 The defendants in the case, the Government's
22 attorneys, and our system of justice, all require that a fair
23 jury, one without bias or prejudice and free of opinion as to
24 the guilt or innocence of the defendants, be chosen here today.

25 A fair jury is one that, not having heard any of the

1 evidence, is not committed to either side. A fair jury is one
2 that is impartial to both sides and that can and will follow
3 the law as it is given to you by the Court. Our goal here
4 today is to have jurors who are free from any bias or prejudice
5 in this particular case.

6 Please do not conceal information or give answers that
7 are not true. Listen to the questions and give full and
8 complete answers. And please, when you answer a question,
9 stand up and give us our juror -- your juror name -- your name
10 and your juror number.

11 Now, ladies and gentlemen, a little aside here. This
12 is my court reporter. I'm sitting here with a microphone, and
13 I think everybody -- everybody can hear me, right? You are all
14 the way to the very back under that clock. He has to take down
15 everything that every person says in this courtroom. And not
16 only does he have to take it down, but he has to be able to
17 identify who said it. So if you just stand up and start
18 talking, he's not going to have a clue who's talking. If you
19 sit down and mumble, he's not going to be able to hear what you
20 say. It is very important that each of you, in response to a
21 question, if you're answering a question, that you stand up and
22 you give me your name and juror number. Can everybody do that
23 for me?

24 JURORS: Yes.

25 THE COURT: Is that a yes?

1 JURORS: Yes.

2 THE COURT: Okay. Good. That's the other thing he
3 can't do. He can't take down a nod. So please respond in an
4 audible voice.

5 Now, each of this -- each of the sides of this case
6 will have a certain number of strikes. These are what we call
7 peremptory challenges. A peremptory challenge removes the name
8 from the list of potential jurors. They will exercise these
9 strikes based on what they hear from you and what they know
10 about you. So please listen carefully to the questions and
11 answer each question truthfully as it pertains to you.

12 Ladies and gentlemen, there are no right or wrong
13 answers. Just listen to the question and answer the question.

14 This is a criminal case. It is alleged that the
15 defendants violated certain penal laws of the United States.
16 Specifically, the defendants are charged as follows:

17 Mr. Ignacio Ramos is charged with Count I, assault
18 with intent to commit murder and aiding and abetting.

19 Count II, assault with a dangerous weapon and aiding
20 and abetting.

21 Count III, assault with serious bodily injury and
22 aiding and abetting.

23 Count IV, discharge of a firearm in relation to a
24 crime of violence.

25 Count VIII tampering with an official proceeding.

1 Count IX, tampering with an official proceeding. Count XII,
2 deprivation of rights under color of law.

3 Jose Alonso Compean is also charged, and he is charged
4 with Count I, assault with intent to commit murder and aiding
5 and abetting.

6 Count II, assault with a dangerous weapon and aiding
7 and abetting.

8 Count III, assault with a -- assault with serious
9 bodily injury and aiding and abetting.

10 Count V, discharge of a firearm in relation to a crime
11 of violence.

12 Count VI, tampering with an official proceeding.

13 Count VII, tampering with an official proceeding.

14 Count VIII, tampering with an official proceeding.

15 Count X, tampering with an official proceeding.

16 And Count XI, deprivation of rights under color of
17 law.

18 I say "charged," ladies and gentlemen, because that is
19 what the accusations against the defendants are. That does not
20 mean that they are guilty of those offenses until such time
21 that a jury is selected and determines that the Government has
22 proven guilt by legal and competent evidence beyond a
23 reasonable doubt.

24 There are many jurors that are selected and seated,
25 and many jurors that listen to the evidence. And even though

1 there are accusations in every criminal case, jurors are always
2 able to listen to the evidence thoughtfully, consider the
3 instructions, listen to the arguments of the attorneys, and
4 then return a verdict of guilty or not guilty, depending on
5 what their view of the evidence is.

6 Remember, all that we have now are allegations. The
7 fact that a defendant has been indicted or charged with an
8 offense does not in any way indicate that he is guilty of that
9 offense. At the outset of any criminal trial the defendant is
10 presumed innocent.

11 Now, remember I told you I'm going to be asking you
12 some questions. This first question that I'm going to be
13 asking you has to do with scheduling problems, ladies and
14 gentlemen. Now, as I explained to you, this case is going to
15 take approximately five days to try; in other words, starting
16 today, through the first part of next week.

17 All of us have busy schedules. And I certainly
18 understand that all of us have jobs, all of us have families,
19 and I can appreciate that. But our system of justice requires
20 that we have jurors. And so we often have to take time out of
21 those busy schedules to give -- to do jury service. And it's
22 important that each of you -- each and every one of you
23 understand how much we appreciate that and how important your
24 service is.

25 So this question regarding scheduling has to do with

1 any of you who have something in your schedule that makes it
2 impossible for you to serve. I'm not talking about work. I'm
3 not talking about family. I'm talking about something that, if
4 it's regarding work, it's so serious that you cannot leave
5 work; something regarding a family member, or something that is
6 so serious that you can't be away from the family. If you have
7 a doctor's appointment that you scheduled ten months ago and
8 you can't get in again for another ten months. If you have
9 nonrefundable round trip tickets to China and you're going to
10 lose thousands of dollars, I can understand that. But unless
11 it's something serious, ladies and gentlemen, then that doesn't
12 apply. So I'm talking about scheduling problems that make it
13 impossible for you to serve.

14 Is there anyone here that has such a scheduling
15 problem? Anyone in row 1? If so, please raise your hand.

16 Row 2?

17 First row in the back?

18 Second row in the back?

19 Third row in the back?

20 And I think we only have four rows. All the way in
21 the back under that clock? Anybody there?

22 All right. Now, the next question I'm going to ask
23 you is regarding prior jury service.

24 I would assume that some of you, if not many of you,
25 have served on juries before. This question has to do with

1 that prior service.

2 And what I want to know is, if you've served on a
3 jury, what kind it is, whether it is a federal case like today,
4 or a state case, which is across that -- across the street in
5 that big, glass building; whether it was a civil case or a
6 criminal case; whether you were able to reach a verdict or you
7 weren't able to reach a verdict; and finally, if any of you
8 have served on a Grand Jury. All right?

9 So if any of you have had prior injury service, I will
10 be taking you row by row. And if you'll just let me know.

11 Anybody in that first row that's had prior jury
12 service, please raise your hand. That's usually what happens.
13 We have a lot of people.

14 Juror Number 1, if you would, give us your name.

15 PROSPECTIVE JUROR: Ricardo Tellez, Juror Number 1.

16 THE COURT: And, Mr. Tellez, where -- what kind of
17 service have you had in the past?

18 PROSPECTIVE JUROR: It was criminal.

19 THE COURT: All right. And how many times have you
20 been on a jury?

21 PROSPECTIVE JUROR: Twice.

22 THE COURT: All right. And were they both criminal?

23 PROSPECTIVE JUROR: No. One was civil. One was
24 criminal and one was civil.

25 THE COURT: All right. And where were they?

1 PROSPECTIVE JUROR: Across the street.

2 THE COURT: Both of them?

3 PROSPECTIVE JUROR: Both of them.

4 THE COURT: Were you able to reach a verdict in both?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Is there anything about that prior
7 service, either in the civil case or criminal case, that you
8 feel would not -- would get in the way of you serving here
9 today?

10 PROSPECTIVE JUROR: No.

11 THE COURT: All right. Thank you.

12 Yes, ma'am.

13 PROSPECTIVE JUROR: Maria Villela, Juror Number 2. I
14 served Grand Jury for three months.

15 THE COURT: And where is that?

16 PROSPECTIVE JUROR: Across the street.

17 THE COURT: AND how long ago was that?

18 PROSPECTIVE JUROR: About two years ago.

19 THE COURT: All right. Is that the only jury service
20 you've had?

21 PROSPECTIVE JUROR: Yes, ma'am.

22 THE COURT: Is there anything about that service that
23 would affect your ability to sit with us here today?

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: All right. Thank you.

1 PROSPECTIVE JUROR: Stephen Smith, Juror Number 4. It
2 was on a state criminal case. We did reach a verdict.

3 THE COURT: Okay. And how long ago was that?

4 PROSPECTIVE JUROR: Years.

5 THE COURT: Years ago. Okay. And is that the only
6 jury service you've had?

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: And is there anything about that service,
9 Mr. Smith, that you feel would affect your ability to serve
10 with us?

11 PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: Thank you, sir.

13 Anyone else in that row?

14 Yes, ma'am.

15 PROSPECTIVE JUROR: Martha Hood, Juror Number 6. I've
16 served on both -- state, both criminal and civil. And, yes, we
17 reached a verdict each time.

18 THE COURT: You guys are learning fast. Okay. Hold
19 on. You can't sit down yet.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: Anything about that service that you feel
22 might affect your ability to serve with us here today?

23 PROSPECTIVE JUROR: No.

24 THE COURT: And nothing here in federal court?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Thank you.

2 Anyone else in that row? Did I miss anybody?

3 Okay. Second row back?

4 Yes, sir.

5 PROSPECTIVE JUROR: Maximino Torres, Juror Number 8.

6 I served on a criminal case across the street.

7 THE COURT: All right.

8 PROSPECTIVE JUROR: We did reach a verdict. And I was

9 on the Grand Jury a couple years ago.

10 THE COURT: All right. And was that here or across

11 the street?

12 PROSPECTIVE JUROR: That was across the street.

13 THE COURT: All right. And is -- is there anything
14 about either the Grand Jury service or your jury on a criminal

15 case -- your service on the criminal case -- that you feel

16 would affect your ability to serve with us today?

17 PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: Thank you.

19 PROSPECTIVE JUROR: I'm David Gallardo, Juror Number

20 9.

21 THE COURT: All right. And --

22 PROSPECTIVE JUROR: And I served about seven years ago
23 in state, across the street, in a civil case.

24 THE COURT: All right.

25 PROSPECTIVE JUROR: We did reach a verdict.

1 THE COURT: All right. And is that the only jury
2 service you have had?

3 PROSPECTIVE JUROR: Yes, ma'am.

4 THE COURT: And is there anything about that,
5 Mr. Gallardo, that you feel would affect your ability to sit
6 with us?

7 PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: Thank you, sir.

9 Next?

10 PROSPECTIVE JUROR: My name is Maria Ledesma, Juror
11 Number 10. And 13 years ago, in the state of New Jersey.

12 THE COURT: All right.

13 PROSPECTIVE JUROR: And it was a state.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: And we did reach a verdict.

16 THE COURT: You were in the state of New Jersey. I
17 assume you used to live there?

18 PROSPECTIVE JUROR: Yes, ma'am.

19 THE COURT: Okay. And is there anything about that
20 service in the state of New Jersey that you feel would affect
21 your ability to sit with us here today?

22 PROSPECTIVE JUROR: Not at all.

23 THE COURT: All right. And have you had any jury
24 service since you've been here in Texas?

25 PROSPECTIVE JUROR: No, ma'am.

1 THE COURT: All right. Thank you.

2 PROSPECTIVE JUROR: Bertha Valtierra, Juror Number 11.
3 I served on a juvenile and a civil across the street.

4 THE CLERK: Okay.

5 PROSPECTIVE JUROR: And we did reach a verdict.

6 THE COURT: In both?

7 PROSPECTIVE JUROR: In both.

8 THE COURT: Is there anything about that jury service
9 that you feel might affect your ability to serve with us?

10 PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: All right. Thank you, ma'am.

12 Anyone else in that row? No?

13 PROSPECTIVE JUROR: I'm Charlene Newman, Number 14.
14 About six years ago, across the street, juvenile and civil.

15 THE COURT: All right. And anything about that
16 service that you feel would affect your ability to be with us
17 here today?

18 PROSPECTIVE JUROR: None.

19 THE COURT: Thank you.

20 Okay. First row in back.

21 Yes, ma'am.

22 PROSPECTIVE JUROR: I'm Juror Number 15, Susan
23 Acevedo. And it was about 13 years ago, in a civil, across the
24 street.

25 THE COURT: All right. And did you reach a verdict?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: And was there anything about that service
3 that you feel might affect your ability to serve with us?

4 PROSPECTIVE JUROR: No.

5 THE COURT: All right. Thank you.

6 Yes, ma'am.

7 PROSPECTIVE JUROR: I'm Juror Number 16, Jayne Pynes.
8 It was the state, across the street, ten years ago, criminal.
9 We did reach a verdict, and there was nothing about that case
10 that would affect my ability to serve.

11 THE COURT: Perfect.

12 PROSPECTIVE JUROR: I'm a teacher.

13 THE COURT: Man, I bet you you're a taskmaster.

14 Yes, next?

15 PROSPECTIVE JUROR: Alicia Rivera.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: Juror Number 17. And I was on a
18 civil.

19 THE COURT: Okay. Was it across --

20 PROSPECTIVE JUROR: Across the street. And...

21 THE COURT: Did you reach a verdict?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: And anything about that service that you
24 feel affects your ability with us?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Okay. And is that the only case you've
2 been in?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Thank you, ma'am.

5 Yes.

6 PROSPECTIVE JUROR: Linda Elizalde, Juror Number 18;
7 civil, across the street, a verdict was reached. And a
8 federal, and it was also civil.

9 THE COURT: Okay. And --

10 PROSPECTIVE JUROR: A verdict was reached.

11 THE COURT: -- a verdict was reached in both. All
12 right. Anything about either the state case or the federal
13 case that you feel might affect your ability to sit with us
14 here today?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Okay. Thank you, ma'am.

17 Anybody on this side?

18 Yes, sir.

19 PROSPECTIVE JUROR: Bruce Banta, Juror Number 21. I
20 served for -- served on a civil jury, state, in El Paso County,
21 reached a verdict, and that would have no influence on this
22 case.

23 THE COURT: All right. And only one time?

24 PROSPECTIVE JUROR: Only one time, yes.

25 THE COURT: All right. Thank you, sir.

1 Anyone else in that row? No?

2 Second row back? Just raise your hands. That way,
3 I -- anybody in the second row?

4 Okay, ma'am, if you'd stand, please.

5 PROSPECTIVE JUROR: I'm Juror Number 24, Elia
6 Martinez. And I was here last year, in October, in a civil,
7 across the street.

8 THE COURT: All right. And were you able to reach a
9 verdict?

10 PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: And anything about that, Ms. Martinez,
12 that you feel might affect your ability to sit with us?

13 PROSPECTIVE JUROR: No, ma'am.

14 THE COURT: All right. Thank you.

15 Anyone else in that row, raise your hand. No?

16 Okay. Next row back.

17 Yes, sir.

18 PROSPECTIVE JUROR: Juror Number 31, Clyde Overson. I
19 served three years ago on a civil trial across the street; two
20 years ago in a civil trial across the street; and a verdict was
21 reached in both.

22 THE COURT: And they were both civil?

23 PROSPECTIVE JUROR: Yes, ma'am.

24 THE COURT: Anything about that prior service,
25 Mr. Overson, that you feel might affect your ability to sit

1 with us?

2 PROSPECTIVE JUROR: No, ma'am.

3 THE COURT: Thank you.

4 Anyone else in that row?

5 PROSPECTIVE JUROR: Juror Number 35, Danielle Chavez.

6 Last November I served across the street for a civil case, and
7 we did reach a verdict. And it would have nothing on this
8 case.

9 THE COURT: All right. And that was your only jury
10 service?

11 PROSPECTIVE JUROR: Yes, ma'am.

12 THE COURT: All right. Thank you, ma'am.

13 Yes.

14 PROSPECTIVE JUROR: Juror Number 38, Leticia Miranda.

15 I served on a criminal case across the street. I don't
16 remember how long ago it was. It was some years ago.

17 THE COURT: Obviously, huh? Did you reach a verdict?

18 PROSPECTIVE JUROR: Yes, ma'am.

19 THE COURT: And is there anything about that service
20 that you feel might affect your ability to sit with us?

21 PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: Thank you. Did I miss anybody in that
23 row?

24 Okay. All the way in the back. Anybody in the back
25 row?

1 Okay. Did I miss anyone who has had prior jury
2 service? All right.

3 Now, I'm going to ask the attorneys to go ahead and
4 make their introductions. At the Government table first.

5 MS. KANOF: Good morning, ladies and gentlemen. My
6 name is Debra Kanof. I'm an Assistant United States Attorney
7 for the Western District of Texas, El Paso Division.

8 My co-counsel is Assistant United States Attorney Jose
9 Luis Gonzalez.

10 MR. GONZALEZ: Good morning.

11 MS. KANOF: And we will be trying the case for the
12 Government.

13 THE COURT: And --

14 MS. KANOF: And sitting also at counsel table is
15 Special Agent Christopher Sanchez. He's an agent with the
16 Department of Homeland Security, Office of the Inspector
17 General.

18 THE COURT: Does anyone know anyone at the
19 Government's table? Anyone familiar with Mr. Gonzalez,
20 Ms. Kanof, or the special agent? Anyone at all?

21 Yes.

22 PROSPECTIVE JUROR: Juror Number 21, Bruce Banta. I
23 know Debra Kanof.

24 THE COURT: All right. And how long ago did you meet
25 Ms. Kanof?

1 PROSPECTIVE JUROR: Professionally, when she was
2 trying a case in El Paso District Court concerning a murder
3 trial of a patient of mine.

4 THE COURT: Okay. And what role did you play in that
5 trial?

6 PROSPECTIVE JUROR: I was a -- I believe -- it's been
7 so long ago. I believe I was -- I testified in that case.

8 THE COURT: Okay. And have you seen Ms. Kanof since
9 then?

10 PROSPECTIVE JUROR: No, I haven't.

11 THE COURT: All right. Is there anything about that
12 experience that you feel might affect your ability to sit with
13 us here today?

14 PROSPECTIVE JUROR: I thought she was very effective
15 in the case she presented, and I was very impressed with the
16 outcome.

17 THE COURT: All right. Then I will ask the same
18 question, though. Is there anything about that -- understand
19 that the trial requires that our jury be fair and impartial.
20 Is there anything about your association with Ms. Kanof that
21 you feel might affect your ability to be fair and impartial to
22 both sides?

23 PROSPECTIVE JUROR: No, I don't believe so.

24 THE COURT: Okay. Thank you, sir.

25 Anyone else who knows anyone from the Government's

1 table?

2 Anyone have any association with the U.S. Attorney's
3 office, either because you have friends that work there,
4 someone who was employed there, previous experience with the
5 U.S. Attorney's office?

6 Okay. Defense table.

7 MS. STILLINGER: Good morning, members of the jury
8 pool. My name is Mary Stillinger. I'm an attorney in private
9 practice here in El Paso. And with me trying this case is
10 Steve Peters.

11 MR. PETERS: Good morning.

12 MS. STILLINGER: He's also an attorney in private
13 practice in El Paso. And we represent Ignacio Ramos, who's on
14 trial here today.

15 THE COURT: All right. Does anyone -- you can go
16 ahead and be seated.

17 Does anyone know Ms. Stillinger, Mr. Peters, or
18 Mr. Ramos?

19 Yes.

20 PROSPECTIVE JUROR: Yes, Nicholas Houser, Juror Number
21 39. I know Mr. Peters more or less as an acquaintance. We
22 share the same building, different floors.

23 THE COURT: All right. You shared it previously or
24 you do now?

25 PROSPECTIVE JUROR: No, no, we're in -- we're in the

1 same building.

2 THE COURT: Right now?

3 PROSPECTIVE JUROR: With offices, yes, different
4 floors.

5 THE COURT: All right. And what kind of work do you
6 do?

7 PROSPECTIVE JUROR: I'm an anthropologist/historian.

8 THE COURT: Okay. And how often do you see
9 Mr. Peters?

10 PROSPECTIVE JUROR: I really don't know. It's -- he's
11 an acquaintance, not a personal friend. But maybe -- maybe --
12 oh, maybe two or three times a week or so.

13 THE COURT: Okay. You don't socialize with him?

14 PROSPECTIVE JUROR: Generally in the elevator, you
15 know, friendly banter, I guess.

16 THE COURT: Okay. You don't socialize with him?

17 PROSPECTIVE JUROR: No.

18 THE COURT: And is there anything about knowing
19 Mr. Peters that you think might affect your ability to be a
20 fair and impartial juror in this case?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Thank you, sir.

23 Yes.

24 PROSPECTIVE JUROR: Rick Alaniz, Juror Number 25. I
25 run into Mr. Peters every once in a while at the county

1 courthouse. I'm a probation officer there, so...

2 THE COURT: Okay. And I believe a number of the
3 attorneys probably work at the courthouse. Do you know any of
4 the other ones?

5 PROSPECTIVE JUROR: Ms. Ramirez.

6 THE COURT: Okay. Is -- let's talk about Mr. Peters,
7 then. You don't recognize Ms. Stillinger?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Okay. Is there anything -- do you know
10 Mr. Peters, other than seeing him at the courthouse?

11 PROSPECTIVE JUROR: No. Just -- he may -- he may have
12 been a defense attorney on maybe one of my cases. But that
13 would be the only time.

14 THE COURT: All right. And do you -- you do recall
15 that, or are you not sure?

16 PROSPECTIVE JUROR: I -- I've seen him, but I just
17 don't recall any specific case.

18 THE COURT: All right. Is there anything about
19 knowing Mr. Peters or your experience with him there in state
20 court that you feel might affect your ability to be fair and
21 impartial here today?

22 PROSPECTIVE JUROR: No, ma'am.

23 THE COURT: All right. You may be seated. Thank you.

24 Anyone else who knows either Mr. Peters,
25 Ms. Stillinger, or Mr. Ramos? If so, please raise your hand.

1 All right. Ms. Ramirez?

2 MS. RAMIREZ: Good morning, ladies and gentlemen. My
3 name is Maria Ramirez. And I will be trying this case with
4 Mr. Christopher Antcliff.

5 MR. ANTCLIFF: Good morning.

6 MS. RAMIREZ: I've been in private practice in El Paso
7 for the past 16 years. I'm also an elected municipal court
8 judge.

9 This is my client, Jose Alonso Compean. And we will
10 be trying the case on his behalf.

11 Thank you.

12 THE COURT: All right. Anyone who knows Mr. Antcliff,
13 Mr. Compean, or Ms. Ramirez?

14 Okay. Yes, sir.

15 PROSPECTIVE JUROR: John Wicker, Juror 44. I believe
16 the gentleman here --

17 THE COURT: Mr. Antcliff?

18 PROSPECTIVE JUROR: Yes, ma'am.

19 THE COURT: All right. How do you believe you know
20 Mr. Antcliff?

21 PROSPECTIVE JUROR: Well, I sat in on a friend's
22 account that he -- what do you call it?

23 THE COURT: Was it a trial?

24 PROSPECTIVE JUROR: No, I was just a friend of
25 somebody that he -- he was his attorney.

1 THE COURT: I got you. And you sat in during the
2 hearing?

3 PROSPECTIVE JUROR: It wasn't a hearing. It was just
4 kind of there when he was going to be sentenced.

5 THE COURT: Gotcha.

6 PROSPECTIVE JUROR: And I believe it was the same
7 gentleman. I'm not real sure.

8 THE COURT: All right. Other than sitting in
9 during -- for -- with your friend during that legal proceeding,
10 whatever it was, do you know Mr. Antcliff outside of that?

11 PROSPECTIVE JUROR: No, I do not.

12 THE COURT: Do you socialize with him?

13 PROSPECTIVE JUROR: No, I do not.

14 THE COURT: And is there anything about that
15 experience -- and I know you're not quite sure if it's
16 Mr. Antcliff. But if it -- but if it is the same gentleman, is
17 there anything about that experience that you feel might affect
18 your ability to be fair in this case?

19 PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Thank you, sir.

21 I saw someone else's hand go up.

22 PROSPECTIVE JUROR: Rick Alaniz again, Juror Number
23 25. I've dealt with Ms. Ramirez professionally, in my duties,
24 when she was with the County Attorney's office or the District
25 Attorney's office.

1 THE COURT: Okay. And anything about your experience
2 with Ms. Ramirez that you feel might affect your ability to be
3 fair and impartial in the case?

4 PROSPECTIVE JUROR: No, ma'am.

5 THE COURT: Okay. Now, again -- thank you, sir. You
6 may be seated.

7 Again, Ms. Ramirez is a municipal court judge. Does
8 anyone believe that they have appeared in front of her?

9 Okay. Thank you.

10 One other thing I do want to advise you. Mr. Ramos
11 suffers from a medical condition known as Tourette's syndrome.
12 And it is a neurological condition. It's my understanding that
13 on occasion his head might twitch from side to side.

14 Is there anyone here who feels that, because of that
15 condition, they cannot be fair and impartial, that because --
16 perhaps because of the twitching they might -- may be more
17 likely to believe him guilty or, conversely, that the twitching
18 might cause them to be sympathetic or unable to find him
19 guilty? Anyone have any opinion about that experience with
20 Tourette's syndrome or any -- any such? No? If so, please
21 raise your hand. All right.

22 Now, this is a case where the defendants stand charged
23 with various offenses. And I've gone over those with you.
24 Basically, it is alleged as follows:

25 Defendant Ignacio Ramos is charged with seven counts

1 as follows: That on or about February 17th, 2005, aided and
2 abetted by the co-defendant, Jose Alonso Compean, Defendant
3 Ramos assaulted a person, one initials OAD, with the intent to
4 commit murder, by shooting him with a firearm.

5 Defendant Ramos, aided and abetted by the
6 co-defendant, Jose Alonso Compean, is also charged with assault
7 with a dangerous weapon.

8 Defendant Ramos, aided and abetted by the
9 co-defendant, Jose Alonso Compean, is also charged with assault
10 with serious bodily injury.

11 Defendant Ramos is also charged with discharging a
12 firearm in relation to a crime of violence.

13 Defendant Ramos is also charged with two counts of
14 tampering with an official proceeding.

15 Defendant Ramos, acting under the color of law, in his
16 capacity as a United States Border Patrol agent, is also
17 charged with deprivation of rights under color of law.

18 Defendant Jose Alonso Compean is charged with nine
19 counts, as follows:

20 That on or about February 17, 2005, aided and abetted
21 by the co-defendant, Ignacio Ramos, Defendant Compean assaulted
22 a person whose initials are OAD, with the intent to commit
23 murder.

24 Defendant Compean, aided and abetted by co-defendant,
25 Ignacio Ramos, is also charged with assault with a dangerous

1 weapon.

2 Defendant Compean, aided and abetted by the
3 co-defendant, Ignacio Ramos, is also charged with assault with
4 serious bodily injury.

5 Defendant Compean is also charged with discharging a
6 firearm in relation to a crime of violence.

7 Defendant Compean is also charged with four counts of
8 tampering with an official court proceeding.

9 Defendant Compean, acting under the color of law, in
10 his capacity as a United States Border Patrol agent, is also
11 charged with deprivation of rights under color of law.

12 In the past, and particularly in recent days, there
13 have been quite a few news stories both in the newspaper and on
14 television regarding this case. I want everyone to take a
15 moment and think about it carefully. I need you to let me know
16 if any of you have heard any news stories about this case. If
17 you have, I need any of you who believe that you have
18 previously heard of this case to please stand up at this time.
19 If you think you've heard about this case, anybody, please
20 stand up. I don't care what row you're in. Don't be shy.

21 Okay. Now, let me -- for the rest of you who are
22 seated, as we -- as I ask some of these questions, if you think
23 you know something about this case, go ahead and stand up, all
24 right? Because I need to talk to each of you separately.

25 All right. Juror Number 6, your name again?

1 PROSPECTIVE JUROR: Martha Hood.

2 THE COURT: Where is it that you believe you heard
3 about this case?

4 PROSPECTIVE JUROR: El Paso Times.

5 THE COURT: All right. And how many stories do you
6 think you've read about this case?

7 PROBATION OFFICER: Two, possibly three.

8 THE COURT: All right. How familiar do you feel you
9 are with the facts in this case?

10 PROSPECTIVE JUROR: Well, to the extent of what was in
11 the paper, I feel that -- I'm familiar with those facts --

12 THE COURT: All right. What you read in the --

13 PROSPECTIVE JUROR: -- assuming they are facts. I'm
14 familiar with those.

15 THE COURT: All right. And having the knowledge of
16 the case that you have from reading the things in the paper --
17 you didn't see anything on TV, right?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Have you formed an opinion regarding the
20 case? I don't want to know what the opinion is. I just want
21 to know if you have formed an opinion.

22 PROSPECTIVE JUROR: I would say, based on what I've
23 read, and assuming that it's true, yes, I have.

24 THE COURT: All right. Do you believe that, knowing
25 what you know now about this case, that you can sit and listen

1 to the evidence as presented to you in this courtroom and make
2 a fair and impartial verdict, based solely on the evidence, not
3 what you've heard or seen anywhere else, but based on the
4 evidence you've heard -- and, ladies and gentlemen, for those
5 of you who are going to be answering this question, you owe it
6 to both the Government and the defense to search your souls and
7 be sure that you feel you can be fair and impartial after
8 whatever it is you've read.

9 Go ahead.

10 PROSPECTIVE JUROR: I would like to say yes, but I'm
11 afraid the answer is no.

12 THE COURT: Okay. We will talk to you in just a few
13 minutes.

14 PROSPECTIVE JUROR: Okay.

15 THE COURT: Thank you. Okay. Juror -- you can be
16 seated. Thank you.

17 Juror 13.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: All right. Same questions for you, but
20 let's take them one at a time. Where is it that you believe
21 you heard about this case?

22 PROSPECTIVE JUROR: Claudia Phillips. I heard about
23 it last night, I think on TV, that this might be the trial that
24 they were going to try here today. And that's all I've heard
25 about it.

1 THE COURT: Okay. Is that the only story you -- that
2 you either saw or heard about?

3 PROSPECTIVE JUROR: Yes. I haven't read anything in
4 the papers or seen anything else on TV that I'm aware of.

5 THE COURT: All right. How familiar do you feel you
6 are with the facts in this case?

7 PROSPECTIVE JUROR: I'm not familiar with any facts.

8 THE COURT: Okay. Having the knowledge that you now
9 have about the case, have you formed an opinion regarding this
10 case?

11 PROSPECTIVE JUROR: No.

12 THE COURT: And do you believe that, knowing what you
13 know about this case, that you could sit and listen to the
14 evidence presented to you in this courtroom and make a fair and
15 impartial verdict?

16 PROSPECTIVE JUROR: Yes, ma'am.

17 THE COURT: All right. Thank you, ma'am. You may be
18 seated.

19 Juror Number 14. Go ahead and give me your name.

20 PROSPECTIVE JUROR: Charlene Newman.

21 THE COURT: And, Ms. Newman, where is it you believe
22 you heard about this case?

23 PROSPECTIVE JUROR: The El Paso Times.

24 THE COURT: All right. And how many stories do you
25 think you've read?

1 PROSPECTIVE JUROR: Two.

2 THE COURT: And how familiar do you feel you are with
3 the facts of this case?

4 PROSPECTIVE JUROR: Not that familiar. I read the
5 stories, and I read them, and -- just like I read the paper
6 every day, and moved on to another story. So --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: I also heard it last night on
9 Channel 6 news.

10 THE COURT: Okay. Having the knowledge that you have
11 of this case, from the things that you've heard or seen, do
12 you -- have you formed an opinion regarding this case?

13 PROSPECTIVE JUROR: No, I don't believe I have.

14 THE COURT: Do you feel, then, that you can -- knowing
15 what you know about the case -- that you can sit and be a fair
16 and impartial juror in this case, listen to the evidence that's
17 presented to you in this courtroom, and base a verdict solely
18 on that evidence?

19 PROSPECTIVE JUROR: I think I can -- yes, I do think I
20 can.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: I've not formed any kind of an
23 opinion.

24 THE COURT: All right. And you feel you can be fair
25 and impartial?

1 PROSPECTIVE JUROR: Uh-huh.

2 THE COURT: All right. Thank you, ma'am.

3 Juror Number 16, give me your name, please.

4 PROSPECTIVE JUROR: Jayne Pynes.

5 THE COURT: All right.

6 PROSPECTIVE JUROR: I've read about it in the El Paso
7 Times, and I've also read about it in your website.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: I looked at your website. Every
10 recording says, Come check out our website.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: So I did.

13 THE COURT: All right.

14 PROSPECTIVE JUROR: So I feel very conversant with
15 what's available on line and from my memory of what I read
16 previously. On the other hand, I have formed no opinion.

17 THE COURT: All right. Now, let's talk a little bit
18 about the facts of the case. How familiar do you feel you are
19 with the facts of the case?

20 PROSPECTIVE JUROR: From your website, very familiar.

21 THE COURT: Okay. And when you say my website --

22 PROSPECTIVE JUROR: I mean to say -- I mean the
23 federal district website.

24 THE COURT: Okay. Okay. There's a federal district
25 website?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: And when -- do you know what the address
3 of that website is?

4 PROSPECTIVE JUROR: Texaswd.gov.us, something of that
5 nature.

6 THE COURT: Okay. And when you got into that website,
7 what part of the website are you talking about that you saw
8 information?

9 PROSPECTIVE JUROR: What I did was I clicked on
10 schedules --

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: -- to see if I might be serving on
13 Friday.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: Because the TAKS test is today in
16 the public schools. I'm a public schoolteacher.

17 THE COURT: Right.

18 PROSPECTIVE JUROR: And I clicked on the case.

19 THE COURT: Okay. And so what information did you see
20 that was available there?

21 PROSPECTIVE JUROR: It was a review of the case, along
22 with the allegations and the link to, I think, the El Paso
23 Times. There might not have been a link to the El Paso Times.
24 I don't recall.

25 THE COURT: Okay. And you read all of that?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Knowing what you know about this case, do
3 you -- have you formed an opinion?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Do you feel that you can be fair and
6 impartial in this case, listening only to the evidence that you
7 receive here in the courtroom?

8 PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: All right. Thank you. We'll probably
10 call you up to speak with you in a little while.

11 All right. Next gentleman.

12 PROSPECTIVE JUROR: 21, Bruce Banta.

13 THE COURT: Mr. Banta, where is it that you believe
14 you've heard about this case?

15 PROSPECTIVE JUROR: Through the El Paso Times and the
16 TV programs.

17 THE COURT: All right. And how many stories, either
18 in the Times or on TV, did you see?

19 PROSPECTIVE JUROR: Probably two or three with the
20 El Paso Times, and I know at least two or three times on TV,
21 also.

22 THE COURT: All right. And how familiar do you feel
23 you are with the facts of this case?

24 PROSPECTIVE JUROR: Only with what the paper
25 presented.

1 THE COURT: All right. Having the knowledge that you
2 have, either from the paper or the TV, do you feel that you
3 have formed an opinion regarding this case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Do you feel that you can sit in this
6 courtroom, listen to only the evidence that you receive here,
7 and make a fair and impartial verdict based on that evidence?

8 PROSPECTIVE JUROR: I believe so.

9 THE COURT: Okay. Thank you, Mr. Banta.
10 Juror Number 22, go ahead.

11 PROSPECTIVE JUROR: Marcos Vargas.

12 THE COURT: All right. And have you -- where is it
13 that you believe you heard about this case?

14 PROSPECTIVE JUROR: I believe I heard one of the
15 defendant's name on the news, on TV news.

16 THE COURT: All right. And is -- only on TV?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: And did you -- how many stories do you
19 believe you saw on TV?

20 PROSPECTIVE JUROR: Just one.

21 THE COURT: And how familiar do you feel you are with
22 the facts of this case?

23 PROSPECTIVE JUROR: I don't remember any of the case.
24 I remember hearing the name, but I don't remember any of the
25 facts.

1 THE COURT: All right. Then having the knowledge that
2 you have about this case, Mr. Vargas, have you formed an
3 opinion?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Do you feel that you can sit, listen to
6 the evidence presented to you here in this courtroom, and make
7 a fair and impartial verdict?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: All right. Thank you, sir.
10 Juror Number 32, please give me your name.

11 PROSPECTIVE JUROR: Raymond Llewellyn, Juror 32.

12 THE COURT: All right. And, Mr. Llewellyn, how did
13 you hear about this case?

14 PROSPECTIVE JUROR: The El Paso Times.

15 THE COURT: All right.

16 PROSPECTIVE JUROR: Probably about when it happened.

17 THE COURT: All right.

18 PROSPECTIVE JUROR: And it's very vague circumstances.
19 I'm not familiar with the facts.

20 THE COURT: All right. Now, when you say you believe
21 you heard about this case back when it happened, have you read
22 any recent stories about the case?

23 PROSPECTIVE JUROR: No, ma'am.

24 THE COURT: And how familiar do you feel you are with
25 the facts of the case?

1 PROSPECTIVE JUROR: I'm not.

2 THE COURT: And, having the knowledge that you have
3 regarding this case, have you formed an opinion?

4 PROSPECTIVE JUROR: No, ma'am.

5 THE COURT: Do you feel that you can -- knowing what
6 you know about the case -- sit and listen to the evidence in
7 this courtroom and render a verdict based solely on that
8 evidence?

9 PROSPECTIVE JUROR: No, I don't. I'm a former law
10 enforcement officer.

11 THE COURT: All right. We will talk to you later.
12 And let me ask you, then, where -- what kind of law enforcement
13 work?

14 PROSPECTIVE JUROR: Arkansas State Police.

15 THE COURT: So it was in Arkansas?

16 PROSPECTIVE JUROR: Yes, ma'am.

17 THE COURT: And you believe, because of your prior
18 experience, you just couldn't be a fair and impartial juror in
19 the case. Is that what you're saying?

20 PROSPECTIVE JUROR: I don't think so.

21 THE COURT: Okay. Thank you. We'll talk to you
22 later. All right, Mr. Llewellyn.

23 I can't see your number. Number --

24 PROSPECTIVE JUROR: Me?

25 THE COURT: Yes, sir. Your name?

1 PROSPECTIVE JUROR: 26, Louis Almanza.

2 THE COURT: And, Mr. Almanza, where is it that you
3 believe you heard about this case?

4 PROSPECTIVE JUROR: I read it in the newspaper about
5 three or four times.

6 THE COURT: All right.

7 PROSPECTIVE JUROR: And also on TV.

8 THE COURT: And how familiar do you feel you are with
9 the facts of this case?

10 PROSPECTIVE JUROR: Just what I have read on the
11 newspaper.

12 THE COURT: All right.

13 PROSPECTIVE JUROR: And what they have said on TV.

14 THE COURT: And, having read what you read in the
15 newspaper or heard what you heard on TV, have you formed an
16 opinion regarding this case?

17 PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: Do you feel you can sit in this courtroom,
19 listen to the evidence, and be fair and impartial, and based
20 solely on the evidence, render a verdict?

21 PROSPECTIVE JUROR: I would say no, ma'am.

22 THE COURT: All right. Juror 26, Mr. Almanza. Is
23 that right?

24 PROSPECTIVE JUROR: Right.

25 THE COURT: We will talk to you later, then,

1 Mr. Almanza. Thank you. You may be seated.

2 Juror 45?

3 PROSPECTIVE JUROR: Leonel Castillo, Juror Number 45.

4 I've known about this case through the newspaper.

5 THE COURT: All right. And how many times do you
6 think you saw something in the paper about it?

7 PROSPECTIVE JUROR: Oh, about four or five times.

8 THE COURT: All right. And how familiar do you feel
9 you are with the facts of this case?

10 PROSPECTIVE JUROR: Only what's been in the paper.

11 THE COURT: And, having the knowledge that you have
12 gotten from the facts -- from the newspaper regarding this
13 case, have you formed an opinion?

14 PROSPECTIVE JUROR: No.

15 THE COURT: Do you feel that you can sit in this
16 courtroom, listen to the evidence presented to you, and render
17 a verdict based solely on the evidence in this courtroom?

18 PROSPECTIVE JUROR: I don't think so.

19 THE COURT: You don't think you can do that?

20 PROSPECTIVE JUROR: I don't think so.

21 THE COURT: All right. We will talk to you, then,
22 later, Mr. Castillo. Thank you.

23 Now, is there anyone that I missed? Anyone who, after
24 hearing a little bit about the case, now thinks they might know
25 something about this case? All right.

1 Now, as you can see by our discussions so far in this
2 case, this is a case that involves officers with the Border
3 Patrol. A number of these officers may be testifying in this
4 trial, so it's important that we discuss whether or not any of
5 you have had any prior involvement with the Border Patrol.

6 Do any of you have any family members, close personal
7 friends that are employed in law enforcement, and particularly
8 with Border Patrol? Please, if so, let me know. We'll go row
9 by row. Please raise your hand.

10 Row number 1.

11 Yes, Juror Number 1.

12 PROSPECTIVE JUROR: Juror Number 1, Ricardo Tellez. I
13 have cousins in the police department.

14 THE COURT: Okay. It's a cousin?

15 PROSPECTIVE JUROR: Two cousins.

16 THE COURT: And what -- are we talking first cousin,
17 second cousin?

18 PROSPECTIVE JUROR: First cousin.

19 THE COURT: And how often do you see these cousins?

20 PROSPECTIVE JUROR: Once or twice a year.

21 THE COURT: And they are both with the El Paso Police
22 Department?

23 PROSPECTIVE JUROR: Yes. They're brothers.

24 THE COURT: And do you know what -- I don't know if
25 they both do the same thing. Do you know what each of them

1 does for the police department?

2 PROSPECTIVE JUROR: No, I'm not sure.

3 THE COURT: How often do you see them?

4 PROSPECTIVE JUROR: About twice a year; once or twice

5 a year.

6 THE COURT: And is that at, like, family gatherings?

7 PROSPECTIVE JUROR: Yeah.

8 THE COURT: Do you talk about what they do?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Is there anything about your cousins being

11 with the police department, or discussions you may have had

12 with them, that you feel might affect your ability to be fair

13 and impartial in this case?

14 PROSPECTIVE JUROR: No.

15 THE COURT: All right. Any other family members or

16 friends?

17 PROSPECTIVE JUROR: That's it.

18 THE COURT: Okay. Thanks.

19 PROSPECTIVE JUROR: My name is Guadalupe Alvarez, and

20 I'm Juror Number 3. And I do have a brother --

21 THE COURT: A brother?

22 PROSPECTIVE JUROR: Uh-huh.

23 THE COURT: And what does he do?

24 PROSPECTIVE JUROR: Works for Border Patrol.

25 THE COURT: Okay. And where is he stationed?

1 PROSPECTIVE JUROR: I believe in Ysleta.

2 THE COURT: So here in the El Paso area?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: And how long has he been with Border
5 Patrol?

6 PROSPECTIVE JUROR: I believe, like -- I would say
7 eight years.

8 THE COURT: And do you know what he does with Border
9 Patrol, what his exact assignment is?

10 PROSPECTIVE JUROR: He works -- I believe he works in
11 the field.

12 THE COURT: Okay. And how often do you see your
13 brother?

14 PROSPECTIVE JUROR: I would say once a month.

15 THE COURT: And I assume that's at some sort of social
16 setting?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: And do you talk about the work he does?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Have you ever discussed any of his work
21 with him?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Is there anything about experiences that
24 he may have had, or the fact that your brother works for Border
25 Patrol, that you feel may affect your ability to be fair and

1 impartial to both sides?

2 PROSPECTIVE JUROR: No, Your Honor.

3 THE COURT: No?

4 PROSPECTIVE JUROR: No.

5 THE COURT: All right. You may be seated. Thank you.

6 Anyone else in that first row? All right.

7 Second row back.

8 Yes, sir.

9 PROSPECTIVE JUROR: My name is Maximino Torres, Juror
10 Number 8. I have a co-worker that her husband is a Border
11 Patrol agent. He used to work on the field. Now he's
12 stationed, I guess, at that the airport --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: -- you know.

15 THE COURT: And how long has this person been your
16 co-worker?

17 PROSPECTIVE JUROR: Nine years.

18 THE COURT: And do you socialize outside of work?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Okay. And do you talk about -- do you
21 know her husband?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: And have -- and I assume, then, you've met
24 him at social settings?

25 PROSPECTIVE JUROR: Correct, and at his house.

1 THE COURT: And do you talk about his work?

2 PROSPECTIVE JUROR: No. Just maybe some particular
3 items, such as him meeting one, I guess you would call a
4 Hollywood star, at one time at the airport. But not
5 everything, you know.

6 THE COURT: Okay. Is -- have you ever heard about
7 this case before?

8 PROSPECTIVE JUROR: No, I haven't.

9 THE COURT: All right. And is there anything about
10 the fact that -- would you consider this co-worker a close
11 friend, and her husband?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Is there anything about the fact that you
14 have a co-worker that is a close friend, working with her on a
15 daily basis, or your knowing them, that you feel might affect
16 your ability to be fair and impartial in this case?

17 PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: All right. Thank you, sir.

19 Anyone else? Yes, sir.

20 PROSPECTIVE JUROR: David Gallardo, Juror Number 9.
21 My wife's brother is a Border Patrol agent here in the El Paso
22 sector.

23 THE COURT: So your brother-in-law?

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: All right. And how long has he been with

1 Border Patrol?

2 PROSPECTIVE JUROR: 13 years.

3 THE COURT: How often do you see your brother-in-law?

4 PROSPECTIVE JUROR: Only on family occasions now.

5 THE COURT: Do you know -- and how often would you say
6 that is?

7 PROSPECTIVE JUROR: Six months -- every six months or
8 so.

9 THE COURT: Okay. And when you see him, do you talk
10 about his work?

11 PROSPECTIVE JUROR: No, we do not.

12 THE COURT: Have you ever discussed with him certain
13 cases, or work he's done?

14 PROSPECTIVE JUROR: I had previously, when I used to
15 play golf with him.

16 THE COURT: All right. And did you -- have you ever
17 heard about this case?

18 PROSPECTIVE JUROR: No, I have not.

19 THE COURT: Is there anything about the fact that your
20 brother-in-law is with Border Patrol that you feel might affect
21 your ability to be fair and impartial? And that includes
22 what -- having to deal with your wife after your render a
23 verdict in this case.

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: No? You think you could be fair and

1 impartial?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: She also has three other sisters
5 that are married to law enforcement agents.

6 THE COURT: Okay. So you have a law enforcement
7 family, huh?

8 PROSPECTIVE JUROR: She does.

9 THE COURT: She does. Well, by marriage.

10 PROSPECTIVE JUROR: Well, I do, too.

11 THE COURT: Okay. And what kind of work do they do?

12 PROSPECTIVE JUROR: One is with the sheriff's
13 department.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: I think he's with internal
16 affairs.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: Second one is with the police
19 department.

20 THE COURT: Do you know what he does?

21 PROSPECTIVE JUROR: He is a motorcycle police officer.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR: The third one is with the
24 sheriff's department, as well. He's a supervisor.

25 THE COURT: And how often do you see these family

1 members?

2 PROSPECTIVE JUROR: With the police officer, I play
3 golf with him every weekend.

4 THE COURT: Okay. And do you talk -- he's a
5 motorcycle officer?

6 PROSPECTIVE JUROR: Yes, ma'am.

7 THE COURT: Okay. And do you talk about his work?

8 PROSPECTIVE JUROR: He just tells me who he stopped
9 during the week.

10 THE COURT: Okay. Is there anything about the -- your
11 relationship with him that you feel might affect your ability
12 to be fair and impartial in this case?

13 PROSPECTIVE JUROR: No, ma'am.

14 THE COURT: All right. And any -- any of the other
15 officers, I guess they're sheriff's officers, anything you've
16 talked about with them, or your relationship with them, that
17 you feel might affect your ability to be fair and impartial in
18 this case?

19 PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: All right. Thank you, sir.

21 Anyone else first row? No?

22 First row in the back.

23 Yes, ma'am. Juror Number 18.

24 PROSPECTIVE JUROR: Linda Elizalde, Number 18. My
25 sister is an FBI agent here in El Paso.

1 THE COURT: All right.

2 PROSPECTIVE JUROR: And my other sister is a DEA agent
3 in California.

4 THE COURT: All right. Let's talk about your sister
5 here in El Paso first. How long has she been with FBI?

6 PROSPECTIVE JUROR: It's been about eight years.

7 THE COURT: Has she been in El Paso the whole time?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: And do you know what she does with the
10 FBI?

11 PROSPECTIVE JUROR: She works in the field.

12 THE COURT: And do you talk about her cases with her.

13 PROSPECTIVE JUROR: No.

14 THE COURT: How about your sister out in California?

15 PROSPECTIVE JUROR: No.

16 THE COURT: How long has she been with DEA?

17 PROSPECTIVE JUROR: Five years.

18 THE COURT: Do you know what she does with DEA?

19 PROSPECTIVE JUROR: No. Just a lot of paperwork.

20 THE COURT: Is there anything about the fact that you
21 have two sisters that are in law enforcement that you feel
22 might affect your ability to be fair and impartial in the case?

23 PROSPECTIVE JUROR: No.

24 THE COURT: All right. Thank you, ma'am. And no
25 other family members?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Not like that's not enough, but -- all
3 right.

4 Anyone else?

5 Yes, sir.

6 PROSPECTIVE JUROR: Jim Baudier. I work with Doss
7 Aviation. I'm Juror Number 19. We maintain some of the air
8 operations, aircraft, some of their overflow. Other than that,
9 I do not associate with Border Patrol.

10 THE COURT: Okay. Now, when you're saying -- I assume
11 you're talking out at the airport?

12 PROSPECTIVE JUROR: At Biggs Army airfield.

13 THE COURT: Okay. And do you -- so, by maintaining
14 aircraft, do you actually meet with them, or is it mostly just
15 with the machines that they use?

16 PROSPECTIVE JUROR: Their chiefs.

17 THE COURT: Okay. And how -- do you socialize with
18 any Border Patrol --

19 PROSPECTIVE JUROR: We do not socialize with them at
20 all.

21 THE COURT: Is there anything about the work that you
22 do, or the people that you know there with either Border Patrol
23 or any other law enforcement, that you feel might affect your
24 ability to be fair in this case?

25 PROSPECTIVE JUROR: No, Your Honor.

1 THE COURT: All right. Thank you, sir.

2 Anyone else in that first row?

3 Yes, sir.

4 PROSPECTIVE JUROR: Yes. Bruce Banta, Juror Number
5 21. I have a brother-in-law who is a special agent with the
6 FBI. He's an instructor at the FBI academy in Quantico. I
7 talk to him perhaps once a month, only on family matters. He
8 never discusses any of his business at all.

9 THE COURT: I assume, since he's an instructor at the
10 academy, he's had some prior experience with the FBI.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Was he ever stationed here in El Paso?

13 PROSPECTIVE JUROR: No, he -- as far as I know, never.

14 THE COURT: Okay. And do you know, when he was
15 actually not at the academy, do you know what a kind of work he
16 was doing?

17 PROSPECTIVE JUROR: Before the academy?

18 THE COURT: Yes.

19 PROSPECTIVE JUROR: He was a specialist at forensics.

20 THE COURT: Okay. Is there any -- did you talk about
21 his work, or do you?

22 PROSPECTIVE JUROR: No, never. He never discussed his
23 cases at all.

24 THE COURT: All right. Is there anything about the
25 fact that your brother is with the FBI, or law enforcement,

1 that you feel might affect your ability to be fair in this
2 case?

3 PROSPECTIVE JUROR: I have a lot of pride in the
4 uniformed services of the Federal Government.

5 THE COURT: Okay. But anything about -- about that,
6 that makes you feel you can't be fair and impartial in this
7 case?

8 PROSPECTIVE JUROR: I don't believe so.

9 THE COURT: All right. Thank you, sir.
10 Yes, sir.

11 PROSPECTIVE JUROR: My boss' brother-in-law, one of
12 them is an officer here in -- police officer, here in El Paso.

13 THE COURT: Okay. Before you go on, your name?

14 PROSPECTIVE JUROR: Oh, Marcos Vargas.

15 THE COURT: And I know Mr. Perez tries to remember
16 everybody's names, but I think he probably can't keep track of
17 everybody.

18 Mr. Vargas, your boss' brother is with the police
19 department?

20 PROSPECTIVE JUROR: His brother-in-law is with the
21 police department, and another brother-in-law is with the
22 Border Patrol in Tucson.

23 THE COURT: All right. I assume, since you know those
24 facts, do you know these two people?

25 PROSPECTIVE JUROR: Yes, I do. I know them well.

1 THE COURT: All right. And do you talk about their
2 work?

3 PROSPECTIVE JUROR: No.

4 THE COURT: How often do you see them?

5 PROSPECTIVE JUROR: I would say maybe three times a
6 year at parties or something.

7 THE COURT: And do you talk about their work?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Is there anything about knowing them, or
10 the work that they do, or the kind of work, that you feel might
11 affect your ability to be fair and impartial in this case?

12 PROSPECTIVE JUROR: No.

13 THE COURT: And, much like Juror Number 9, my question
14 to you is: Since it's your boss who's related to these people,
15 is there anything about that that might affect your ability to
16 be fair and impartial?

17 PROSPECTIVE JUROR: No. He's more of a friend now
18 than my boss.

19 THE COURT: Okay. Well, that's good to know. All
20 right.

21 Anyone in row 2, in the back?

22 Okay. We'll start with you, sir.

23 PROSPECTIVE JUROR: Rick Alaniz, Juror Number 25. I
24 have several ex-coworkers who are now Border Patrol agents.
25 One is DEA. And I've dealt with Border Patrol professionally

1 with my job.

2 THE COURT: All right. And you are, actually, a
3 probation officer?

4 PROSPECTIVE JUROR: Yes, ma'am.

5 THE COURT: And how long have you been a probation
6 officer?

7 PROSPECTIVE JUROR: 21 years.

8 THE COURT: And, in your work as a probation officer,
9 I assume you work with law enforcement.

10 PROSPECTIVE JUROR: Yes, I do.

11 THE COURT: And do you socialize, also?

12 PROSPECTIVE JUROR: Socialize?

13 THE COURT: Yes.

14 PROSPECTIVE JUROR: No, not at all.

15 THE COURT: So it's only work-related, usually?

16 PROSPECTIVE JUROR: Work-related.

17 THE COURT: And how often would you say that you deal
18 with Border Patrol in your work?

19 PROSPECTIVE JUROR: Maybe once a year.

20 THE COURT: And is there anything about your working
21 with Border Patrol that you feel might affect your ability to
22 be fair and impartial in this case?

23 PROSPECTIVE JUROR: No, I don't think so.

24 THE COURT: I assume, as a probation officer, you work
25 with a lot of law enforcement. Anything with the work that you

1 do with the law enforcement people that you feel might affect
2 your ability to be fair and impartial in this case?

3 PROSPECTIVE JUROR: I -- I can be fair.

4 THE COURT: I assume you appear in court quite often.

5 PROSPECTIVE JUROR: Yes, ma'am.

6 THE COURT: Anything about having to appear in court,
7 as a part of your work, that you feel might affect your ability
8 to be fair and impartial in this case?

9 PROSPECTIVE JUROR: No, ma'am.

10 THE COURT: And, being a probation officer, you
11 supervise people that have been sentenced, I assume.

12 PROSPECTIVE JUROR: That's correct.

13 THE COURT: Is there anything about your work with
14 those people that you feel affects your ability to be fair and
15 impartial in this case?

16 PROSPECTIVE JUROR: There, it might. It might be,
17 there.

18 THE COURT: All right. Then we will talk to you
19 later. All right? Thanks.

20 Yes, sir.

21 PROSPECTIVE JUROR: Juror 26. My name is Louis
22 Almanza. I have a cousin who works as a special agent in the
23 FBI.

24 THE COURT: All right. And what -- how close a cousin
25 is he?

1 PROSPECTIVE JUROR: He's a first cousin.

2 THE COURT: And how often do you see him?

3 PROSPECTIVE JUROR: About once a year. He's in
4 San Antonio.

5 THE COURT: And has he always been in San Antonio?

6 PROSPECTIVE JUROR: No, ma'am. He's been on and off
7 different locations.

8 THE COURT: Was he ever here in El Paso?

9 PROSPECTIVE JUROR: No, ma'am.

10 THE COURT: Do you talk about his work?

11 PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: Is there anything about that relationship,
13 or discussions you may have had with him, that you feel might
14 affect your ability to be fair in this case?

15 PROSPECTIVE JUROR: No, ma'am.

16 THE COURT: Any other family members or close friends?

17 PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: Thank you, sir.

19 Anyone else? Yes, ma'am.

20 PROSPECTIVE JUROR: Number 27, Yvette Flores. I have
21 a son-in-law that's a U.S. Marshal.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR: And I have three nephews that are
24 in the forces. One is a -- in the prison -- federal prison
25 system.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: One is Border Patrol. And the
3 other one is a police officer here in El Paso.

4 THE COURT: Okay. Let's talk about -- it's your
5 son-in-law first?

6 PROSPECTIVE JUROR: He's a United States Marshal.

7 THE COURT: All right. Where is he a --

8 PROSPECTIVE JUROR: Here in El Paso.

9 THE COURT: And is he stationed here in this
10 courthouse?

11 PROSPECTIVE JUROR: Yes, ma'am.

12 THE COURT: And how often do you see your son-in-law?

13 PROSPECTIVE JUROR: Maybe once every week, about three
14 times a month.

15 THE COURT: And how long has he been with the
16 marshals?

17 PROSPECTIVE JUROR: I would say about 15 years.

18 THE COURT: And does he talk to you about the cases?

19 PROSPECTIVE JUROR: Oh, no.

20 THE COURT: Does he talk about the work he does?

21 PROSPECTIVE JUROR: No, ma'am, he does not.

22 THE COURT: Have you heard about this case?

23 PROSPECTIVE JUROR: No, ma'am.

24 THE COURT: Is there anything about the fact that your
25 son-in-law works for the U.S. Marshal Service that you feel

1 might affect your ability to be fair in the case?

2 PROSPECTIVE JUROR: No, ma'am.

3 THE COURT: Now, you have three nephews in law
4 enforcement, one at a federal correctional facility?

5 PROSPECTIVE JUROR: In Arizona.

6 THE COURT: All right. And one with the police
7 department?

8 PROSPECTIVE JUROR: Here in El Paso.

9 THE COURT: And the third one with Border Patrol?

10 PROSPECTIVE JUROR: Border Patrol.

11 THE COURT: How close are you to these nephews?

12 PROSPECTIVE JUROR: They're very -- my sister's son,
13 and then my brother-in-law's sons, two of them.

14 THE COURT: And how often do you see them?

15 PROSPECTIVE JUROR: Maybe twice or three times a year.

16 THE COURT: Other than the -- the one police officer,
17 I think you said, is here in El Paso. Are the other two
18 gentleman here in El Paso?

19 PROSPECTIVE JUROR: No. One is in Arizona, at the
20 prison system in Arizona.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: And the other one is in the Border
23 Patrol in Arizona, also.

24 THE COURT: And how -- do you ever talk about the work
25 they do?

1 PROSPECTIVE JUROR: No, ma'am. I don't.

2 THE COURT: Is there anything about your relationship
3 to them, particularly -- I guess it's your nephew who's
4 actually with Border Patrol, that you feel might affect your
5 ability to be fair and impartial?

6 PROSPECTIVE JUROR: No, ma'am.

7 THE COURT: All right. Thank you, ma'am.

8 Anyone else in that row?

9 PROSPECTIVE JUROR: Bob Gourley, Juror Number 30. My
10 brother-in-law is with the El Paso Police Department. He's a
11 lieutenant. I know he's worked in homicide. He's getting
12 ready to retire. And I think he just recently headed up a task
13 force to protect the elderly, a personnel task force to protect
14 the elderly.

15 THE COURT: So I assume he's been with the police
16 department a while.

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Do you -- how often do you see him?

19 PROSPECTIVE JUROR: Once, sometimes twice a month.

20 THE COURT: And do you talk about his work?

21 PROSPECTIVE JUROR: I like to know about what he did
22 in homicide, but he doesn't like to talk about it. So --

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: -- he's pretty -- he doesn't tell
25 me much.

1 THE COURT: Not like CSI, huh?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Is there -- and do you -- other than your
4 brother, do you know any other people in law enforcement, or
5 because of your brother, do you know other people in law
6 enforcement?

7 PROSPECTIVE JUROR: No.

8 THE COURT: And is there anything about your brother
9 being in law enforcement, or discussions you've had with him,
10 that you think might affect your ability to be fair in this
11 case?

12 PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: All right. Thank you, sir.

14 Anyone else in that row?

15 Next row back. I guess it's the third row.

16 Yes.

17 PROSPECTIVE JUROR: Number 35, Danielle Chavez. My
18 husband is a detention officer with the sheriff's department.

19 THE COURT: And I assume that's here in El Paso.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And how long has he been a detention
22 officer?

23 PROSPECTIVE JUROR: For about eight months.

24 THE COURT: And before that, was he involved in law
25 enforcement?

1 PROSPECTIVE JUROR: No.

2 THE COURT: And I assume, then, that he is stationed
3 right there at the jail working with the prisoners.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Is there any -- do you socialize with
6 people that are in law enforcement?

7 PROSPECTIVE JUROR: No. I guess my brother-in-law's
8 neighbor is one, but right now he's over in Iraq.

9 THE COURT: Okay. Is there anything about your
10 husband being a detention officer, working with prisoners, or
11 people you know, that you feel might affect your ability to be
12 fair in this case?

13 PROSPECTIVE JUROR: No, ma'am.

14 THE COURT: All right. Thank you, ma'am.

15 Anyone else in that row?

16 Yes.

17 PROSPECTIVE JUROR: Leticia Miranda, Juror Number 38.
18 I have an uncle in immigration. I have a cousin in the
19 sheriff's department, and another one in the police department,
20 and a sister-in-law in the FBI.

21 THE COURT: Okay. Now, the three that you mentioned
22 are all uncles?

23 PROSPECTIVE JUROR: No, one uncle and two cousins.

24 THE COURT: One uncle and two cousins. And the uncle
25 that is with immigration, ever since they divided it up,

1 there's a bunch of different agencies. Do you know which
2 agency he's with?

3 PROSPECTIVE JUROR: I do not know.

4 THE COURT: How often do you see this uncle?

5 PROSPECTIVE JUROR: Once or twice a year.

6 THE COURT: And do you talk about the work he does?

7 PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: Is he here in El Paso?

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: Okay. Is there anything about the fact
11 that he works with immigration, or discussions you may have
12 had, that you feel might affect your ability to be fair in this
13 case?

14 PROSPECTIVE JUROR: No, ma'am.

15 THE COURT: How about your cousins or -- your
16 sister-in-law?

17 PROSPECTIVE JUROR: Sister-in-law.

18 THE COURT: The work that they do --

19 PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Have you talked to them about the work
21 they do?

22 PROSPECTIVE JUROR: No, ma'am.

23 THE COURT: And anything about their work in law
24 enforcement or your relationship with them that you feel might
25 affect your ability to be fair in this case?

1 PROSPECTIVE JUROR: No, ma'am.

2 THE COURT: Thank you, ma'am.

3 All right. Anyone in the back row?

4 Yes.

5 PROSPECTIVE JUROR: Donna Byers, Juror Number 41. I
6 have a brother-in-law who is in the Border Patrol, and he's
7 never been assigned here in El Paso, and never has discussed
8 his work.

9 THE COURT: Okay. Where is he assigned?

10 PROSPECTIVE JUROR: At the moment, he's in Ohio.

11 THE COURT: All right. And how long has he been with
12 Border Patrol?

13 PROSPECTIVE JUROR: I would have to say over ten
14 years.

15 THE COURT: And do you talk about his work at all?

16 PROSPECTIVE JUROR: No, not at all.

17 THE COURT: Is there anything about the mere fact that
18 he is in Border Patrol that you feel might affect your ability
19 to be fair and impartial in this case?

20 PROSPECTIVE JUROR: No, ma'am.

21 THE COURT: All right. Anyone else? Any other family
22 member?

23 PROSPECTIVE JUROR: No.

24 THE COURT: All right. Thank you.

25 Did I miss anybody?

1 Yes, sorry.

2 PROSPECTIVE JUROR: Elia Martinez, Juror Number 24. I
3 have a second cousin that's in the Border Patrol. And my
4 co-worker's husband is in the Border Patrol.

5 THE COURT: Okay. So those are two different people
6 in Border Patrol. How often do you see your co-worker's
7 husband?

8 PROSPECTIVE JUROR: Often.

9 THE COURT: Okay. Do you -- so you socialize?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: And how about your second cousin?

12 PROSPECTIVE JUROR: Only when there's a family event
13 going on.

14 THE COURT: And how often would you say that that is?

15 PROSPECTIVE JUROR: Maybe twice or once a year.

16 THE COURT: How many times?

17 PROSPECTIVE JUROR: Maybe twice or once a year,
18 depending if there's a wedding or something.

19 THE COURT: All right. With either one of them do you
20 talk about their work?

21 PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: Do you talk about your co-worker -- with
23 your co-worker about their spouse's work?

24 PROSPECTIVE JUROR: Uh-huh.

25 THE COURT: You do. Okay. And so -- I'm not sure you

1 understood my question. In other words, do you -- is it a
2 female married to a male who is with Border Patrol that's
3 your -- is your co-worker a male or a female?

4 PROSPECTIVE JUROR: My co-worker is a female.

5 THE COURT: And she's married to someone in Border
6 Patrol. Do you talk about her -- with her about her husband's
7 work?

8 PROSPECTIVE JUROR: No, ma'am. No, no, no.

9 THE COURT: Okay. That's what I wanted to make sure.
10 I wasn't sure you understood. Maybe I didn't phrase myself too
11 well. All right.

12 So is there anything about the work that your
13 co-worker does, the discussions you've had with your co-worker
14 or her husband, or the fact that you socialize with them, that
15 you feel might affect your ability to be fair and impartial in
16 this case?

17 PROSPECTIVE JUROR: No, ma'am.

18 THE COURT: All right. Thank you.

19 Anyone else that I missed?

20 Now, this next question has to do with experiences
21 with Border Patrol, Customs. Some people confuse the two. And
22 since they have been divided up into a number of agencies, it's
23 easy to confuse. So when I say Border Patrol, I mean Customs,
24 ICE -- I can't -- sometimes I can't even remember what they all
25 stand for. But anyone that you would characterize as working

1 along the border doing different functions.

2 I would like to know if any of you -- we live on the
3 border. We -- also, many of us go across the border often and
4 have various experiences. Is there anyone here who feels that
5 they have had an experience that you would personally
6 characterize as unpleasant, and that you feel, because of that
7 experience, it would affect your ability to be fair and
8 impartial in this case?

9 Anyone, row 1?

10 Second row?

11 Anybody in the first row in the back?

12 Second row in the back?

13 Third row?

14 And all the way in the way back?

15 Okay. Now, the opposite of that question. Again, we
16 live on the border and have different experiences. Is there
17 anyone in this courtroom that has had an experience with Border
18 Patrol, Customs, or ICE, that they've had such a pleasant
19 experience -- this is kind of like getting the cat out of the
20 tree by the fire department -- that you have had such a
21 pleasant experience with them that you feel you couldn't be
22 fair and impartial in this case? Anyone?

23 Anyone in the first row?

24 Second row?

25 First row in the back?

1 Second row in the back?

2 Third row?

3 And all the way in the back?

4 Yes.

5 PROSPECTIVE JUROR: Bill Forbes, Juror Number 42.

6 Does the question concern all law enforcement or just Border
7 Patrol?

8 THE COURT: Well, if -- if you -- if it is -- if
9 you're asking the question, then I will say to you all law
10 enforcement. Did you have either -- did you have a pleasant or
11 an unpleasant experience?

12 PROSPECTIVE JUROR: A pleasant. And actually, in my
13 line of work, I have relationships with several people in
14 several law enforcement agencies around town in a border
15 professional way, along the lines of charity work and Crime
16 Stoppers and that type of thing, just because of my line of
17 work.

18 THE COURT: Gotcha. And is there anything about that
19 experience -- and I appreciate -- and this goes for anybody, if
20 you have a question, feel free to ask me.

21 Is there anything about working with law enforcement,
22 in general, that -- I mean, this is a case all about law
23 enforcement. Is there anything that you feel, with that
24 experience, might affect your ability to be fair and impartial
25 in this kind of a case?

1 PROSPECTIVE JUROR: Not at all. I've had a good time.

2 THE COURT: All right. Thank you. And I hope you
3 have a good time here.

4 All right. Anybody else?

5 Yes, sir.

6 PROSPECTIVE JUROR: Marcos Vargas, Juror 22.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR: We did all the cameras here for
9 the border, the ones when you come across they take a -- with
10 my company, they did. And we did all the way down to Laredo.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: So I worked with Border Patrol and
13 Customs. I had -- I used to be with a GSA tag. I'd say it was
14 a pleasant experience.

15 THE COURT: Is there anything about working closely --
16 I assume that you -- on occasion, you were working closely with
17 them to install those cameras. Anything about your work
18 relationship with them that you feel might affect your ability
19 to be fair in this kind of a case?

20 PROSPECTIVE JUROR: I believe so, yes.

21 THE COURT: Okay. We will talk to you later, then.

22 Anyone else that I missed? Okay.

23 Now, as -- as you -- as you've heard me talking, I
24 will occasionally say that I will speak with some of you later.
25 This next question, I want you to be perfectly clear that, if

1 you would like to talk with me privately in response to this
2 question, you need to let me even know that. Okay? So don't
3 let the fact that you may not want to answer too much publicly
4 dissuade you from answering this question. It's an important
5 question.

6 The next question has to do with criminal history.
7 Have any of you or any member of your immediate family ever
8 been charged with a crime, indicted by the Grand Jury, the
9 target of a criminal investigation, or a witness in the
10 crim- -- in a criminal case?

11 Anybody in row one? Yes, ma'am.

12 PROSPECTIVE JUROR: Claudia Flores, Juror 5.

13 THE COURT: All right. And, Ms. Flores, do you mind
14 telling me what kind of ex- --

15 PROSPECTIVE JUROR: My father, criminal.

16 THE COURT: Okay. And how long ago was that?

17 PROSPECTIVE JUROR: It's been 20 years ago.

18 THE COURT: And do you mind talking about it?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Okay. Did you have any involvement in it?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. Did you act as a witness? Did
23 you attend the trial?

24 PROSPECTIVE JUROR: A witness.

25 THE COURT: And is there anything about what he went

1 through, and your involvement in that, that you feel might
2 affect your ability to be fair and impartial in this case?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Do you mind saying what kind of crime he
5 was charged with?

6 PROSPECTIVE JUROR: Murder.

7 THE COURT: Okay. And -- okay. We will probably talk
8 to you later, just to make sure, all right, if you're
9 comfortable. All right. Thank you. You may be seated.

10 Anyone else in row 1?

11 And I appreciate your candor.

12 Anyone in row 2?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Yes, ma'am.

15 PROSPECTIVE JUROR: Yes. I have a -- I'm Joann Wardy,
16 Juror Number 12.

17 THE CLERK: All right.

18 PROSPECTIVE JUROR: And I had a relative that was
19 involved in a trial --

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: -- to do with drugs and murder.

22 THE COURT: And were you involved in at that at all,
23 Ms. Wardy?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Is there anything about that experience

1 that you feel might affect your ability to be fair in this
2 case?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Did you attend the trial?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. So is -- and only you would know.

7 Is there anything about the experience at all that would affect
8 your ability to be fair and impartial in this kind of a case?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Thank you, Ms. Wardy.

11 Anyone else?

12 Yes.

13 PROSPECTIVE JUROR: Claudia Phillips, Juror Number 13.

14 My daughter, her brother-in-law was indicted for accessory to
15 murder and was sentenced to 20 years, I think.

16 THE COURT: Okay. Was that here in El Paso?

17 PROSPECTIVE JUROR: In El Paso, yes.

18 THE COURT: Okay. And did you have anything to do
19 with that case, other --

20 PROSPECTIVE JUROR: I had nothing to do with it, other
21 than I knew the defendant.

22 THE COURT: Okay. And is there -- did you attend the
23 trial?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Is -- I assume it had some affect on -- it

1 was your daughter?

2 PROSPECTIVE JUROR: My daughter's brother-in-law.

3 THE COURT: Right. But I -- I assume it may have had
4 some affect on your daughter.

5 PROSPECTIVE JUROR: Yes, somewhat.

6 THE COURT: Is there anything about that experience
7 that you went through, having a family member, perhaps, that
8 was affected by it, that you feel might affect your ability to
9 be fair and impartial in this case?

10 PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: All right. Thank you, ma'am.

12 Anyone else? And I know these are difficult
13 questions. And, as I said, if anyone feels they would rather
14 talk to me privately, that's fine.

15 Anyone in row 1?

16 Second row in the back?

17 Yes, sir.

18 PROSPECTIVE JUROR: Rick Alaniz, Juror 25. I've been
19 a witness for criminal cases, both for the defense and the
20 state. And I had a cousin do federal time.

21 THE COURT: Okay. Let's talk about -- and we're going
22 to probably call you up and speak with you privately. But just
23 to make sure, when you're talking about a witness, are you
24 saying in your capacity as a probation officer?

25 PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: Have you ever had any personal involvement
2 in a criminal case?

3 PROSPECTIVE JUROR: No, ma'am.

4 THE COURT: And this cousin that was involved, was
5 that here in El Paso?

6 PROSPECTIVE JUROR: Yes, it was.

7 THE COURT: And were you involved in that case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Did you attend the trial?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Is there anything about your cousin's
12 involvement that you feel might affect your ability to be fair
13 in this case?

14 PROSPECTIVE JUROR: No.

15 THE COURT: All right. Thank you.

16 Anyone else in that row?

17 Yes, ma'am.

18 PROSPECTIVE JUROR: Sylvia Soliz, Juror Number 23. My
19 ex-husband, he was indicted for vehicular homicide probably
20 about nine years ago.

21 THE COURT: Were you married to him at the time?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: And were you involved in the trial at all,
24 as a witness or attending the trial or anything?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: And do you mind talking about it?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Okay. Did you attend the trial or were
4 you a witness?

5 PROSPECTIVE JUROR: No, I just attended the trial.

6 THE COURT: Okay. And is there anything about the
7 experience that you went through, or that your husband went --
8 your ex-husband went through, that you feel might affect your
9 ability to be fair in this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: No?

12 PROSPECTIVE JUROR: No.

13 THE COURT: You feel you can listen to the evidence in
14 this case and render a verdict based solely on the evidence?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. Thank you, ma'am.

17 Anyone else in that row?

18 Third row back. Anyone?

19 Yes, sir.

20 PROSPECTIVE JUROR: Ray Llewellyn, Juror Number 32.
21 I've been a witness in a number of criminal cases.

22 THE COURT: And that was in your role as an officer
23 with the Arkansas State Police, right?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: And did you ever have -- I understand that

1 you were with the department there. Did you ever have any
2 personal experiences?

3 PROSPECTIVE JUROR: No.

4 THE COURT: And so any experiences you may have had
5 would have been in your role as a law enforcement officer.

6 PROSPECTIVE JUROR: Yes, ma'am.

7 THE COURT: Anything about that, other than what
8 you've sort of indicated to me, that you feel might affect your
9 ability to be fair and impartial in this case?

10 PROSPECTIVE JUROR: Same reasons as before.

11 THE COURT: All right. Thank you, sir.

12 Anyone else in the third row?

13 Okay. In the way back, anyone had any personal
14 experiences?

15 Yes, sir.

16 PROSPECTIVE JUROR: Bill Forbes, Juror Number 42. I
17 was a witness in a military court martial.

18 THE COURT: All right. And what was that person up
19 for court marshal for?

20 PROSPECTIVE JUROR: Arson and explosives.

21 THE COURT: And were you in the military at the time?

22 PROSPECTIVE JUROR: No, I was a civilian.

23 THE COURT: Okay. And how long ago was that.

24 PROSPECTIVE JUROR: More than 20 years.

25 THE COURT: Is there anything about that experience,

1 as a witness in that case, that you feel might affect your
2 ability to be fair and impartial in this case?

3 PROSPECTIVE JUROR: No, Your Honor.

4 THE COURT: All right. You feel you can listen to the
5 evidence in this case and render a verdict based solely on the
6 evidence?

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: All right. Thank you, sir.

9 Anyone else?

10 Yes, sir.

11 PROSPECTIVE JUROR: John Wicker, 44. Again, the
12 friend of mine that was sentenced, I was just there for moral
13 support.

14 THE COURT: Okay. And you -- what was he charged
15 with?

16 PROSPECTIVE JUROR: False information to Dun &
17 Bradstreet.

18 THE COURT: Okay. And how long ago was this?

19 PROSPECTIVE JUROR: About a year and a half ago.

20 THE COURT: And I assume, since you were there for
21 moral support, that your friend was affected by it and you felt
22 you needed to be there for him.

23 Is there anything about what he went through, and the
24 mere fact he was charged and that he was a close friend of
25 yours, that you feel might affect your ability to be fair in

1 the case?

2 PROSPECTIVE JUROR: It would not affect my ability.

3 THE COURT: All right. You think you can listen to
4 the evidence in this case and render a verdict solely on that
5 evidence?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: All right. Thank you, sir.

8 Anybody that I missed?

9 Okay. Let's talk a little bit about lawsuit
10 experience. Occasionally, I will encounter jurors who have had
11 an experience in our judicial system that has made such a
12 strong impression on them that they are unable to set their
13 personal beliefs aside in subsequent legal proceedings.

14 You may have been a victim of a crime, you may have
15 filed a lawsuit or defended a lawsuit. You may have gone
16 through a divorce. Whatever it may be, it has so affected you
17 that you are just unable to be objective when it comes to
18 judicial proceedings. So let's talk a little bit about
19 personal experiences.

20 Is there anyone who has been a party to a lawsuit,
21 civil or criminal, which has so affected you that you just
22 don't feel that you could be fair and impartial if selected as
23 a juror in this case?

24 Anybody in the first row?

25 Second row?

1 First row in the back?

2 Second row in the back?

3 Third row?

4 All way in the way back under the clock? Nobody?

5 Okay.

6 I'm going to ask the attorneys for the Government, if
7 you could go ahead and list for us the potential witnesses in
8 this case.

9 Now, ladies and gentlemen, these are possible
10 witnesses. It doesn't mean they will testify. But it's
11 important that if any of you have -- or feel you might know
12 these witnesses, that you let me know. So listen carefully
13 as -- Ms. Kanof, you're going to read the list?

14 MS. KANOF: I will, Your Honor.

15 THE COURT: -- as Ms. Kanof reads that list. And I'm
16 going to ask the defense to do that, too.

17 Go ahead.

18 MS. KANOF: There are two Agent Sanchezes in this
19 case. One of them is Agent Rene Sanchez. He's a United States
20 Border Patrol agent in Willcox, Arizona.

21 The other is Agent Christopher Sanchez, who is sitting
22 at counsel table. He is with the Department of Homeland
23 Security, Office of the Inspector General.

24 Osvaldo Aldrete-Davila.

25 Border Patrol Agent Oscar Juarez.

1 Border Patrol Agent Arturo Vasquez.
2 Border Patrol Agent Jose Luis Mendoza.
3 Border Patrol Agent David Jacquez.
4 Border Patrol Agent Lorenzo Yrigoyen.
5 Border Patrol Agent Rene Mendez.
6 Border Patrol Agent Lance Medrano.
7 Supervisory Border Patrol Agent Jonathan Richards.
8 Supervisory Border Patrol Agent Robert Arnold.
9 Tony Solo, from the United States International
10 Boundary and Water Commission.
11 Agent Brian Carter, of the Department of Homeland
12 Security, Office of the Inspector General.
13 Agent Jose Ontiveros, of the Department of Homeland
14 Security, Office of the Inspector General.
15 Colonel Winston Warne -- that's spelled W-A-R-M-E.
16 He's an orthopedic surgeon at William Beaumont Army Medical
17 Center.
18 Dr. Todd Miller. He's the chief of urology at William
19 Beaumont Army Medical Center.
20 Joseph Correa. He's with the Texas Department of
21 Public Safety.
22 Elizabeth Munoz, also with the Texas Department of
23 Public Safety.
24 Deputy Chief Luis Barker, who used to be the chief of
25 the El Paso Border Patrol sector. He's currently in

1 Washington, D.C., the deputy chief of the United States Border
2 Patrol.

3 Joe Todd. He's a United States Border Patrol, El Paso
4 sector, firearms and tool mark officer.

5 Supervisory Border Patrol Agent David Blea, the head
6 of the evidence -- he is the evidence team commander.

7 Supervisory Border Patrol Agent Oscar Benavides. He
8 is the field operations supervisor.

9 And Agent John Banken, also with the Department of
10 Homeland Security, Office of the Inspector General.

11 THE COURT: Does anybody recognize any of those names,
12 particularly those of you who have indicated to me that you
13 have sons-in-laws, relatives, cousins, in Border Patrol.
14 Anyone?

15 Yes, in the back.

16 PROSPECTIVE JUROR: Dr. Todd Miller, he did surgery on
17 my father.

18 THE COURT: On your father?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: And how long ago was that?

21 PROSPECTIVE JUROR: Three, three and a half years ago.

22 THE COURT: Okay. And were you involved in the
23 surgery? In other words, did you go to the hospital?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: Did you meet the doctor?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: Is there anything about -- I mean, surgery
3 can be a very sort of emotional time. Is there anything about
4 that experience with Dr. Miller that you feel might affect your
5 ability to listen to his testimony and weigh his testimony the
6 same as any other witness in a case?

7 PROSPECTIVE JUROR: No, ma'am.

8 THE COURT: You think you can listen to his testimony
9 and be fair and impartial in this case?

10 PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: All right. And, I'm sorry, your name?

12 PROSPECTIVE JUROR: Oh, I'm sorry. I'm Danielle
13 Chavez, Juror Number 35.

14 THE COURT: Thank you. All right.

15 Anyone else?

16 Yes, sir.

17 PROSPECTIVE JUROR: David Gallardo, Juror Number 9. I
18 didn't catch his new title. But Barker?

19 THE COURT: Yes.

20 PROSPECTIVE JUROR: I played golf with him at a Hold
21 The Line Tournament for the Border Patrol about three years
22 ago.

23 THE COURT: Okay. And is -- was that your only sort
24 of social involvement with Deputy Chief Barker?

25 PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: And while you were playing golf with him,
2 did you play 9 or 18 holes?

3 PROSPECTIVE JUROR: 18.

4 THE COURT: Which takes a little --

5 PROSPECTIVE JUROR: 19.

6 THE COURT: 19 holes, okay. It takes a little while
7 to play. Did you have social interaction with him?

8 PROSPECTIVE JUROR: Not -- not really social. It was
9 just kind of cordial.

10 THE COURT: Okay. Did you talk about his work?

11 PROSPECTIVE JUROR: We may have.

12 THE COURT: Okay. Do you ever remember hearing
13 anything about this case in talking to him?

14 PROSPECTIVE JUROR: No, ma'am. This was three years
15 ago.

16 THE COURT: Okay. And is there anything that you
17 talked to him about that you feel -- or playing that game with
18 him -- that you feel might affect your ability to be fair and
19 impartial in this case?

20 PROSPECTIVE JUROR: No, ma'am.

21 THE COURT: Okay. You think you can listen to the
22 evidence as presented in this courtroom and render a verdict
23 based solely on that evidence?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: All right. Thank you, sir.

1 Anyone else? Okay.

2 Defense counsel. Ms. Stillinger?

3 MS. STILLINGER: Yes, Your Honor.

4 We may call any of these following witnesses.

5 First is Dr. Juan Contin. He was the former medical
6 examiner in El Paso, retired now.

7 Agent Nolan Blanchette, a Border Patrol agent who is
8 currently stationed in New Mexico, formerly stationed here in
9 El Paso.

10 Agent Robert Russell, also a Border Patrol agent, and
11 union representative.

12 Freddie Bonilla, who is a retired El Paso police
13 officer now working as a private investigator.

14 And Jose Villarreal, who is a retired Border Patrol
15 agent.

16 THE COURT: Anyone feel that they may know any of
17 those people? If so, please raise your hand.

18 Yes, ma'am.

19 PROSPECTIVE JUROR: Maria Villela, Juror Number 2. I
20 think Jose Villarreal.

21 MS. STILLINGER: Yes, ma'am.

22 PROSPECTIVE JUROR: If he was a board member at
23 Canutillo.

24 THE COURT: Okay. Now, you say board -- are you
25 talking about school board?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: And what was your relationship with the
3 school board?

4 PROSPECTIVE JUROR: None.

5 THE COURT: An interested parent?

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: Okay. Is there anything about knowing the
8 work he did on the school board -- and those issues can
9 occasionally get hot. Is there anything about that, knowing
10 him on the school board, that you feel might affect your
11 ability to be fair in this case?

12 PROSPECTIVE JUROR: He was also our neighbor.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: But --

15 THE COURT: Did you socialize with him?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. Is there -- knowing him, if he gets
18 up and he testifies, do you think it will affect your ability
19 to listen to his testimony the same as any other witness and be
20 fair and impartial?

21 PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: All right. Thank you. Thank you.

23 Anyone else?

24 Yes, ma'am.

25 PROSPECTIVE JUROR: Bertha Valtierra, Juror Number 11.

1 I knew Freddie Bonilla.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: But this has been like in the
4 '70s.

5 THE COURT: Okay. You knew him in the '70s?

6 PROSPECTIVE JUROR: When he was on the police force.

7 THE COURT: Okay. And have you seen him since then?

8 PROSPECTIVE JUROR: No, ma'am.

9 THE COURT: And is there anything about that
10 experience with him in the '70s that you feel might affect your
11 ability to listen to his testimony?

12 PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: All right. Thank you, ma'am.

14 Anybody else?

15 Yes, sir.

16 PROSPECTIVE JUROR: May I approach the bench?

17 THE COURT: Yes, you can later. Whatever it is that
18 you would like to talk to me about, I will just make a note.
19 And you'd like to talk to me privately?

20 PROSPECTIVE JUROR: I'm Bruce Banta, Juror Number 21.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: Thank you.

23 THE COURT: Thank you.

24 As I said to you, if any of you feel you need to talk
25 to the Court privately, you are welcome to let me know that.

1 All right. Anybody else who knows any -- or might
2 know any of those witnesses?

3 Okay. Ms. Ramirez?

4 MS. RAMIREZ: Thank you, Your Honor.

5 We may call any of these witnesses.

6 Dr. Sergio Ibarra, who is currently working at the
7 emergency room at Sierra Medical Hospital.

8 Cipriano Ortiz.

9 Armando Vasquez.

10 And these are two DEA agents, Michael Stephens.

11 James Gothe, G-O-T-H-E.

12 And we have an investigator, Sam Streep.

13 THE COURT: Does anyone believe they recognize any of
14 those individuals?

15 Yes, ma'am.

16 PROSPECTIVE JUROR: Juror 15, Susan Acevedo. I know
17 the name Dr. Ibarra, just because I work at Sierra, also.

18 THE COURT: Okay. Do you know Mr. Ibarra?

19 PROSPECTIVE JUROR: No, ma'am.

20 THE COURT: Anything about your knowledge of him, by
21 working there, that you feel might affect your ability to be
22 fair and impartial in this case?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Okay. Thank you.

25 Anybody else? No? All right.

1 Now, there will be a number of legal issues presented
2 in this case that I would like to discuss with you now. But
3 before I do, remember that you are the triers of the facts in
4 the case. And understand that I, as the judge, it's my job to
5 give you the law.

6 It's important to understand that you, as jurors, must
7 follow the law as it is given to you by the Court. You may not
8 substitute what you believe the law ought to be. You must
9 follow the law as it is given to you by the Court. So, as I go
10 over some of legal issues with you, please listen carefully.
11 Because I need to know if there's anyone here who feels so
12 strongly about the law that they feel they just could not
13 follow it.

14 You will be instructed that the law makes no
15 distinction between circumstantial evidence and direct
16 evidence. Circumstantial evidence is a chain of facts or
17 circumstances that tends to prove or disprove something.

18 Direct evidence is testimony by persons who actually
19 observed an event.

20 Now, lots of legal language there. Circumstantial
21 evidence, let me give you an example. Let's say that you go to
22 sleep one night, you get up the next morning, and there's snow
23 all over the ground, just covered with white snow. Okay?

24 You get up and you think, Oh, my God, I didn't know.
25 The weatherman didn't predict that there was going to be snow,

1 but there is snow. So you're going to assume that last night
2 it snowed, right?

3 Anybody who disagrees with that idea?

4 That's what we call circumstantial evidence. In other
5 words, you didn't see it snow. But the facts, as they're
6 presented to you, make you tend to believe that it snowed last
7 night. Everybody got that? Yes? Is that a yes?

8 PROSPECTIVE JURORS: Yes.

9 THE COURT: Okay.

10 Direct evidence is something that you see for
11 yourself. You stayed up really late watching some TV show that
12 you knew you shouldn't have watched, because you had to go to
13 work the next day. And you happened to look out, and it's
14 snowing.

15 That's direct evidence. Everybody understand the
16 difference?

17 PROSPECTIVE JURORS: Yes.

18 THE COURT: Okay. So you're going to be instructed
19 that the law makes no distinction between circumstantial and
20 direct evidence.

21 Is there anyone here who feels that they cannot follow
22 the law regarding that? Anybody? If so, raise your hand.

23 All right. It is 12 of you that will be selected to
24 sit on this jury, that will have to listen to all of the
25 evidence, and then decide whether or not the Government has

1 proven this case beyond a reasonable doubt.

2 And, in a criminal case, there are certain rules that
3 apply. And you have to be able, even if you disagree with
4 those rules, or if you believe those rules should not exist,
5 you have to be able to follow those rules.

6 As I previously stated, one of those rules is that you
7 have to hold the Government to their burden of proof. The
8 Government has to prove this case beyond a reasonable doubt.

9 The burden never shifts. It is always on the
10 Government. That means that the defendants are never required
11 to prove anything whatsoever.

12 And when I say "prove beyond a reasonable doubt," that
13 doesn't mean that the Government has to convince you
14 100 percent. The Government does not have to prove the case
15 beyond all possible doubt; only beyond a reasonable doubt.
16 And, if the Government does prove their case beyond a
17 reasonable doubt, then and only then you may return a verdict
18 of guilty.

19 Another rule that we have in criminal cases is that
20 the defendant, having no burden, is not required to put on any
21 evidence whatsoever. The defendant can simply sit here during
22 the trial, and at the end of the Government's case, remain
23 silent.

24 Thus, the defendant in any criminal case is not
25 required to prove himself innocent. If the defendant does not

1 choose to testify, then you may not consider that fact as
2 evidence of guilt. Nor may you, in your deliberations, comment
3 or in any way allude to that fact.

4 Now, I know that sometimes it may be hard to do that,
5 because it's natural to want to hear both sides of the story.
6 But remember, this is a criminal case. While you may want to
7 hear both sides, you're not entitled to hear both sides.
8 You're not here to try to figure out who is innocent. You are
9 here, as jurors, trying to figure out one thing, and only one
10 thing. And that is: Did the Government, who has the burden of
11 proof, prove their case beyond a reasonable doubt?

12 If either of the defendants does not choose to testify
13 in this trial, is there anyone on this panel who will hold it
14 against that defendant? And, in other words, will the fact
15 that one of the these defendants decides not to testify affect
16 your ability to be fair and impartial in reaching your verdict?

17 Along with that question, should one of the defendants
18 choose to testify, but the other one doesn't, is there anyone
19 here who would hold it against the one who doesn't testify?
20 Would it affect your ability to be fair and impartial in
21 reaching a verdict in this case?

22 Row number 1, anybody who feels they have to hear from
23 both of the defendants?

24 In the second row, anybody who feels that they have to
25 hear from one or both of the defendants, or that they would

1 feel somehow affected if one testified and the other one
2 didn't? Anybody?

3 First row in the back?

4 Second row in the back?

5 Third row in the back?

6 All way in the way back, way under the clock?

7 Anybody? All right.

8 Another rule in a criminal case is that the
9 defendants, at the beginning of the trial, are presumed
10 innocent. That means there is a presumption of innocence which
11 can be overcome by legal and competent evidence, the evidence
12 that is admitted at trial.

13 You can believe everything that a witness says. You
14 can reject everything that a witness says. Or you can believe
15 part of what a witness says. That's the power that you, who
16 are selected as jurors, have.

17 Is there anyone who feels they cannot follow that,
18 listen to each witness and judge their credibility? Anybody?

19 The indictment, or formal charges against the
20 defendant, is not evidence of guilt. As I've stated, a
21 defendant is presumed innocent, and the law does not require a
22 defendant to prove his innocence or produce any evidence at
23 all, and no inference whatsoever may be drawn from the choice
24 of a defendant not to testify.

25 As I previously indicated to you, each of these

1 defendants stands charged by indictment with multiple offenses.

2 Would the mere fact that these defendants have been
3 indicted, or the mere fact that these defendants have been
4 indicted on multiple counts make it seem more likely to you
5 that they have committed a crime?

6 Is there anyone who feels that, because these
7 defendants stand charged, or stand charged with multiple
8 offenses, that they're more likely to have committed the crime?

9 Anybody in row 1?

10 Row 2?

11 First row in the back?

12 Second row in the back?

13 Third row in the back?

14 PROSPECTIVE JUROR: Selena Schulz, Number 34.

15 THE COURT: All right. You feel that might affect
16 your ability? All right. We will talk to you in a little
17 while, then. Thank you. Selena Schulz.

18 Anybody else? And in the way back under the clock?

19 Now, some of the instructions regarding the law that
20 the Court may be giving to you in this case may involve the use
21 of a weapon. And remember, you must follow the law as it is
22 given to you by the Court, and you cannot substitute what you
23 think the law should be.

24 Is there anyone here who feels so strongly about the
25 use of a weapon that they do not believe they can follow the

1 law as I give it to you?

2 Anybody in row 1?

3 Row 2?

4 First row in the back?

5 Second row in the back?

6 Third row in the back?

7 All the way in the way back, under the clock?

8 Anybody?

9 Also, in this case, the Court may instruct you
10 regarding the issue of immunity. That is, I may be instructing
11 you regarding testimony of one who provides evidence against a
12 defendant in a trial in exchange for immunity from punishment
13 or for personal advantage.

14 Again, you must follow the law as it is given to you
15 by this Court in this regard. And you cannot substitute any
16 personal feeling that you may have regarding what the law
17 should be in this matter.

18 Is there anyone who feels so strongly about the use of
19 immunity that they do not believe they can follow the law in
20 this case as the Court gives it to you?

21 Anybody in row 1?

22 Row 2?

23 First row in the back?

24 Second row in the back?

25 Third row in the back?

1 And all the way in the way back, under the clock?

2 Also, in this case, the Court may instruct you
3 regarding issues involving illegal drugs. As I previously
4 explained to you, you must be able to follow the law as the
5 Court instructs you regarding these matters.

6 You may have had some personal experience with illegal
7 drugs. You may have had a close friend or a family member who
8 has had their life affected by issues involving illegal drugs.
9 And, because of those experiences, you may have formed such a
10 strong opinion about those issues that you cannot set that
11 opinion aside in this case.

12 Is there anybody here who feels so strongly about the
13 issues involving illegal drugs that you just don't feel you
14 could follow the law as I give it to you in this case?

15 Anybody in row 1?

16 Row 2?

17 Anybody in the first row?

18 Second row in the back?

19 Third row in the back?

20 All the way in the way back, under the clock?

21 There will be other instructions regarding the law
22 that the Court may be giving you in this case. So this
23 question is a general one regarding the Court's instructions to
24 the jury.

25 And that is: Is there anyone who feels that you can't

1 follow the law as I give it to you, and would, instead,
2 substitute your -- what you think the law to be in any matter?
3 In other words, everyone understands the concept here is you
4 are the triers of the facts. You listen to the facts, you
5 decide the facts. You apply the law in this case, as it's
6 given to you by the Court.

7 So if someone feels, Well, you know, once I listen to
8 the facts, I don't care what the law is, I'm just going to do
9 what is right, because I feel so strongly about drugs, I feel
10 so strongly about weapons, I feel so strongly about anything,
11 that I just can't follow the Judge's instructions.

12 Anybody who feels that might be the case in any issue
13 the Court may instruct you? All right.

14 Understand that it's important that you be able to
15 assess the testimony of anyone, regardless of how they're
16 employed, based upon what your view is of the testimony that's
17 given you from the witness stand. And you must assess it in
18 the same manner as you would any other testimony.

19 In other words, does it sound truthful? Does it sound
20 reliable? Does it conflict with the testimony of someone else?
21 Is the demeanor that of a credible witness?

22 So, because you happen to be employed as a law
23 enforcement official, or you happen to wear a uniform in
24 connection with the performance of your duty, that doesn't in
25 any way indicate in and of itself whether a person is credible

1 or not.

2 Now, there are going to be people who testify that are
3 law enforcement, particularly Border Patrol. And, as I have
4 said, you must judge that testimony in the same manner as you
5 would any other testimony.

6 Is there anyone here who believes that they cannot
7 follow that instruction? Is there anyone who believes that a
8 law enforcement officer always tells the truth and just would
9 never lie?

10 Conversely, is there anyone who believes that any time
11 a law enforcement officer testifies that it's an automatic lie?
12 You just don't believe anything they say. Okay? Anybody who
13 feels that strongly, either believes everything, believes
14 nothing?

15 Anybody in row 1?

16 Anybody in row 2?

17 First row in the back?

18 Second row in the back?

19 Third row in the back?

20 And all the way in the way back?

21 Now, I've asked you that question regarding law
22 enforcement. But, as you've heard, there will be witnesses
23 from various walks of life, including doctors. And I believe
24 we've heard from some -- there may be some experts.

25 I want to make sure that you-all understand that, as

1 you listen to testimony, you must judge and assess the
2 credibility of each witness, and you must follow the Court's
3 instructions.

4 Is there anyone who feels that, because we may have
5 doctors testifying or someone else, that that may -- you've
6 heard the list of the potential witnesses -- that they may not
7 be able to listen to that type of testimony and judge it the
8 same as you would any others? Anybody?

9 Yes, sir.

10 PROSPECTIVE JUROR: Yes. Bruce Banta, Juror Number
11 21.

12 THE COURT: Mr. Banta. Is there anyone in particular
13 or just what we've talked about in the past?

14 PROSPECTIVE JUROR: Yes, just when I stood up before.

15 THE COURT: Okay. All right. Thank you.

16 Anybody else? All right.

17 Occasionally, we will have people who, because of
18 their religious or moral beliefs, are just unable to sit in
19 judgment on another person.

20 Is there anyone here who, because of their beliefs,
21 has a problem with jury service, has a problem with being able
22 to render a verdict in this case, just can't sit in judgment?

23 Anybody in the first row?

24 Second row?

25 First row in the back?

1 Second row in the back?

2 Third row.

3 And all the way in the way back? Anybody?

4 Now, as the judge, there may be occasions when I have
5 to rule on objections. It's my role, as judge, to make sure
6 that this case is tried in accordance with the rules of
7 evidence and the rules of procedure. Thus, I need to make sure
8 that the evidence that is admitted is legally admissible
9 evidence. I may sustain some objections and I may overrule
10 some objections. You shouldn't hold it against the attorneys
11 or their clients if they make objections. It is their duty to
12 represent their clients and to argue for their clients
13 zealously.

14 When they make an objection, they are merely
15 suggesting to me, as the judge, that the evidence that's about
16 to be entered is, in their opinion, outside the rules of
17 evidence.

18 And so, when I rule one way or the other, you
19 shouldn't concern yourself with why I'm making the ruling. I'm
20 making that ruling based on the rules of evidence, rules of
21 procedure. That is what I, as the judge, am required to do.

22 Does everyone feel that they can follow that rule? Is
23 there anyone who feels that they would hold it against either
24 the United States or counsel for the defendants if they were to
25 object? Anybody?

1 Anybody in row 1?

2 Row 2?

3 Anybody in the first row in the back?

4 Second row in the back?

5 Third row?

6 And all the way in the way back? Anybody?

7 Each of you has filled out juror questionnaires, which
8 are useful in trying to get to know a little about each of you.
9 However, occasionally, there's something about your personal
10 life that may particularly affect your ability to be a fair and
11 impartial juror in this case, questions that I haven't asked.
12 For example, your educational background, your work
13 experiences, places that you may have lived in the past.

14 Is there anyone who feels -- other than those who
15 indicated to me -- is there anyone who feels that, because of
16 some personal experience that you may have had in the past,
17 that you just don't feel you could be fair and impartial in
18 this case? Anybody? All right.

19 Occasionally, I will have someone who is unable to
20 serve for whatever reason. I really try to cover all the
21 bases, all the important issues regarding a trial. But,
22 occasionally, there's something I miss, something particular to
23 one of you, a question I don't ask. It could be a medical
24 condition.

25 Occasionally, I've had somebody say, Judge, I have a

1 really bad back. I can't sit for more than two seconds. I
2 have -- I take some kind of medication that affects my ability
3 to think clearly.

4 It could be anything; a recent death, something that
5 just so affects you, you don't think you can sit and be fair
6 and impartial. This is your opportunity to let me know. You
7 don't get another chance. I don't want you to get on that jury
8 and then all of a sudden tell me, Oh, Judge, I should have told
9 you this. Okay?

10 If you have a concern, you need to let me know now.
11 If you do not want to talk about it in public, I will speak
12 with you privately. Okay?

13 Is there anybody who feels, for whatever reason, they
14 just cannot sit in this trial -- good reason. Okay?

15 Anybody in row number 1?

16 Row number 2?

17 First row in the back?

18 Second row?

19 Third row?

20 And all the way in the way back? Anybody?

21 All right. If the attorneys would approach, bring
22 your lists.

23 (Bench conference:)

24 THE COURT: I need -- I'm going to -- speak into here.
25 I'm going to go over with you who I intend to call up. I want

1 you to get your lists. And if I miss somebody, you need to let
2 me know.

3 Juror Number 5.

4 Juror Number 6.

5 Juror Number 16.

6 Juror Number 21.

7 Juror Number 22.

8 Juror Number 25.

9 Juror Number 26.

10 Juror Number 32.

11 And Juror Number 45.

12 Everybody agrees?

13 You know what? You're right. Juror Number 34.

14 MS. RAMIREZ: The only other is Juror 27.

15 THE COURT: Ms. Ramirez, hold on. Juror 27. What is
16 it about --

17 MS. RAMIREZ: What concerned me about her is she said
18 that there was a nephew, and that's what I want to talk about.
19 Just a caution there. We can ask her. That's the only thing.

20 THE COURT: We can ask her, I prefer, out of an
21 abundance of caution. Anybody else?

22 Okay. Well, let's do them one at a time.

23 MS. STILLINGER: I was going to say on 33, I think he
24 needs to be spoken to. He has occupation, U.S. Government. I
25 was wondering if you could inquire.

1 THE COURT: I will bring him up. That's fine.

2 MS. KANOF: Juror Number 22.

3 MR. PETERS: Juror 19.

4 THE COURT: What's concerning 19?

5 MR. PETERS: The fact he seems to work for Border
6 Patrol, works on the maintenance for the aircrafts. He
7 maintains the planes.

8 THE COURT: I thought I asked him. He doesn't even
9 know them. He only deals with supervisors.

10 MR. PETERS: This may be a case of supervisors.

11 THE COURT: I'm happy to talk to him.

12 Anybody else?

13 Okay. Thank you.

14 (Bench conference ends.)

15 THE COURT: Okay. Ladies and gentlemen of the jury
16 panel, now you get a break. Well, some of you get a break.
17 Not everybody. But, at this time we're going to take a recess.
18 It is about 11:15. So what I'm going to do is let you go ahead
19 and recess for lunch. I won't need -- those of you who I send
20 out -- I won't need you back until about 1:00. All right?

21 Between now and 1:00 remember that you are all jury
22 panel members. You have not heard anything about this case.
23 You don't even know if you're going to be on this trial. So
24 it's important that you remember that you cannot talk about
25 this case. You can't talk about the things that we've been

1 doing in this courtroom. You cannot discuss this case amongst
2 each other or with anyone else.

3 If you do, it can result in what we call a mistrial.
4 There's a possibility that I'd have to start this trial all
5 over again. So it's important that you take it seriously, and
6 you not talk about the case.

7 You are all wearing tags. Occasionally we take off
8 coats, we put them on. Normally, those tags will identify you,
9 and people will not talk to you. But if anybody does try to
10 talk to you, you need to let me or somebody here at the
11 courthouse know immediately. Everybody got that?

12 PROSPECTIVE JURORS: Yes.

13 THE COURT: Okay. Now, you will be on break. You can
14 go get some lunch, be back about 1:00. By then we should have
15 the jury selected, and the rest of you will be free to go. But
16 it's important, between now and then, that you observe that
17 rule, because I don't want to have to do this over and over
18 again. Okay?

19 When you come back, do not come back into to this
20 room. You can see, it's a very small courtroom. I'm going to
21 ask you to reassemble in that jury assembly room where you
22 started. Okay? And then, those of you who are selected as
23 jurors will be brought over here, and the rest of you will be
24 free to go.

25 Because I won't see many of you again, I want to tell

1 you again how much I appreciate your time and your being here
2 today, because it is very important to our system of justice
3 that you do these things. And I can -- and on behalf of
4 everyone in this courtroom, I want to thank you for that.

5 Now, there are some jurors that I'm going to speak to
6 privately. All right? And so I'm going to ask those jurors
7 whose numbers I call out to remain in the hallway here. We
8 will take you one at a time, and then you will be free to
9 leave, also, to go to lunch and not be back until 1:00. But I
10 do need those jurors whose numbers I call to remain so I can
11 speak to you.

12 I also -- one last time -- want to caution anybody who
13 feels they need to talk to me about something, this is your
14 chance to do it. You can wait out in that hallway and speak to
15 me if you feel it's something important you need to talk to me
16 about. All right?

17 Listen carefully. I will call out those jurors'
18 numbers who I need to speak with.

19 I need to speak with Juror Number 5, Juror Number 6,
20 Juror Number 12, Juror Number 16, Juror Number 19, Juror Number
21 21, Juror Number 22, Juror Number 25, Juror Number 26, Juror
22 Number 32, Juror Number 33, Juror Number 34, and Juror Number
23 45.

24 Everybody heard those numbers? Anybody need me to
25 repeat them? I'll be happy to do that.

1 All right, then. Everyone is free to -- we'll take a
2 recess now. Remember the rules the Court has told you. I
3 won't need you back until 1:00. And those jurors whose numbers
4 I called, please wait out in the hallway.

5 One other thing I want to tell you: When you come
6 back at 1:00, be prompt. Everybody look at your neighbor.
7 Remember, if that person doesn't show up at 1:00, you hold
8 everybody else up. Okay? And those people are not going to be
9 happy, because I'm sure they all want to get back to work.
10 Okay? So please be prompt. Okay? You've got almost an hour
11 and 45 minutes. Whatever you need to do, I'm sure you can get
12 it done between now and then.

13 All right. We'll see you back at 1:00.

14 (Prospective jurors released.)

15 THE COURT: Are we ready?

16 MR. GONZALEZ: Yes, Your Honor.

17 THE COURT: Then you can bring in Juror Number 5.

18 (Prospective juror in the courtroom.)

19 THE COURT: All the way up, Ms. Flores. See that
20 podium right there? You're going to be in the hot seat for a
21 minute.

22 Ms. Flores, I -- frankly, I want to say to you that I
23 asked you to come in. You were doing fine in front of
24 everyone, but I just -- I actually felt a little uncomfortable
25 making you answer some of the questions. So I just want to

1 make sure you're comfortable in addressing it.

2 I asked you to come in because you had indicated to me
3 that your dad had been involved in a murder trial.

4 PROSPECTIVE JUROR: Right.

5 THE COURT: And he was the accused?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. And how long did the trial go on
8 for?

9 PROSPECTIVE JUROR: I was only like 12 years old. I
10 don't remember. Maybe like three weeks, a month.

11 THE COURT: Okay. And did you attend the trial.

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Every day?

14 PROSPECTIVE JUROR: I don't remember. I know I was a
15 witness.

16 THE COURT: Okay. And you were a witness regarding
17 what?

18 PROSPECTIVE JUROR: I guess at the time that he was
19 with myself and my sister.

20 THE COURT: Okay. So sort of an alibi witness?

21 PROSPECTIVE JUROR: Right.

22 THE COURT: That he was with you at the time that this
23 happened?

24 PROSPECTIVE JUROR: Right.

25 THE COURT: Okay. Was a verdict reached in that case?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: And was he found guilty or not guilty?

3 PROSPECTIVE JUROR: He actually had two trials. The
4 first one was a mistrial. And then, like a year later, they
5 tried him again, and he was convicted.

6 THE COURT: Were you a witness in both of those cases?

7 PROSPECTIVE JUROR: I believe just the second one.

8 THE COURT: Okay. And in the second one a verdict was
9 reached?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Was he found guilty or not guilty?

12 PROSPECTIVE JUROR: Guilty.

13 THE COURT: Was he sentenced to incarceration?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: And how long was he sentenced for?

16 PROSPECTIVE JUROR: He was sent away for, like, ten
17 years. He came out in '95, and then he was out for, like, four
18 years, and they caught him drinking --

19 THE COURT: Okay.

20 PROSPECTIVE JUROR: -- driving. So he went back. He
21 just got out in October.

22 THE COURT: Do you have a relationship with your dad?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. And is there anything about all
25 that you've been through with him that you feel might affect

1 your ability to be fair and impartial in this case?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Do you think you can listen to both sides
4 of this case, be fair to both the Government and defense in
5 rendering a verdict?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: You understand how important that is?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: All right. Ms. Kanof, Mr. Gonzalez, any
10 questions?

11 MR. GONZALEZ: No, Your Honor.

12 THE COURT: Anybody, any questions?

13 MS. STILLINGER: No, Your Honor.

14 THE COURT: All right. Thank you. We'll see you back
15 at 1:00.

16 PROSPECTIVE JUROR: Okay.

17 (Prospective juror out of the courtroom.)

18 THE COURT: Hold on just a second, Kenny. Can she
19 wait just a minute?

20 Yeah, just step outside for just a second.

21 Kenny, let me just make sure there's no challenge.

22 Any challenge?

23 MR. GONZALEZ: Not from the Government.

24 THE COURT: I usually wait until they're out of the
25 courtroom before I ask that.

1 MS. STILLINGER: No, Your Honor.

2 MS. RAMIREZ: No, Judge.

3 THE COURT: Okay. Now you can bring in Juror Number
4 6. Sorry.

5 (Prospective juror in the courtroom.)

6 THE COURT: Come on up, Ms. Hood. You get to be in
7 the hot seat. Right up here to the podium.

8 Ms. Hood, when I was asking about the knowledge of
9 this case, you indicated you knew about the case. And that,
10 since you had heard enough about the case, you didn't feel you
11 could be fair and impartial.

12 Having gone through all of the voir dire, do you still
13 feel that way?

14 PROSPECTIVE JUROR: Well, like I said before, I would
15 like to say yes, because I would like to think that I could put
16 any feelings that I have aside. But, you know, I am afraid
17 that I would be doing the defendants a disservice, because I do
18 have an opinion. And -- based entirely on what I read in the
19 paper.

20 But -- and I recognize that that's not evidence. But
21 I also know that even media news won't print false facts.
22 So -- so I'm afraid that I would go into it with a bad juror
23 attitude.

24 THE COURT: All right. And you understand, Ms. Hood,
25 that the fact that you can't sit as a juror in this case

1 doesn't mean you can't be a juror in any other kind of case.

2 And I appreciate your candor.

3 So, final question: Having -- knowing what you know
4 about this case, having sat through voir dire, do you feel you
5 can sit, listen to the evidence in this case, and be fair and
6 impartial in this particular case?

7 PROSPECTIVE JUROR: I would say no.

8 THE COURT: All right.

9 Any questions, Ms. Kanof?

10 MS. KANOF: No, Your Honor.

11 THE COURT: On behalf of the defendants?

12 MS. STILLINGER: No, Your Honor.

13 MS. RAMIREZ: No, Your Honor.

14 THE COURT: All right. Thank you. We'll see you at
15 1:00.

16 (Prospective juror out of the courtroom.)

17 THE COURT: Do I have a challenge?

18 MS. RAMIREZ: Challenge for cause, Judge.

19 MS. STILLINGER: Yes.

20 THE COURT: All right. Any objection?

21 MR. GONZALEZ: No, Your Honor.

22 THE COURT: She will be struck.

23 Juror Number 12.

24 (Prospective juror in the courtroom.)

25 THE COURT: All the way to the front, Ms. Wardy, to

1 the hot seat.

2 Ms. Wardy, I just have a question that has to do
3 with -- you know, again, occasionally, I try to talk to jurors
4 outside the presence, because I don't want people to be
5 embarrassed or feel uncomfortable. And I want to make sure,
6 Ms. Wardy. My understanding -- are we talking about -- what
7 case are we talking about that you had a relative that was
8 involved in?

9 PROSPECTIVE JUROR: Which case?

10 THE COURT: Which case?

11 PROSPECTIVE JUROR: It was the Chagra case.

12 THE COURT: Okay. And that's what I assumed, but I --
13 never assume anything, they say. All right.

14 And that was a very highly publicized case, and it got
15 a lot of media attention. And I -- sometimes on occasion still
16 does.

17 Ms. Wardy, is there anything about your experiences
18 with that trial, the fact that it was a relative, the fact that
19 it was involved here in federal court, anything that you feel
20 might affect your ability to be fair and impartial in this
21 case?

22 PROSPECTIVE JUROR: Absolutely not.

23 THE COURT: All right.

24 Ms. Kanof, any questions?

25 MS. KANOF: None, Your Honor.

1 THE COURT: All right. Anybody on behalf of --

2 MS. STILLINGER: No, Your Honor.

3 MS. RAMIREZ: No, Your Honor.

4 THE COURT: All right. Thank you. We'll see you back
5 at 1:00.

6 (Prospective juror out of the courtroom.)

7 THE COURT: Do we have a challenge?

8 Okay. You can bring in the next one, 16.

9 By the way, I have had -- while she's coming in, I
10 can't find anything on this case in the website. My law clerks
11 who are, like, authorities on this, can't find what she's
12 talking about, about getting all the facts and stuff. Was
13 anybody else able to --

14 MR. PETERS: I think she must have read the
15 indictment. The indictment is the only thing that I can
16 possibly --

17 THE COURT: But is that on the website? Is it -- I
18 mean, not -- it's not on Pacer, is it?

19 MS. RAMIREZ: I don't think so. There was a little --
20 there is a little squib that says links. And I have never been
21 to that website, so I didn't know if maybe that sent her
22 somewhere else.

23 THE COURT: But who links it to the -- to the
24 newspaper?

25 MS. RAMIREZ: I don't think so.

1 THE COURT: Okay. Well, I'm going to explore some of
2 that with her, just to make sure. But it appears to me she is
3 very familiar with this case. So, I mean, I don't know if --
4 if we need to speak to her. Does any -- do we have an opinion?
5 I mean, she's got -- appears to feel like she knows everything
6 about this case.

7 All right. Go ahead and -- go ahead.

8 MR. PETERS: Who's -- what number?

9 THE COURT: She's number 16.

10 All right. Go ahead and bring her in.

11 MS. KANOF: You can ask her what she knows,
12 Your Honor.

13 THE COURT: Yeah, I'm going to.

14 (Prospective juror in the courtroom.)

15 THE COURT: All the way to the front, the hot seat,
16 Ms. Pynes.

17 PROSPECTIVE JUROR: I feel like I'm on American Idol.

18 THE COURT: Yeah, but the sad thing is it's not quite
19 the same here.

20 PROSPECTIVE JUROR: I don't get to meet Simon Cowell.

21 THE COURT: Okay. Ms. Pynes, you are a teacher?

22 PROSPECTIVE JUROR: Yes, ma'am.

23 THE COURT: I want to know what grade you teach.

24 PROSPECTIVE JUROR: I teach 9th through 12th grade at
25 Coronado High School.

1 THE COURT: I hope my son gets you.

2 PROSPECTIVE JUROR: Oh, thank you, but I teach English
3 as a second language, so I doubt he will.

4 THE COURT: Oh, okay. Well, that might help him, too.

5 PROSPECTIVE JUROR: I believe your son went to Country
6 Day?

7 THE COURT: Yes, he did.

8 PROSPECTIVE JUROR: I used to teach there, as well.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR: I don't recall, but I don't
11 believe I ever had any interaction with you.

12 THE COURT: Okay. Well, Ms. Pynes -- and the reason I
13 say that is because it appears that you know a little about
14 this case, having gotten some familiarity by looking on the
15 website.

16 PROSPECTIVE JUROR: Correct.

17 THE COURT: And I want to ask you, because, you know,
18 I have research people that go and do all kinds of research.

19 What -- can you kind of explain to me --

20 PROSPECTIVE JUROR: How I got there?

21 THE COURT: Yeah, how you got there.

22 PROSPECTIVE JUROR: When you call, they instruct you,
23 in the lovely letter that you receive, that -- to call this
24 phone number. When you ans- -- when you call the number, it
25 begins with, We invite you to visit our website, and they give

1 you the address.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: Well, I'm conversant with the
4 Internet, so I visited your website, especially with the power
5 outage.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: That's actually what caused me to
8 go.

9 THE COURT: Okay. And then when you got to the
10 website, it's a general Texas Western District website?

11 PROSPECTIVE JUROR: Correct.

12 THE COURT: What particular areas did you visit?

13 PROSPECTIVE JUROR: The only thing I looked at was
14 schedules, and then I did click on upcoming trials.

15 THE COURT: Okay. And when you got to the upcoming
16 trial portion --

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: -- where did that take you? Was that a
19 media site or was it still within a --

20 PROSPECTIVE JUROR: No. No, it was -- actually, I
21 thought about it. It was never outside of that site. It was
22 basically the -- the charges that you read were exactly the
23 charges listed, and that was that. And it wasn't just for this
24 case, it was for another case in regard to -- I'm assuming it
25 was a civil case, as well.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: And any -- outside of that, no, it
3 did not take you outside to the media.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR: The media information I recall is
6 from reading the stories when they first came out.

7 THE COURT: Okay. So on the website you got the
8 general information regarding the case?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And then you also got some information
11 from reading?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: And put the two together, I assume?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: All right. Now, I guess based on that,
16 you feel pretty familiar with this case?

17 PROSPECTIVE JUROR: I guess I would say yes, I would.

18 THE COURT: Okay. And you've also sat through the
19 voir dire.

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: Having listened to everything you've
22 listened to here in the courtroom, having seen what you saw on
23 the website, having read what you've read, or heard on TV, do
24 you feel that you have -- that you have an opinion in this
25 case?

1 PROSPECTIVE JUROR: No, I don't. There's no way I
2 could have an opinion without hearing the actual facts from the
3 justice system.

4 THE COURT: Okay. So you feel that you could listen
5 to the evidence as it's presented to you here in the courtroom
6 and render a verdict solely based on that evidence?

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: All right.

9 Ms. Kanof, do you have any questions?

10 MS. KANOF: I do not, Judge.

11 THE COURT: All right. Any questions?

12 MS. STILLINGER: No, Your Honor.

13 MS. RAMIREZ: No, Judge.

14 THE COURT: All right. Thank you.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: And we'll see you at 1:00.

17 So you do get to come back, just like on American
18 Idol.

19 PROSPECTIVE JUROR: Thank you.

20 THE COURT: Okay.

21 (Prospective juror out of the courtroom.)

22 THE COURT: Do we have any challenges?

23 MR. GONZALEZ: Not from the Government, Your Honor.

24 MS. STILLINGER: No, Your Honor.

25 THE COURT: All right.

1 Juror 19.

2 (Prospective juror in the courtroom.)

3 THE COURT: Mr. Baudier?

4 PROSPECTIVE JUROR: Baudier.

5 THE COURT: Baudier. I was close. Not quite, but
6 close.

7 Mr. Baudier, the only reason I asked you to come in
8 was, you had indicated that you do maintenance for some of the
9 Border Patrol, and I assume ICE, airplanes. And I want -- I
10 just want to make sure, because we had talked about you knowing
11 any of the agents.

12 As you heard, when we were talking about some of the
13 witnesses, there will also be, I assume, some supervisors
14 involved. And I just want to make sure that you didn't
15 recognize or know any of those witnesses, or feel that you
16 might have met them in the course of your employment.

17 PROSPECTIVE JUROR: I don't think I recognized any of
18 the names.

19 THE COURT: Okay. Do you -- and so you don't feel
20 like you might know any of those people?

21 PROSPECTIVE JUROR: I don't believe so.

22 THE COURT: How often do you deal with people -- I
23 mean, actual agents?

24 PROSPECTIVE JUROR: The chiefs come by and see us once
25 every other week, or once a week.

1 THE COURT: Now, when you say "chiefs," are you
2 saying -- like we were talking about Chief Deputy Barker. Are
3 you talking about that high of a chief, or are you talking
4 about --

5 PROSPECTIVE JUROR: Sector chiefs, like Mr. Hester, I
6 guess their air ops chiefs.

7 THE COURT: Okay. So can you name some of the chiefs
8 you might meet with?

9 PROSPECTIVE JUROR: Dave Taylor is the most I meet
10 with, and sometimes Mr. Hester.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: That's all the names I can really
13 recognize.

14 THE COURT: Okay. And so, knowing what you know about
15 the case, the kind of work you do, do you feel you can be fair
16 and impartial in this case and listen only to the evidence?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: All right.

19 Any questions, Ms. Kanof?

20 MS. KANOF: No, Your Honor.

21 THE COURT: Ms. Ramirez?

22 MS. RAMIREZ: No, Your Honor.

23 THE COURT: Ms. Stillinger?

24 MS. STILLINGER: No, Your Honor.

25 MR. PETERS: I just have one question, Your Honor.

1 THE COURT: Go ahead, Mr. Peters.

2 MR. PETERS: Sir, do you think the fact that you
3 are -- have a business relationship with the management level
4 of the Border Patrol here, if it became apparent there was a
5 Border Patrol -- if it became apparent that there were Border
6 Patrol higher-ups who may desire a certain outcome, would that
7 affect the fact that you have a business relationship with
8 them?

9 PROSPECTIVE JUROR: I don't believe so. We just did
10 get a big contract to paint all of the DHS aircraft, but I
11 don't think it would affect me one way or the other. You know,
12 what's the law is the law.

13 MR. PETERS: Thank you, sir.

14 THE COURT: And let me just ask you, then, regarding
15 that, Mr. Baudier. And that is, when you say you just got a
16 contract with DHF (sic), what does that mean, for the record?
17 What's DHF?

18 PROSPECTIVE JUROR: DHS. We're going to --

19 THE COURT: Oh, Department of Homeland Security.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. And -- I thought you said F, as in
22 Frank.

23 And when you -- do you negotiate that contract, or do
24 you bid on it? How does that work?

25 PROSPECTIVE JUROR: We bid the time, but the

1 Government does most of the negotiation here. I don't.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: I just run the company.

4 THE COURT: Okay. Are you an owner of the company or
5 just...

6 PROSPECTIVE JUROR: No, just a manager.

7 THE COURT: Okay. And so you work there at the
8 company?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Okay. All right. Thank you.
11 Anything else?

12 MS. KANOF: Nothing from the Government.

13 THE COURT: No?

14 MS. STILLINGER: No questions.

15 MS. RAMIREZ: No, Your Honor.

16 THE COURT: All right. Thank you. We'll see you back
17 at 1:00. Thank you, Mr. Baudier.

18 (Prospective juror out of the courtroom.)

19 THE COURT: Any challenge?

20 MS. STILLINGER: No challenge.

21 MS. RAMIREZ: Oh, no, Judge.

22 THE COURT: Number 21.

23 (Prospective juror in the courtroom.)

24 THE COURT: All the way up to the podium.
25 Mr. Banta, we are now outside the presence of the rest

1 of the jury panel. And I could sense that you felt you needed
2 to speak with the Court. So I will go ahead and let you tell
3 me what it is you wanted to let me know.

4 PROSPECTIVE JUROR: Yes. It concerns one of the
5 defense witnesses, Dr. Juan Contin.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: I don't know Dr. Contin personally
8 at all. I may have spoken to him once during my professional
9 career. But I have a number of surgical colleagues who have
10 seriously doubted his judgment in some of their cases. This
11 involves people who subsequently died after being cared for by
12 the physicians, where the surgeons stated -- this is in casual
13 conversation -- that their surgical findings -- and this
14 involved, I think, both head injury cases and chest injury
15 cases, where their findings at surgery did not concur with what
16 Dr. Contin found at autopsy.

17 THE COURT: All right.

18 PROSPECTIVE JUROR: And their impression was he was
19 less than, shall I say, competent, in their opinion.

20 THE COURT: All right. And, based on that, and I
21 assume because of the famil- -- because of your desire to speak
22 with the Court, do you feel that might affect your ability to
23 be fair and impartial?

24 PROSPECTIVE JUROR: Yes, I certainly do, because I
25 respect these physicians quite well.

1 And, on the other hand, I really don't know anything
2 about Dr. Contin.

3 THE COURT: Okay. You don't know him personally?

4 PROSPECTIVE JUROR: No.

5 THE COURT: And you don't have any personal
6 experience --

7 PROSPECTIVE JUROR: I have no personal relationship --
8 personal or professional relationships with him with any of my
9 patients.

10 THE COURT: All right. All right.

11 Any questions, Ms. Kanof?

12 MS. KANOF: No questions from the Government.

13 THE COURT: Any questions?

14 MS. RAMIREZ: No, Your Honor.

15 MS. STILLINGER: No, Your Honor.

16 THE COURT: Thank you, Mr. Banta. We'll see you back
17 here at 1:00. I appreciate it.

18 I assume that's Dr. Banta. I apologize.

19 (Prospective juror in the courtroom.)

20 THE COURT: Do we have a challenge?

21 MS. STILLINGER: Yes, Your Honor. Move to strike him
22 for cause.

23 THE COURT: All right. Any objection?

24 MS. KANOF: Regretfully, no, Your Honor.

25 THE COURT: All right. The Court will strike for

1 cause.

2 Number 22.

3 (Prospective juror in the courtroom.)

4 THE COURT: Come on up, Mr. Vargas. You get the hot
5 seat now.

6 Well, Mr. Vargas, I noticed when you filled out your
7 juror sheet that you said that you were an electrician, but
8 little did I imagine that you were the electrician that
9 installed Border Patrol cameras.

10 PROSPECTIVE JUROR: Well, we did, yeah.

11 THE COURT: So my question has to do with that. You
12 indicated you, as part of your work, installed Border Patrol
13 cameras between here and Del Rio?

14 PROSPECTIVE JUROR: Laredo.

15 THE COURT: Laredo. Okay.

16 PROSPECTIVE JUROR: All the way to Laredo.

17 THE COURT: All the way to Laredo. And I assume --
18 how long did that work last?

19 PROSPECTIVE JUROR: A couple of years.

20 THE COURT: Okay. And were you involved that whole
21 time in the installation?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: And you --

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: And you traveled all along the border?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Do you feel pretty familiar with the
3 border?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: During the time that you were doing that,
6 were border operations going on? In other words, did you see
7 things going on?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: And did you meet and talk to Border Patrol
10 agents while you were out there?

11 PROSPECTIVE JUROR: Yes, some of them; just talk to
12 them, and they were friendly towards me.

13 THE COURT: Okay. Were you involved at all in their
14 work while you were doing this work?

15 PROSPECTIVE JUROR: No.

16 THE COURT: In order to install the cameras,
17 Mr. Vargas, I assume that you had to have a certain knowledge
18 of what goes on in the Border Patrol.

19 PROSPECTIVE JUROR: Right.

20 THE COURT: What kind of information, and without
21 going into -- I'm sure we could be here all day. But how did
22 you sort of prepare to do this job?

23 PROSPECTIVE JUROR: Basically, we went in to, say,
24 the -- the -- one of the border crossings here --

25 THE COURT: Okay.

1 PROSPECTIVE JUROR: -- the bridge. And we would go
2 in, and we would run through the building with the piping wire
3 across, and then out into the -- into the aisles, each
4 individual aisle. So we had -- and we had GSA tags, so we had
5 contact with all -- all the Border Patrol and all the Customs
6 agents there.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: And, you know, we were in the
9 cells, through the cells, through the top, and everything.
10 So...

11 THE COURT: Okay. Did you actually have any sort of
12 special training in order to do this work, or was it just about
13 being an electrician.

14 PROSPECTIVE JUROR: No, it was just about being an
15 electrician.

16 THE COURT: During the time you worked on doing that,
17 I assume that there were different agents you either saw, met,
18 talked to. If it turns out that one of those agents gets up
19 here and testifies, do you think that will affect your ability
20 to be fair in this case?

21 PROSPECTIVE JUROR: I don't think so.

22 THE COURT: Did you have much of a social -- I assume
23 there are remote areas of the border --

24 PROSPECTIVE JUROR: Right.

25 THE COURT: -- where you were out there by yourself

1 for a while. Did you have much social interaction with Border
2 Patrol agents?

3 PROSPECTIVE JUROR: Not much, just talk, laugh, and,
4 you know, that was it. I don't know their names. I don't
5 really --

6 THE COURT: Did you go out for beers with them and
7 talk about their work?

8 PROSPECTIVE JUROR: No, nothing like that. While we
9 were there and they were -- you know, they would ask us what we
10 were doing, and we would see what they were doing. And, you
11 know, that was about it.

12 THE COURT: Okay. Is there anything, Mr. Vargas, that
13 you feel about that work that you did, either working with
14 Border Patrol or the -- you know, the experiences you had while
15 you were doing the job, that you feel might affect your ability
16 to be fair and impartial in this case?

17 PROSPECTIVE JUROR: The reason why I spoke up is
18 because I have -- I tend to side on the side of, usually, the
19 agent, or an officer. If he's in uniform and performing his
20 duty, and something goes wrong, I would side on the side of the
21 agent, usually, or officer.

22 THE COURT: Okay. Well, I believe there's Border
23 Patrol agents on both sides of this case.

24 PROSPECTIVE JUROR: Right. Oh, okay.

25 THE COURT: And so the issue is whether you can listen

1 to both sides and be fair. I -- again, I don't know if that
2 means that you may be more for the defense or more for the
3 Government. But again, this is -- you haven't heard any of the
4 evidence --

5 PROSPECTIVE JUROR: Right.

6 THE COURT: -- and -- but it is about work with Border
7 Patrol on both sides.

8 PROSPECTIVE JUROR: Right.

9 THE COURT: So the question is: Do you think anything
10 you know about this case, or your work with Border Patrol, or
11 your familiarity with the work they do, you may feel it would
12 affect your ability to be fair and impartial in this case?

13 PROSPECTIVE JUROR: I'm not sure.

14 THE COURT: Okay. Well, only you can answer the
15 question. And if you need a minute to think about it, I'm --

16 PROSPECTIVE JUROR: Yeah. Well, that's -- you know,
17 like I said, I don't know the facts. But if it turns out that,
18 you know, they were in the act of maybe pursuing something --
19 you said it was a murder trial, and -- or attempted murder, I'm
20 sorry, and they had to fire upon somebody, and it was a
21 mistake, then I would side on them.

22 But, like I said, there's two sides. I think I could.
23 I think I could.

24 THE COURT: You can listen to both sides and be fair
25 and impartial?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: All right. Ms. Kanof?

3 MS. KANOF: Yes, I have a couple of questions.

4 THE COURT: Go ahead.

5 MS. KANOF: What kind of cameras were you installing?

6 PROSPECTIVE JUROR: The cameras take pictures of
7 your -- of the license plates, when people come across.

8 MS. KANOF: So it was always at ports of entry?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Did you ever feel like you were in danger
11 when you were installing the cameras?

12 PROSPECTIVE JUROR: No.

13 MS. KANOF: Did you ever have an opportunity to
14 observe a seizure of either aliens or of drugs?

15 PROSPECTIVE JUROR: Plenty, here in El Paso.

16 MS. KANOF: Okay. And so you sort of had a ringside
17 view of -- what, drug seizures or alien seizures? Which ones?

18 PROSPECTIVE JUROR: Drug seizures.

19 MS. KANOF: Okay. And, let's see. When you said that
20 if it -- that if they were pursuing someone and it was a
21 mistake, suppose the evidence was that Border Patrol agents
22 were pursuing somebody and shot them, and it turned out that it
23 was a mistake. You would side with the agents. Is that
24 correct?

25 PROSPECTIVE JUROR: I -- I think I would, yes.

1 MS. KANOF: Okay. Thank you.

2 THE COURT: All right. Sure.

3 MS. RAMIREZ: Mr. Vargas?

4 PROSPECTIVE JUROR: Yes.

5 MS. RAMIREZ: Okay. Mr. Vargas, but you haven't heard
6 any of the evidence yet, right?

7 PROSPECTIVE JUROR: No. Right, I haven't heard
8 anything yet.

9 MS. RAMIREZ: Okay. And if the judge told you that
10 you would have to listen to the evidence and follow the law,
11 you would be able to do that, correct?

12 PROSPECTIVE JUROR: Yes. I can do that, yes.

13 MS. RAMIREZ: Okay. And you would be able to apply
14 the evidence to the law that the judge gives you and be fair to
15 the Government as well as to the defense.

16 PROSPECTIVE JUROR: Yes.

17 MS. RAMIREZ: Is that correct?

18 PROSPECTIVE JUROR: Yes.

19 MS. RAMIREZ: Okay. And you would be able to give
20 both the Government and the defendant a fair trial.

21 PROSPECTIVE JUROR: Yes.

22 MS. RAMIREZ: Correct?

23 PROSPECTIVE JUROR: Yes.

24 MS. RAMIREZ: Okay. So now -- and I have just a
25 couple more questions to ask you.

1 For the cameras, only at the ports of entry, you said?

2 PROSPECTIVE JUROR: Yeah. Only at ports of entry.

3 MS. RAMIREZ: Okay. Did you ever install any cameras
4 over in Fabens or in the San Elizario area?

5 PROSPECTIVE JUROR: No.

6 MS. RAMIREZ: Okay. All right.

7 I don't have any further questions.

8 THE COURT: All right. Ms. Stillinger?

9 MS. STILLINGER: No questions, Your Honor.

10 THE COURT: All right. And, Mr. Vargas, just one more
11 question -- well, maybe one more series of questions -- that
12 hae to do with following the law. You haven't heard any of the
13 evidence.

14 PROSPECTIVE JUROR: Right.

15 THE COURT: You remember I explained to all of you
16 that you are the triers of the facts. In other words, you're
17 going to listen to all of the facts about what happened in this
18 case. And then you are going to apply the law as the Court
19 gives it to you.

20 I've heard you say a couple of times that -- you know,
21 you've talked about mistakes. We don't know anything about the
22 facts in this case.

23 PROSPECTIVE JUROR: Sure.

24 THE COURT: We don't know anything about what law
25 might be applicable to those facts. My question has to do with

1 whether -- feeling as you feel, if you can set aside whatever
2 you feel and listen to the facts in this case and apply the law
3 as it applies to this case.

4 PROSPECTIVE JUROR: Yes. Yes, I can.

5 THE COURT: You don't -- do you feel that because
6 you -- I mean, you sort of indicated some sense of, you know,
7 border -- law enforcement, and if they may make a mistake.

8 PROSPECTIVE JUROR: Right.

9 THE COURT: Have you formed an opinion about this
10 case?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Do you know anything about the facts of
13 this case?

14 PROSPECTIVE JUROR: I don't know anything.

15 THE COURT: Do you know anything about the law in this
16 case?

17 PROSPECTIVE JUROR: No.

18 THE COURT: Will you have a problem applying the law
19 to the facts this case?

20 PROSPECTIVE JUROR: No, ma'am.

21 THE COURT: Any other questions, Ms. Kanof?

22 MS. KANOF: No, Your Honor.

23 MS. RAMIREZ: No, Your Honor.

24 MS. STILLINGER: No, Your Honor.

25 THE COURT: All right. You may step out, and we'll

1 see you at 1:00.

2 PROSPECTIVE JUROR: Yes, ma'am.

3 THE COURT: Thank you, Mr. Vargas.

4 (Prospective juror out of the courtroom.)

5 MS. KANOF: Your Honor, the Government moves for
6 dismissal on cause, based on the following statement made by
7 Mr. Vargas, "I'm not sure I can be fair."

8 MS. RAMIREZ: He said he could be fair, Judge. I
9 asked him a couple of times if he could be fair to both the
10 Government and to the defense. And then he stated that he
11 could apply the law, and -- as it was given in the jury charge,
12 and apply the facts to that law, and render a fair decision
13 both to the Government and to the defense.

14 THE COURT: All right. The Court will not strike.

15 All right. Juror Number 25.

16 (Prospective juror in the courtroom.)

17 THE COURT: Mr. Alaniz.

18 PROSPECTIVE JUROR: Judge.

19 THE COURT: You are a probation officer.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: What -- are you adult or juvenile?

22 PROSPECTIVE JUROR: Adult.

23 THE COURT: And over with the state?

24 PROSPECTIVE JUROR: With the county.

25 THE COURT: Okay. Okay. Correct. And I thought you

1 said it's been a number of years. How many years did you tell
2 me?

3 PROSPECTIVE JUROR: 21 years.

4 THE COURT: 21. Okay. I was thinking 19. I'm glad I
5 asked. All right.

6 And during that time, during that 21 years, were you
7 always with the adult county probation office?

8 PROSPECTIVE JUROR: That's correct.

9 THE COURT: And what kind of role have you played as a
10 county probation officer?

11 PROSPECTIVE JUROR: I supervise felony offenders.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: Placed on probation.

14 THE COURT: And has it always been the same, where you
15 supervised felony offenders? Did you ever do any other work
16 with them?

17 PROSPECTIVE JUROR: Just -- either misdemeanor or
18 felony, or a combination of both.

19 THE COURT: All right. And how many probationers do
20 you have at any given time?

21 PROSPECTIVE JUROR: About 130, 140.

22 THE COURT: Okay. And you have testified in a number
23 of cases?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Ever involved in a murder trial?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Attempted murder?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Ever involved in a case involving law
5 enforcement accused of a crime?

6 PROSPECTIVE JUROR: No, I haven't.

7 THE COURT: Ever supervised a law enforcement as a
8 probationer?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Okay. What kind of law enforcement have
11 you supervised?

12 PROSPECTIVE JUROR: It was a police officer.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: It was a misdemeanor DWI.

15 THE COURT: DWI?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: And how long was he on -- do you remember
18 how long that officer was on probation?

19 PROSPECTIVE JUROR: I believe it was two years.

20 THE COURT: Okay. And did he successfully complete
21 probation?

22 PROSPECTIVE JUROR: Yes, he did.

23 THE COURT: Any other officer that you've supervised,
24 law enforcement?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Mr. Alaniz, I'm sure we could go all day
2 into what you do and the work do you and testimony and
3 experience with lawyers and judges and defendants. My question
4 is: Knowing what you know, having the experience you've had in
5 trial and with law, the legal system in general, do you feel
6 you could sit in this case and be a fair and impartial juror?

7 PROSPECTIVE JUROR: I feel that what's important here
8 is dealing with the facts, not so much the defendant and who he
9 is, but just -- I know the importance of the facts.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR: I feel I could deal with that
12 only, and not have a problem with it.

13 THE COURT: All right. You think you could listen to
14 the facts and decide the case based on the facts?

15 PROSPECTIVE JUROR: Yes, I could.

16 THE COURT: Let's talk about the law a little bit,
17 because you know the Court is going to instruct you regarding
18 the law. The law here in federal court is different than the
19 law in state court. And you have to be able to follow the law
20 as the Court gives it to you in federal court. Do you feel you
21 will have any problems doing that?

22 PROSPECTIVE JUROR: I don't have any problems with
23 following the law.

24 THE COURT: All right. You feel you can listen to the
25 law as the Court gives it to you?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: Ms. Kanof, any questions?

3 MS. KANOF: No, Your Honor.

4 THE COURT: Anybody -- yes, Mr. Peters.

5 MR. PETERS: Just a couple, Your Honor.

6 THE COURT: Sure.

7 MR. PETERS: Mr. Alaniz, have I ever done anything in
8 state court across the street that you can recall that offended
9 you in any way?

10 PROSPECTIVE JUROR: No, I don't recall.

11 MR. PETERS: Because I didn't recall any such thing,
12 but, you know, sometimes I fight with probation officers,
13 because that's my job, right?

14 PROSPECTIVE JUROR: (No verbal response.)

15 MR. PETERS: Do you carry a gun?

16 PROSPECTIVE JUROR: No, I don't.

17 MR. PETERS: Okay. Do you feel there's anything about
18 your professional relationship, as a probation officer, that
19 would make you want to side with the Government, or with
20 authority of the higher-ups in an agency, or anything like
21 that, or do you feel that you could -- you could just look
22 pretty much straight down the line?

23 PROSPECTIVE JUROR: I feel I could pretty much deal
24 with the facts and separate that from everything else.

25 MR. PETERS: Thank you, sir.

1 THE COURT: Anyone else? Any questions? No?

2 MS. RAMIREZ: No, Judge.

3 THE COURT: Thank you. You're free to go.

4 PROSPECTIVE JUROR: Thank you.

5 (Prospective juror out of the courtroom.)

6 THE COURT: Any challenges?

7 MS. KANOF: None from the Government, Your Honor.

8 MR. ANTCLIFF: Judge, during -- in my notes, I took
9 down that he said that he could not be fair while he was
10 speaking in open court, prior to coming in here to speak
11 individually to the Court. For that reason, I would move for
12 challenge for cause.

13 THE COURT: All right. The Court will overrule the
14 challenge. He will remain as a juror.

15 Anybody else? Okay.

16 Number 26.

17 (Prospective juror in the courtroom.)

18 THE COURT: All the way to the front, Mr. Almanza.
19 Right there. That's it, unless you want to sit here, but --

20 PROSPECTIVE JUROR: No, thank you.

21 THE COURT: Okay. Mr. Almanza, you indicated, I think
22 at one point, you said to me you had some concerns about
23 sitting as a juror in this case. Is that true?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: Do you want to let me know what it is?

1 PROSPECTIVE JUROR: Okay. Last night, we -- me and my
2 grandson, we were talking about this certain case.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: I don't know why, it's that we saw
5 on the news that it was going to be today.

6 THE COURT: Uh-huh.

7 PROSPECTIVE JUROR: And I told him, I bet you that's
8 the jury I'm on. Between me and my --

9 THE COURT: So did you make that bet? Because you
10 might win.

11 PROSPECTIVE JUROR: No. I didn't bet, but I told
12 him -- between me and my grandson we were discussing this case.
13 And more or less we formed an opinion about the case.

14 THE COURT: And remember, I asked you that question,
15 so you do feel --

16 PROSPECTIVE JUROR: Yes, I do.

17 THE COURT: So you do feel you've formed an opinion?

18 PROSPECTIVE JUROR: Yes, ma'am, I do.

19 THE COURT: All right. Do you think you could sit and
20 listen to this and be fair and impartial, then?

21 PROSPECTIVE JUROR: Well, that's another thing, about
22 sitting, you know, too long in that chair. I recently lost my
23 wife.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR: And when I'm sitting for a long

1 time, my mind drifts.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR: And I forget about what they were
4 saying.

5 THE COURT: Okay. And I appreciate you being so
6 candid.

7 All right. Any questions of this juror?

8 MS. KANOF: No, Your Honor.

9 THE COURT: Anybody have any questions?

10 MS. STILLINGER: No, Your Honor.

11 THE COURT: All right. Anything else you wanted to
12 tell me? I didn't mean to interrupt you, Mr. Almanza.

13 PROSPECTIVE JUROR: No, it's just that you hit another
14 subject, on drug related.

15 THE COURT: Uh-huh.

16 PROSPECTIVE JUROR: About 15 years ago I lost two
17 brothers doing drugs, illegal drugs.

18 THE COURT: Okay. And --

19 PROSPECTIVE JUROR: They were killed. And it --

20 THE COURT: And has that affected you?

21 PROSPECTIVE JUROR: -- has stayed in my mind.

22 THE COURT: Sure. I appreciate that.

23 Well, I appreciate -- as I said -- and that's why I
24 asked you to come back, so I could speak to you privately. I
25 appreciate your candor, and we will see you back here at 1:00.

1 Okay? Thank you.

2 (Prospective juror out of the courtroom.)

3 THE COURT: Anyone have a challenge?

4 MS. RAMIREZ: Challenge for cause, Judge.

5 THE COURT: All right. Any objection?

6 MS. KANOF: No objection.

7 THE COURT: All right. He'll be struck, Juror Number

8 26.

9 27. I'm sorry, 27. Juror Number 27.

10 MS. STILLINGER: This is the one that Ms. Ramirez

11 asked, because her --

12 THE COURT: I thought I called out her number.

13 MS. STILLINGER: Yes, I show you did.

14 MS. RAMIREZ: You did, Judge.

15 THE COURT: I show I did. Will you just make sure

16 she's not out there? We may have --

17 I did not call out the number?

18 MS. KANOF: No, you did not.

19 THE COURT: Okay. The only thing I would say to you,

20 ladies and gentlemen of the jury, we are going to have

21 alter- -- I mean of the bar -- I'm already...

22 I'm going to have two alternates. If it turns out

23 Juror Number 27, Ms. Flores, is selected on the jury, we

24 probably do need to ask her before we seat the jury. And we

25 may have to pick an alternate. Okay? All right.

1 32.

2 (Prospective juror in the courtroom.)

3 THE COURT: All the way to the hot seat here.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: Now you get to talk, Mr. Llewellyn. All
6 right? Mr. Llewellyn, you indicated that you were retired from
7 the Arkansas State Police Department.

8 PROSPECTIVE JUROR: That's correct.

9 THE COURT: And this case is all about law
10 enforcement, as you've heard.

11 PROSPECTIVE JUROR: Yes, ma'am.

12 THE COURT: So do you feel you can sit in this case
13 and be a fair and impartial juror?

14 PROSPECTIVE JUROR: No.

15 THE COURT: All right. Do you want to tell me why?

16 PROSPECTIVE JUROR: Unless you've really been out
17 there and gone through what a lot of law enforcement officers
18 have, I think things happen, they happen quickly, spur of the
19 moment. I don't know the circumstances of this, but I would
20 lean toward the officers.

21 THE COURT: Okay. All right.

22 PROSPECTIVE JUROR: That's as honest as I can be.

23 THE COURT: I appreciate your candor.

24 All right. Any questions, Ms. Kanof?

25 MS. KANOF: No, Your Honor.

1 THE COURT: All right. Sure.

2 MS. RAMIREZ: If you sit on the panel, though, you
3 will be instructed that you need to listen to the facts and you
4 need to follow the law.

5 PROSPECTIVE JUROR: Right.

6 MS. RAMIREZ: If the Judge charges you that this is
7 what the law is, do you think that you could apply the facts to
8 the law?

9 PROSPECTIVE JUROR: Oh, yeah. Yes.

10 MS. RAMIREZ: Yes?

11 PROSPECTIVE JUROR: Yes.

12 MS. RAMIREZ: Okay. And do you think you would be
13 able to give -- follow the law and render a verdict that is
14 fair to the Government as well as to the defendants?

15 PROSPECTIVE JUROR: I believe so, yes.

16 MS. RAMIREZ: So you think that you can be a fair and
17 impartial juror in this case?

18 PROSPECTIVE JUROR: I want to say yes, you know,
19 depending on what I hear. But I -- I don't know, without
20 hearing it.

21 MS. RAMIREZ: Right. Because you don't know what the
22 evidence is yet.

23 PROSPECTIVE JUROR: Right. I don't know what the
24 evidence is. But I think I can listen to evidence. I've
25 listened to evidence, you know, for a lot -- a lot of times.

1 Yes.

2 MS. RAMIREZ: And, after you listen to the evidence,
3 since you're the ones -- the jurors are the ones that are going
4 to be the ultimate judges of the facts --

5 PROSPECTIVE JUROR: Right.

6 MS. RAMIREZ: -- apply those facts to the law as its
7 given to you by the Judge --

8 PROSPECTIVE JUROR: Yes.

9 MS. RAMIREZ: -- and render a fair and impartial
10 verdict in this case?

11 PROSPECTIVE JUROR: Yes, I think I can.

12 MS. RAMIREZ: And be a fair and impartial juror, both
13 to the Government and to the defense?

14 PROSPECTIVE JUROR: Yes.

15 MS. RAMIREZ: You think you can do that?

16 PROSPECTIVE JUROR: Yes.

17 MS. RAMIREZ: Okay.

18 MS. KANOF: I have questions now.

19 THE COURT: Sure, Ms. Kanof.

20 MS. KANOF: Mr. Llewellyn --

21 PROSPECTIVE JUROR: Yes.

22 MS. KANOF: -- the issue here isn't whether you can
23 follow the law. You've done that all of your life --

24 PROSPECTIVE JUROR: Right.

25 MS. KANOF: -- obviously. The question is the impact

1 that the facts would have on you emotionally, having spent your
2 entire life as a law -- your entire working life as a law
3 enforcement officer. Is that correct?

4 PROSPECTIVE JUROR: Yes.

5 MS. KANOF: Okay. Now, you indicated that people
6 don't know what it's like out there.

7 PROSPECTIVE JUROR: Right.

8 MS. KANOF: And that sometimes you have to make split
9 minute decisions, correct?

10 PROSPECTIVE JUROR: Yes.

11 MS. KANOF: If the facts in this case -- if the
12 defense in this case was that there was a certain perception
13 that someone was committing a crime, and they made a split --
14 maybe had a gun and made a split decision --

15 MS. RAMIREZ: Your Honor, I don't think that she can
16 contract with the juror, if she's telling him what the facts
17 are. I think she can ask him what the law is and apply the
18 law, but not -- now, she's telling him what the facts are and
19 trying to contract with the juror.

20 MS. KANOF: I'm not trying to contract with him,
21 Your Honor, and I won't try to contract with him. I think he
22 needs to understand what some of the facts are to search his
23 mind for bias.

24 THE COURT: All right. I will let you proceed. Just
25 be careful.

1 MS. KANOF: Okay.

2 Mr. Llewellyn, what I'm asking is if, in that
3 situation, it -- it's not an issue whether or not you could
4 follow the law or the Court's instructions. Of course you
5 could.

6 The question is whether you would impose your own
7 experience into the situation and make a decision based on your
8 knowledge of law enforcement experiences that you have had, and
9 not be able to separate that from the experiences that you
10 might hear on the stand. Do you think -- do you think you
11 would have problems doing that?

12 PROSPECTIVE JUROR: No. I can't -- again, I don't
13 know what the facts are, so I don't know what I'm going to
14 hear, if I should. I would like to think that I can listen to
15 what's being said and what's being presented and make a
16 decision. Yes, it would have to be based on my experience,
17 but...

18 MS. KANOF: You would base it on your experience?

19 PROSPECTIVE JUROR: Sure, I would.

20 MS. KANOF: Okay. You said two things. Let me ask
21 you about those. You said, "Unless you've been out there you
22 can't know what it's like."

23 PROSPECTIVE JUROR: Right.

24 MS. KANOF: Is that correct?

25 PROSPECTIVE JUROR: Yes.

1 MS. KANOF: And you feel that way?

2 PROSPECTIVE JUROR: Yes, I do.

3 MS. KANOF: And you would impose that feeling in this
4 situation, correct?

5 PROSPECTIVE JUROR: It --

6 MS. KANOF: I'm not talking about following the law,
7 I'm talking about your feelings.

8 PROSPECTIVE JUROR: Yeah. Well, obviously, I would
9 follow what I know. I'm just saying that I don't know what the
10 circumstances are that brought all this about. I do understand
11 how quickly things can happen. But, again, it depends on what
12 the -- it depends on what the actual -- the facts are.

13 MS. KANOF: You also said you would lean towards the
14 officers.

15 PROSPECTIVE JUROR: Yes.

16 MS. KANOF: Okay. And you still agree that you would
17 lean towards the officers?

18 PROSPECTIVE JUROR: Yeah. I would have to have
19 evidence that showed, you know, some malfeasance, something. I
20 can't stop that.

21 MS. KANOF: So you don't come into this with a fair
22 and impartial mind. You come into this with the predisposition
23 of believing law enforcement officers over others.

24 PROSPECTIVE JUROR: Well, I guess I should present
25 myself with the evidence --

1 MS. RAMIREZ: I will object. That's a misstatement of
2 what the juror said.

3 THE COURT: Well, he's -- he can answer.
4 Go ahead.

5 PROSPECTIVE JUROR: Yeah. Okay. Yes. I would lean
6 toward law enforcement. When the Judge was asking, Do you
7 believe what you're going to hear, and all this -- and I
8 know -- and not everybody tells the truth, you know, and things
9 sometimes get out of hand. But I would like to think that I
10 could sit there and listen to the facts and make a decision.

11 MS. KANOF: You would like to think that you could.
12 But can you?

13 PROSPECTIVE JUROR: Yes, I think I can.

14 MS. KANOF: Okay. Have you ever shot anyone in the
15 back?

16 PROSPECTIVE JUROR: No.

17 MS. KANOF: Have you ever had to discharge your
18 service weapon in the course of running after a fleeing
19 individual?

20 PROSPECTIVE JUROR: No.

21 MS. KANOF: Have you ever -- have you ever worked on
22 the border?

23 PROSPECTIVE JUROR: No.

24 MS. KANOF: Were you ever a supervisor?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Okay. And so you were a state trooper, is
2 that correct, an Arkansas state trooper?

3 PROSPECTIVE JUROR: Yes.

4 MS. KANOF: Okay. I have nothing further.

5 THE COURT: All right. Any other questions?

6 MS. STILLINGER: I would just like to ask a few,
7 Your Honor.

8 THE COURT: Sure.

9 MS. STILLINGER: Mr. Llewellyn, you understand, if you
10 were selected for this jury and were deliberating in this case,
11 that the Judge would instruct you not to share your personal
12 experiences, things that may have happened to you or stories
13 you may have heard from someone else. You couldn't share that
14 with the jurors. Do you understand that? You wouldn't have a
15 problem with that, correct?

16 PROSPECTIVE JUROR: No.

17 MS. STILLINGER: I understand you're saying you
18 would -- you can't help but rely on your personal experience,
19 of course. But you couldn't put yourself in a position of
20 wanting to tell the other jurors how it really is out there.

21 PROSPECTIVE JUROR: Yeah. No, I wouldn't.

22 MS. STILLINGER: You wouldn't have a problem with
23 that?

24 PROSPECTIVE JUROR: No, not at all.

25 MS. STILLINGER: And as I understand what you're

1 saying, you said you might lean in favor of the officers. But
2 you're saying, I guess, only to the extent you would require
3 the Government to prove some evidence, right?

4 PROSPECTIVE JUROR: Exactly, yes. That's exactly what
5 I mean.

6 MS. STILLINGER: If they had evidence that these
7 officers were guilty of something, you would be able to convict
8 them, wouldn't you?

9 PROSPECTIVE JUROR: Yes.

10 MS. STILLINGER: That's all I have, Your Honor.

11 THE COURT: All right.

12 MS. RAMIREZ: No further questions, Judge.

13 THE COURT: All right. Thank you. We'll see you back
14 at 1:00.

15 PROSPECTIVE JUROR: 1:00.

16 (Prospective juror out of the courtroom.)

17 THE COURT: Ms. Kanof?

18 MS. KANOF: Your Honor, the Government moves to strike
19 for cause, Your Honor.

20 THE COURT: Response?

21 MS. RAMIREZ: Objection. He stated very clearly that
22 he could be fair and impartial and apply the facts as they were
23 presented to him, and that he could apply the law to the facts
24 of the case.

25 I think that his comments were based on having to

1 place the burden of proof on the Government and having -- that
2 the Government had to prove beyond a reasonable doubt that the
3 defendants were guilty.

4 Ms. Stillinger also elicited, I think, testimony from
5 the juror, when he stated he could put aside his personal
6 experiences as a law enforcement officer, and that he wouldn't
7 relate those experiences to the jurors if he were on the jury,
8 and that he would be able to listen to the facts, apply the
9 facts to the law, and render a fair and impartial verdict.

10 He even stated, if the Government proved their case,
11 then he would be able to find the defendants guilty.

12 THE COURT: All right. Ms. Stillinger?

13 MS. STILLINGER: And, Your Honor, just to join in
14 that, but also say, really, I know he sounded like he would be
15 partial at the beginning. But, really, what I heard him say is
16 that he would assume they're innocent until they're proven
17 guilty, which is -- should be his state of mind.

18 And I don't think -- and, obviously, he has personal
19 experiences, although apparently he does not have any personal
20 experiences that he's been involved in that are similar enough
21 that I think the Court could assume he couldn't put it aside.
22 He's never shot anybody in his line of work. So, obviously,
23 he's never been involved in that kind of inquiry.

24 I think the mere fact that he's been in law
25 enforcement -- and so, really, it's just the mere fact that

1 he's been a law enforcement officer, which is certainly not
2 enough to disqualify him.

3 THE COURT: All right. The Court will grant the
4 challenge for cause. He will be struck.

5 Number 33.

6 THE BAILIFF: Number 33 did not remain in the hallway,
7 Your Honor.

8 THE COURT: Okay. I did call him, did I not?

9 MS. KANOF: Yes.

10 THE COURT: 33 and 27, man.

11 MS. KANOF: I think you should find him in contempt.

12 THE COURT: There you go. Okay. Now, I show -- I
13 didn't -- he did not raise any concerns for the Court, other
14 than he was a U.S. Government employee. Do we -- does he
15 explain, Ms. Hammer, anything more than he's a U.S. Government
16 employee on his answer?

17 THE CLERK: Sometimes they do, Judge.

18 THE COURT: Do you know that? Is there any way you
19 can check and see what branch of the Government he's with?

20 THE CLERK: Yes.

21 THE COURT: Will you check up for me, while we're --

22 THE CLERK: May I leave?

23 THE COURT: Yes, you may. Thank you.

24 I will have Ms. Hammer check. And then by the time
25 we're done, perhaps we will know what branch of the Government

1 it might be.

2 THE CLERK: Guy Rosales, right?

3 THE COURT: Guy Rosales, Juror Number 33. Thank you,
4 Ms. Hammer.

5 Okay. The next one I show is 34.

6 MS. KANOF: We do know number 33 doesn't follow
7 instructions.

8 THE COURT: I know. There you go. And I asked that
9 specifically, right?

10 (Prospective juror in the courtroom.)

11 THE COURT: And all way to the front, Ms. Schulz.

12 PROSPECTIVE JUROR: This chair?

13 THE COURT: Right there, the hot seat.

14 PROSPECTIVE JUROR: Okay.

15 THE COURT: Ms. Schulz, I think it was when I was
16 asking the question about being indicted, that these gentleman
17 had been indicted, they'd been indicted for multiple counts,
18 did that affect anyone's ability to listen to the case and be
19 fair and impartial. And you raised your hand. What did you
20 want to tell me?

21 PROSPECTIVE JUROR: Just the fact it -- they had -- if
22 it was like one, for example, one charge or one whatever, I
23 would be able to hear it, both sides. Even if it's just one or
24 the other person or both. But the fact it's multiple, and that
25 I have, like a good citizen, think and believe the police

1 officers more, that they wouldn't just up and just charge them.
2 I would believe that, if they have multiple charges, then
3 they're more than likely guilty.

4 THE COURT: So have you, based on what the Court --
5 and what we've talked about this morning -- have you formed an
6 opinion?

7 PROSPECTIVE JUROR: Just the fact it's multiple
8 charges, yes.

9 THE COURT: Okay. And, based on the fact that it's
10 multiple charges, have you formed an opinion?

11 PROSPECTIVE JUROR: That more than likely they did.

12 THE COURT: All right.

13 Any questions, Ms. Kanof?

14 MS. KANOF: No, Your Honor.

15 THE COURT: Any questions?

16 MS. STILLINGER: No, Your Honor.

17 MS. RAMIREZ: No, Judge.

18 THE COURT: All right. Thank you. We'll see you back
19 at 1:00.

20 PROSPECTIVE JUROR: Thank you.

21 (Prospective juror out of the courtroom.)

22 THE COURT: Any challenge?

23 MS. STILLINGER: Move to strike for cause.

24 Any objection?

25 MS. KANOF: No objection, Your Honor.

1 THE COURT: She'll be struck, 34.

2 The next one I show is 45.

3 (Prospective juror in the courtroom.)

4 THE COURT: All the way to the front, Mr. Castillo.

5 Mr. Castillo, when we were talking about the case in
6 the voir dire, you indicated that you had some concerns about
7 being fair in this case. What did you want to tell the Court?

8 PROSPECTIVE JUROR: Well, it was -- like I told you,
9 it was like -- all I know is what I read in the paper. And the
10 latest thing that I read about the case is about the suing of
11 the Government, which I don't go along with at all.

12 And him being -- bringing that stuff in here, bringing
13 those drugs, putting our people in jeopardy, which I don't go
14 along with at all either, makes me not really believe that the
15 guy is coming from the right angle. And I think these guys had
16 kind of like a big reason to do what they did.

17 THE COURT: Okay. So having read -- how many articles
18 do you think you read, Mr. Castillo?

19 PROSPECTIVE JUROR: Ma'am?

20 THE COURT: How many articles about the case do you
21 think you read?

22 PROSPECTIVE JUROR: About four or five. The last one,
23 really, where the guy is going to try to sue the Government.

24 THE COURT: That was the last one you read?

25 PROSPECTIVE JUROR: That's the last one I read.

1 THE COURT: Okay. And having read, I guess, from
2 article one to article five, you feel you've formed an opinion
3 in this case?

4 PROSPECTIVE JUROR: I think so. Probably I formed it
5 way before.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: Since all this trouble started on
8 the border.

9 THE COURT: Uh-huh.

10 PROSPECTIVE JUROR: Especially with the drug problem,
11 which I'm totally against it. And I would back anybody who
12 would try to stop it.

13 THE COURT: Okay. And you know, Mr. Castillo, I try
14 to explain to jurors, and I want to explain to you, there's
15 lots of cases you would be a great juror on, and there are
16 cases, just because you feel so strongly about certain things,
17 that you just don't feel you could be fair and impartial. And
18 so my question is: Do you feel you can be a fair and impartial
19 juror in this case?

20 PROSPECTIVE JUROR: No, ma'am, I don't think so.

21 THE COURT: All right. Ms. Kanof?

22 MS. KANOF: No questions from the Government,
23 Your Honor.

24 THE COURT: Any questions?

25 MS. STILLINGER: No questions.

1 MS. RAMIREZ: No, questions, Your Honor.

2 THE COURT: All right. Thank you. We'll see you back
3 here at 1:00.

4 (Prospective juror out of the courtroom.)

5 THE COURT: Perfect timing, Ms. Hammer.

6 Ken, was there anybody else out in the hallway?

7 THE BAILIFF: No, ma'am.

8 THE COURT: Nobody wanted to just talk? Okay.

9 MS. KANOF: Move to strike for cause, Your Honor.

10 THE COURT: Any objections?

11 MS. STILLINGER: No objections.

12 MS. RAMIREZ: No objections.

13 THE COURT: He will be struck.

14 Okay. All right. Let me tell you what I know about
15 the juror who doesn't follow the rules here. Ms. Hammer went
16 and got his juror questionnaire.

17 It appears from his juror questionnaire that he was or
18 is employed as a quality assurance evaluator with the
19 United States Government maintenance division at Fort Bliss,
20 Texas.

21 He shows -- I guess that -- hold on a second. Let me
22 see here.

23 The only other one that has any reference to
24 Government employment is the question that says, Have you or
25 your spouse ever been employed by a law enforcement agency?

1 He checked yes.

2 And, If your answer is yes, give agency and dates.

3 Department of Justice, Drug Enforcement Agency.

4 So I don't know, again -- his -- he indicates his wife
5 is a homemaker. Wait. Let me make sure. 33.

6 MS. RAMIREZ: Judge, he didn't answer that question
7 when you asked it.

8 THE COURT: Oh, he didn't? Okay.

9 No, he indicates his wife is a homemaker. But he
10 doesn't indicate if he's speaking of his wife or what when he
11 answers Department of Justice, Drug Enforcement Agency.

12 Okay? So that's all the information I have.

13 MS. RAMIREZ: Judge, did he say --

14 THE COURT: Well, it says, Have you or your spouse
15 ever been employed --

16 MS. RAMIREZ: I understand that now.

17 THE COURT: Yeah. So it could --

18 MS. RAMIREZ: It could be him or his spouse.

19 THE COURT: Yeah. Okay? So, given his role as
20 maintenance division -- in the maintenance division, I don't
21 know if that's what he's referring to.

22 Do we have any concerns about Juror Number 33?

23 MS. STILLINGER: Your Honor, I'm concerned, because if
24 he or his wife ever worked with DEA, I think the Court asked
25 that question --

1 THE COURT: Right.

2 MS. STILLINGER: -- clearly. And he didn't respond.
3 And that causes me some concern.

4 THE COURT: Okay. Well --

5 MS. STILLINGER: I guess I -- I don't know if I could
6 ask to strike him for cause at this point, but I think if we
7 could either agree to strike him, or we could bring him back in
8 and ask him some questions.

9 THE COURT: Well, I mean, here is the alternative. It
10 is a quarter after 12:00. They're coming back at 1:00. I am
11 happy to let everybody take a break and call him in at 1:00 and
12 talk to him, if we feel that strongly that we have some
13 concerns. And then you would have to exercise your strikes.
14 That means we wouldn't have a jury till close to 2:00.

15 MS. KANOF: That's fine with the Government.

16 THE COURT: You want to go ahead and bring him back
17 and ask him any questions?

18 MS. KANOF: I don't necessarily want to bring him
19 back, Judge, but if that's what the Court wants to do, I don't
20 have an objection.

21 THE COURT: Okay. What do you guys want to do? Do
22 you want to speak to him?

23 MS. STILLINGER: We would rather speak to him.

24 THE COURT: All right. Then what -- go ahead.

25 MS. RAMIREZ: Yes, ma'am. And I would also -- I just

1 want, out of an abundance of caution, to talk to 27. I just
2 want to make sure that she has --

3 THE COURT: That's fine. We will speak to both 27 and
4 33. So when -- what I'm going to ask you guys to do, in case
5 anyone shows up early, is try to be here a little bit before
6 1:00, so that if they're here, we can get started with them
7 early.

8 Well, because I have made them a promise. I mean,
9 we're going to be extra long once we get started. So try to be
10 here as close to 1:00 as you can. We'll talk to 27 and 33, and
11 then we will actually exercise our strikes. All right?

12 All right. So we'll see everybody back here at 1:00.

13 (Brief recess; open court, parties present, jury panel
14 not present.)

15 THE COURT: What we're trying to determine. I
16 actually had Ms. Hammer hold 19 more jurors, in case we
17 couldn't get a panel. It appears to me, even if we struck
18 these two, we would have enough. I just want to make sure
19 whether or not we can let them go. Anybody have any concerns?
20 Because we have -- well, let's count how many we have.

21 Let's go over strikes. I show Juror Number 6 struck.
22 Agreed?

23 MS. KANOF: Yes.

24 MS. RAMIREZ: Yes.

25 THE COURT: I show Juror Number 21 struck.

1 MS. RAMIREZ: Yes.

2 THE COURT: I show Juror Number 26 struck.

3 MR. GONZALEZ: Yes.

4 THE COURT: Juror Number 34 struck and Juror Number 32
5 struck.

6 MS. RAMIREZ: Yes.

7 THE COURT: And Juror Number 45 struck. Correct?

8 MR. GONZALEZ: That's what we have, as well.

9 MS. STILLINGER: Yes, Your Honor, that's what we have.

10 THE COURT: All right. So that leaves -- did you
11 count out how many?

12 MR. ANTCLIFF: 39.

13 THE COURT: With 39 will we have enough? I think we
14 will. Minus -- if we have to, if we go down to 37, minus 17,
15 we still have 20, right?

16 MS. KANOF: Yes.

17 THE COURT: So we should be all right if I let those
18 19 go. Anybody have any con- -- I mean, I can keep them.

19 MS. KANOF: How many strikes does the defense have?

20 MS. STILLINGER: Ten.

21 THE COURT: Ten.

22 MS. KANOF: Each side has ten?

23 MS. RAMIREZ: No, ten total.

24 THE COURT: Ten total.

25 MS. KANOF: Ten total, oh.

1 THE COURT: And then you have --

2 MR. GONZALEZ: And then one each for the alternates.

3 THE COURT: Right. One each for the alternates.

4 But -- so we need -- hold on. So I use -- I -- the way I do
5 it -- let me show you the way -- tell you the way I do it, just
6 to make sure. We will go to the number we need for the
7 panel -- I'm sorry, for the jury. Then I will set aside five
8 more, and you will get one more strike for that group. So --
9 but I still think we have enough, based on that. I think we're
10 fine. All right? All right.

11 So, yes, you can let them go, even if we lose these
12 two.

13 All right. We'll see you back here at 1:00.

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

16 THE COURT: You may be seated. We need to be on time,
17 everybody; otherwise, we're going to get way behind.

18 All right. We are -- I believe we have the two jurors
19 here that we needed to speak with; is that correct?

20 THE CLERK: Yes, ma'am. They're outside the door.

21 THE COURT: Okay. 27.

22 (Prospective juror in the courtroom.)

23 THE COURT: 27. There you go.

24 Ms. Flores, the only question I had was about -- I
25 believe you made reference to a relative that was a Border

1 Patrol agent in Arizona. Is that correct?

2 PROSPECTIVE JUROR: Yes, but he's in New Mexico. I
3 remembered later. He's in New Mexico. Sorry.

4 THE COURT: Okay. And the only reason I ask is, we
5 actually have a Border Patrol agent, one of the ones that was
6 listed that may testify, who is out of the Willcox, Arizona,
7 area. And so I want to make sure that it's not -- that it
8 might not be someone --

9 PROSPECTIVE JUROR: I believe he's in Deming,
10 New Mexico.

11 THE COURT: Deming, New Mexico?

12 PROSPECTIVE JUROR: Deming, New Mexico. Yes, ma'am.

13 THE COURT: Okay. All right. Well, then, Ms. Kanof,
14 do you have any questions?

15 MS. KANOF: No, Your Honor.

16 THE COURT: Anyone on behalf of the defense?

17 MS. RAMIREZ: No, Your Honor.

18 THE COURT: All right. Thank you. We'll see you in
19 just a minute, then.

20 PROSPECTIVE JUROR: Thank you, Judge.

21 (Prospective juror out of the courtroom.)

22 THE COURT: Any objections?

23 MS. RAMIREZ: No, Judge.

24 MR. GONZALEZ: No, Your Honor.

25 MS. KANOF: No.

1 THE COURT: All right. 33, please.

2 (Prospective juror in the courtroom.)

3 THE COURT: Mr. Rosales; is that correct?

4 PROSPECTIVE JUROR: Yes, ma'am.

5 THE COURT: Mr. Rosales, you work for the U.S.
6 Government?

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: What do you do with the U.S. Government?

9 PROSPECTIVE JUROR: I'm a contractor surveillance
10 officer for the Government, and I oversee the contractor in
11 place at Fort Bliss.

12 THE COURT: And when you say "surveillance officer,"
13 what does that mean?

14 PROSPECTIVE JUROR: We surveil the contract, and then
15 we basically report card for the board fee for the Government.

16 THE COURT: Okay. So if -- so I'm understanding, if
17 someone has a Government contract, what you do is you surveil
18 that contract and make sure that they're complying with it? Is
19 that what I --

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: Okay. And is it any partic- -- is it
22 construction contracts or is it all kinds of contracts?

23 PROSPECTIVE JUROR: It's the -- it's a major contract
24 at Fort Bliss for maintenance for the brigades on the
25 installation --

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: -- units on installation.

3 THE COURT: Gotcha. So it's mostly to do with
4 maintenance.

5 PROSPECTIVE JUROR: Yes, ma'am.

6 THE COURT: And how long have you been employed?

7 PROSPECTIVE JUROR: I've been with the Government
8 30 -- 31 years.

9 THE COURT: And, in the employment with the
10 Government, have you ever worked with any of the agencies we've
11 talked about here, whether it's Border Patrol --

12 PROSPECTIVE JUROR: Not really.

13 THE COURT: -- immigration?

14 PROSPECTIVE JUROR: There's a contract with Doss
15 Aviation at Biggs Field. I have a counterpart that works out
16 of a different office that works with Doss, and he's the
17 surveilling contractor -- contractor surveilling -- actually
18 surveilling the contractor. And they do a little dealing with
19 the Border Patrol, but I don't have any association with that.

20 THE COURT: All right. And I noted on your
21 questionnaire, you made reference to the Justice Department and
22 DEA, someone perhaps being employed with them. Do --

23 PROSPECTIVE JUROR: My wife just works administrative
24 work, doesn't have anything to do with the agency.

25 THE COURT: Administrative --

1 PROSPECTIVE JUROR: Administrative, that's it.

2 THE COURT: With whom?

3 PROSPECTIVE JUROR: DEA.

4 THE COURT: And what does she do with DEA?

5 PROSPECTIVE JUROR: She pays their bills, basically.

6 THE COURT: Okay. So --

7 PROSPECTIVE JUROR: No -- nothing to do with the
8 actual agents themselves or anything like that.

9 THE COURT: Is she actually at an of- -- does she
10 office with the DEA --

11 PROSPECTIVE JUROR: Yes, ma'am.

12 THE COURT: -- at one location or another?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Which location is that?

15 PROSPECTIVE JUROR: The Mesa Hills office.

16 THE COURT: Okay. Is there anything about her
17 employment, or any information that you feel you may have
18 gotten as a result of her working there, that you feel may
19 affect your ability to be fair and impartial?

20 PROSPECTIVE JUROR: No, ma'am.

21 THE COURT: We are talking, and I think I mentioned to
22 you, that you will receive instructions, or there may be some
23 evidence about illegal drugs. She works with DEA. Is there
24 anything about that, that you feel may affect your ability to
25 be fair and impartial?

1 PROSPECTIVE JUROR: No, ma'am. We don't talk anything
2 about that, basically.

3 THE COURT: All right.

4 Any questions on behalf of the Government?

5 MR. GONZALEZ: No, Your Honor.

6 THE COURT: Anything on behalf of the defense?

7 MS. STILLINGER: No, Your Honor.

8 MS. RAMIREZ: No, Your Honor.

9 THE COURT: All right. Thank you, sir. We'll see you
10 in just a minute.

11 (Prospective juror out of the courtroom.)

12 MR. GONZALEZ: We have no challenge.

13 MS. STILLINGER: No challenge, Your Honor.

14 THE COURT: All right. Now, everyone is here present,
15 and we've gone through the strikes. Do you need me to run
16 through those again?

17 MS. STILLINGER: I don't think so.

18 THE COURT: All right. Have we counted out, then,
19 what we have available for the jury and then for the
20 alternates? All right. What numbers are we talking about, 1
21 through --

22 THE CLERK: The first 12 should come from 1 through
23 31. And your alternates should be beginning with 33 through
24 38, inclusive.

25 THE COURT: All right. So you will exercise your

1 initial strikes, 1 through 31. And then each will get one
2 strike in the -- between 32 and -- actually, 33 and 38.

3 MS. RAMIREZ: That's one each for defense counsel?

4 THE COURT: Right. And one for the Government. All
5 right? Yes? Everybody with me on this?

6 MR. ANTCLIFF: Yes, Your Honor.

7 MR. GONZALEZ: We have two blanks. Just leave one
8 blank?

9 THE COURT: You have two blanks --

10 MR. GONZALEZ: On the alternate.

11 THE COURT: What do you mean, you --

12 MR. GONZALEZ: Just fill in one name? Is that what
13 you said, Judge?

14 THE COURT: Right. We're going to have two
15 alternates. Okay? Yeah. So you -- but you will get one
16 strike in the area between 33 and 38, in order to pick that
17 alternate. All right?

18 All right. Now, how long do you anticipate needing,
19 just so that I will know when you're ready? And does anybody
20 want to use the jury room?

21 MR. GONZALEZ: We don't need to use the jury room. I
22 think we will be ready within five minutes, Your Honor.

23 THE COURT: All right. You, too?

24 MR. ANTCLIFF: Agreed.

25 THE COURT: Okay. As soon as you have it ready, give

1 it to Ms. Hammer. We'll stand in recess until we have the jury
2 selected.

3 (Recess; attorneys making strikes; open court, parties
4 present, jury panel not present.)

5 THE COURT: You may be seated.

6 It is my understanding that we do have a jury. So I'm
7 going to ask the jury clerk to go ahead and read the names of
8 the jurors and the alternates.

9 THE CLERK: The first juror is Number 4, Stephen
10 Smith.

11 The second juror is Number 5, Claudia Flores.

12 The third juror is Number 7, Ramon Paz.

13 The fourth juror is Number 8, Maximino Torres.

14 The fifth juror is Number 11, Bertha Valtierra.

15 The sixth juror is Number 15, Susan Acevedo.

16 The seventh juror is Number 17, Alicia Rivera.

17 The eighth juror is Number 20, Edine Woods.

18 The ninth juror is Number 23, Sylvia Soliz.

19 The tenth juror is Number 27, Yvette Flores.

20 The 11th juror is Number 28, Irene Chavira.

21 The 12th juror is Number 30, Robert Gourley.

22 The first alternate is Number 35, Danielle Chavez.

23 The second alternate is Number 36, Jacqueline
24 Armendariz Reynolds.

25 THE COURT: Does the Government have any objection to

1 the jury?

2 MR. GONZALEZ: No, Your Honor.

3 THE COURT: Does the defense?

4 MS. STILLINGER: No, Your Honor.

5 MS. RAMIREZ: No, Your Honor.

6 THE COURT: All right. Then at this time we will go
7 ahead and bring the jury in.

8 While we're waiting for the jury to get in and get
9 seated, let's talk a little bit about how we will proceed from
10 here.

11 It's the intention of the Court to go ahead and give
12 the instructions and then begin opening argument. Anybody have
13 a problem with that?

14 MR. GONZALEZ: Not the Government, Your Honor.

15 MS. STILLINGER: No.

16 MS. RAMIREZ: No, Judge.

17 THE COURT: All right. We have not talked about how
18 long each side wishes to take. How long does the Government
19 wish to take with opening?

20 MS. KANOF: Approximately 45 minutes, Your Honor; 30
21 to 45 minutes.

22 THE COURT: Are you going to split it at all?

23 MS. KANOF: No.

24 THE COURT: All right. So a straight 30 to 45
25 minutes.

1 Defense?

2 MS. STILLINGER: Well, I asked for a lot less time.
3 That's crazy for an opening statement.

4 THE COURT: All right. How long do you anticipate
5 needing, Ms. Stillinger?

6 MS. STILLINGER: Probably about 15 minutes,
7 Your Honor.

8 THE COURT: All right.

9 MS. RAMIREZ: I anticipate about 15 to 20 minutes,
10 Judge. I think 45 minutes is way too long.

11 THE COURT: Okay.

12 MS. KANOF: I have a question. The Court called it
13 opening argument.

14 THE COURT: I'm sorry, opening statement. That's what
15 I meant. Okay. Let's go ahead, then, and --

16 MS. KANOF: Because then it would take me two hours.

17 THE COURT: Pardon me?

18 MS. KANOF: Because then it would take me two hours.

19 THE COURT: There you go. All right, then. Let's go
20 ahead and -- you said 30 to 45 minutes.

21 MS. KANOF: Yes, Your Honor.

22 THE COURT: Let's keep it to 30 minutes. And then you
23 will each have time -- 30 minutes each, all right, if you need
24 it.

25 All right. And does anybody want a warning of time?

1 MS. KANOF: I do, Your Honor. Two minutes, please.

2 MS. STILLINGER: Same here, Your Honor. I don't think
3 I will get there.

4 THE COURT: Ms. Ramirez?

5 MS. RAMIREZ: Sure, Judge.

6 THE COURT: Just in case?

7 MS. RAMIREZ: Yes, ma'am.

8 (Open court, parties and jury present.)

9 THE COURT: You may be seated.

10 Ladies and gentlemen of the jury, we are now going to
11 call the roll of those jurors who have been selected. As your
12 name is called, I'm going to ask each of you to respond
13 verbally, by either saying Here or Present. As I've said to
14 you before, our court reporter has to take down everything we
15 say. If you nod or don't respond verbally, no one can -- he
16 can't take that down. So it's important that you either say
17 Here or Present, just to make sure that we have the jury
18 correctly seated.

19 So if you would go ahead, Mr. Martinez, and call the
20 roll.

21 THE CLERK: Juror Number 1, Stephen Smith.

22 JUROR: Here.

23 THE CLERK: Juror Number 2, Claudia Flores.

24 JUROR: Here.

25 THE CLERK: Juror Number 3, Ramon Paz.

1 JUROR: Here.

2 THE CLERK: Juror Number 4, Maximino Torres.

3 JUROR: Here.

4 THE CLERK: Juror Number 5, Bertha Valtierra.

5 JUROR: Here.

6 THE CLERK: Juror Number 6, Susan Acevedo.

7 JUROR: Here.

8 THE CLERK: Juror Number 7, Alicia Rivera.

9 JUROR: Here.

10 THE CLERK: Juror Number 8, Edine Woods.

11 JUROR: Here.

12 THE CLERK: Juror Number 9, Sylvia Soliz.

13 JUROR: Here.

14 THE CLERK: Juror Number 10, Yvette Flores.

15 JUROR: Here.

16 THE CLERK: Juror Number 11, Irene Chavira.

17 JUROR: Here.

18 THE CLERK: Juror Number 12, Robert Gourley.

19 JUROR: Here.

20 THE CLERK: Alternate Number 1, Danielle Chavez.

21 JUROR: Here.

22 THE CLERK: Alternate Number 2, Jacqueline Armendariz

23 Reynolds.

24 JUROR: Present.

25 THE COURT: All right. Ladies and gentlemen of the

1 jury, if you would please now stand and take the oath.

2 (Jury sworn.)

3 THE COURT: You may be seated.

4 Ladies and gentlemen of the jury, by the oath you have
5 just taken as jurors, you become officials of this Court and
6 active participants in the public administration of justice.
7 If at any time you cannot clearly hear in the proceedings,
8 please let me know that, let one of my Court staff know that,
9 so we can make sure and have the witness speak up or correct
10 that problem.

11 Do not discuss this case with anyone during your
12 service as a juror. To maintain the integrity of the jury
13 system you are not to discuss the case with anyone. And don't
14 even -- not even with your fellow jurors, until you are
15 instructed to do so.

16 Now, I noticed you are not wearing juror tags. If you
17 haven't gotten them, you will be getting juror tags that say
18 that you are a juror.

19 During the course of the day, between the warmth
20 outside sometimes, the coolness here in this courtroom, you may
21 have sweaters you take on and off. It's important that people
22 know that you are jurors. As you have seen, there's lot of
23 people wandering around the courthouse. It's important that
24 people be able to recognize you as jurors. So please wear
25 those tags. If you take off a sweater, put a coat on, try to

1 make sure that you're aware of whether or not that tag is on.

2 Then, as you're walking around, if you go somewhere
3 where people are talking about this case, or if anyone
4 approaches you to try to discuss this case with you, please let
5 them know that you are a juror, that you cannot talk about the
6 case.

7 And please, if anyone talks to you about the case,
8 immediately report it to me. All right? Anybody have a
9 problem with that? All right.

10 So please listen carefully to the testimony. The
11 lawyers may choose to give an opening statement in this case.
12 These statements are not evidence, but are made to help you
13 understand the nature of the case and of the evidence.

14 The evidence you may consider will consist of the
15 testimony of the witnesses. Evidence will also be presented in
16 the form of physical objects or documents, called exhibits.

17 Each of you must determine the facts as you see them.
18 To do so, you must evaluate the credibility of each witness and
19 decide the weight and value to be given their testimony.

20 In considering the weight and value of the testimony
21 of a witness, you may consider that person's appearance,
22 attitude, and behavior; the person's interest in the outcome of
23 the case; his or her relationship to the defendants, or with
24 the United States; the inclination of that witness to tell the
25 truth; the probability or improbability of the witness'

1 statements; the reasonable inferences from those statements;
2 and all other factors that you feel will help you in giving the
3 testimony of that witness the degree of credibility that you
4 feel that it deserves.

5 The trial will proceed as follows: The Government's
6 attorney will make an opening statement.

7 The defendant's attorney may make an opening statement
8 or reserve the right to do so at a later time.

9 The Government will offer evidence through witnesses,
10 and defense attorneys may cross-examine each witness.

11 When the attorney for the Government has finished
12 presenting the Government's case, then the defense attorneys
13 may present evidence. But remember, the defendants are never
14 required to prove their innocence.

15 The Government's attorney may cross-examination each
16 defense witness, if any.

17 When the defense has finished presenting its
18 witnesses, the Government may put on any rebuttal witnesses.

19 At the conclusion of the presentation of all of the
20 evidence, I will give you the Court's charge, and each side
21 will then present closing arguments, and you will begin your
22 deliberations.

23 At this time, the Government may make their opening
24 statement.

25 MS. KANOF: Your Honor, the Government invokes the

1 rule, with the exception of the case agent, Christopher
2 Sanchez.

3 THE COURT: All right. Then I need to have any
4 witnesses that are here present come forward, so that they can
5 be sworn in.

6 All right. If any are in the courtroom, they need to
7 be identified and come forward.

8 You can line up over here.

9 (Witnesses sworn.)

10 THE COURT: All right. You can lower your hands.

11 You have all been identified as possible witnesses in
12 this case.

13 The rule has been invoked. And what that means is, as
14 witnesses, you cannot remain present in the courtroom while
15 testimony is being given.

16 So I believe there's a witness room. You are welcome
17 to wait there. You are welcome to pace up and down the
18 hallway. You're welcome to wait where you're comfortable, so
19 long as you remain available to testify.

20 While you're waiting, it's important that you
21 understand that you cannot discuss this case with anyone. You
22 can't discuss this case with each other, you can't discuss this
23 case -- certainly not with the jury. You can't discuss this
24 case with the audience or anyone -- any of the public that may
25 be out there. You cannot talk about this case with anyone

1 except for the attorneys involved in this case.

2 If you talk about this case, it can result in what we
3 call a mistrial, which means I have to start all over again.
4 It's important that you do not discuss this case.

5 Does everyone understand that?

6 THE WITNESSES: Yes, Your Honor.

7 THE COURT: Now, that doesn't mean you can't talk.
8 You can talk about anything else you like. You just can't talk
9 about this case. All right? Yes?

10 THE WITNESSES: Yes, Your Honor.

11 THE COURT: All right. Before you leave, just so we
12 have a record of who's been sworn in, we'll start with you. If
13 you would, give your name to this gentleman right here, and
14 then you're free to step out.

15 THE WITNESS: Rene Mendez.

16 THE WITNESS: Oscar Juarez.

17 THE WITNESS: Arturo Vasquez.

18 THE WITNESS: Lorenzo Yrigoyen.

19 THE WITNESS: David Jacquez.

20 THE WITNESS: Robert Russell.

21 THE WITNESS: Jose Mendoza.

22 THE WITNESS: Lance Medrano.

23 THE WITNESS: Rene Sanchez.

24 THE WITNESS: Nolan Blanchette.

25 THE WITNESS: Oscar Benavides.

1 THE COURT: All right. Thank you. We will call you
2 when we need you.

3 MR. GONZALEZ: There are two other witnesses, but
4 they're somewhere else.

5 THE CLERK: They're in a different witness room.

6 THE COURT: Okay.

7 MS. KANOF: But we can swear them when they get on the
8 stand.

9 THE COURT: Okay. Anybody have a problem with that?

10 MS. KANOF: They've been admonished not to the discuss
11 the case.

12 THE COURT: All right.

13 Ladies and gentlemen of the jury, I do want to say to
14 you, if at any point you can't see the way an exhibit or
15 something is positioned, let us know. We will try to correct
16 that for you.

17 All right. Whenever you're ready.

18 MS. KANOF: Thank you, Your Honor.

19 THE COURT: Ms. Kanof, you may proceed with opening
20 statement.

21 MS. KANOF: Thank you, Your Honor.

22 Ladies and gentlemen of the jury, counsel for the
23 defendants, Your Honor, good afternoon.

24

25

1 testimony.

2 With that in mind, ladies and gentlemen, I'm going to
3 tell you what I expect the Government will show in this
4 particular case.

5 The Government will show that it is Border Patrol
6 policy -- it is the policy of the United States Border Patrol
7 to enforce the laws in a fair and humane manner. It is written
8 policy. And the evidence will show that on February 17, 2005,
9 that was not done.

10 Ladies and gentlemen, there is an agent in Willcox,
11 Arizona, by the name of Rene Sanchez. Rene Sanchez is a Border
12 Patrol agent. And sometime in the end of February or the
13 beginning of March of last year, almost exactly a year from
14 today -- in fact, this incident happened exactly a year from
15 when we were supposed to select the jury last Friday, except
16 for the blowout, the electricity problem.

17 Rene Sanchez is stationed in Willcox, Arizona. He's
18 actually from El Paso. And sometime in the last couple of days
19 of February he got a phone call from his mother-in-law. And
20 his mother-in-law lives in Mexico, in a little town on the
21 outskirts of Juarez. And she told him that she had been
22 talking to a friend of hers, a girlfriend of hers, and that
23 that girlfriend told her that her son, the girlfriend's son,
24 had been shot in the back by a Border Patrol agent outside of
25 El Paso, Texas, somewhere near San Elizario.

1 The -- Rene Sanchez' mother-in-law called him and
2 said -- told him about it and said, Do you know anything about
3 this? And he didn't.

4 So Rene Sanchez investigated. He made some phone
5 calls to people he knew in El Paso and asked if there was a
6 shooting.

7 First, he needed to find out, however, when that
8 occurred and approximately where it occurred. So he
9 immediately reported it to his supervisor in Willcox, Arizona,
10 who told him to get more information, which he did by calling
11 his mother-in-law. And he instructed his mother-in-law to take
12 a cell phone -- his mother-in-law actually lives in El Paso --
13 take a cell phone to Mexico, give that cell phone to the
14 individual who was shot, and have them call me, so I can get
15 some facts. And that, he did.

16 The individual who was shot is an individual by the
17 name Osvaldo Aldrete-Davila. And Rene Sanchez spoke with him
18 on the phone, and he gave him information about what occurred
19 that day.

20 Rene Sanchez then did a memo telling his Border Patrol
21 supervisor what had happened on that day. He also called some
22 friends of his who had not heard of the shooting occurring,
23 Border Patrol agent friends that were in the Fabens station,
24 who had not heard of the shooting, and did a little bit of
25 other research on his own to determine whether or not a

1 shooting had occurred. And there was no evidence of a
2 shooting.

3 But he wrote the memo. The memo, of course, went to
4 Washington, D.C. And there's an agency -- there's an umbrella
5 agency over all of the border agencies. After 9-11, they
6 created the Department of Homeland Security, DHS. And the
7 Department of Homeland Security is the umbrella agency for what
8 used to be immigration, customs, the people at the bridge, the
9 inspectors. All kinds of different agencies are now under
10 Homeland Security.

11 Every federal law enforcement agency has something
12 they call the Office of the Inspector General. It's the job of
13 the Office of the Inspector General to look at their own, to
14 investigate their own. They're sort of an internal affairs,
15 but they're a little bit more than that, because they're
16 actually a separate agency within the Department of Homeland
17 Security that investigates allegations against employees that
18 work for Homeland Security.

19 In this case, the agent who was assigned to do that
20 investigation is the case agent, Christopher Sanchez, who is
21 sitting at counsel table with us.

22 Mr. Sanchez received the referral and was assigned the
23 case. The first thing he did was call Rene Sanchez. And, by
24 the way, the two Sanchezes are not related. They never met
25 each other before this case. He called Rene Sanchez in

1 Willcox, Arizona, and tried to get some information from him.

2 Mr. Sanchez wasn't available at that time, but he did
3 call him back. And when he called him back, he told Agent
4 Christopher Sanchez what Osvaldo Aldrete-Davila told him what
5 happened that day.

6 So Agent Sanchez went -- this Agent Sanchez went about
7 investigating what had occurred on that day. First, he looked
8 to see if there was any evidence, any report of the shooting.
9 It is the policy of the Border Patrol that, if you discharge
10 your weapon, that discharge, even if it's accidental, even if
11 you're at home cleaning your weapon and you're not on duty, if
12 a weapon is discharged, it must be reported within an hour to a
13 supervisor. It doesn't have to be in writing, just pick up the
14 phone, I discharged my weapon.

15 Many times agencies shoot snakes out in the desert.
16 They've got to report it. If they shoot a person, they have to
17 report it. And I think the policy will show that.

18 Agent Sanchez and another agent from DHS-OIG, the
19 Office of the Inspector General, went to Juarez. Or, actually,
20 Agent Sanchez went to Juarez to meet with Osvaldo Davila. But
21 Osvaldo Davila didn't want to talk about what had happened that
22 day.

23 In order to get him to talk about it, the
24 United States Government granted him letter use immunity. And
25 basically what that means is, they promised that if he told us

1 the truth, that nothing that he did, or nothing that he told us
2 about what he did on that day, would be used against him. He
3 would not be prosecuted for anything he was doing, if he was
4 violating the laws on that day.

5 After they received information from Osvaldo Davila,
6 they came back and they went to the Border Patrol station and
7 pretended like they were administrative, from the Department
8 of -- from Washington D.C., and got a roster of all the
9 agents -- they didn't know who the shooter was. Osvaldo Davila
10 didn't know who had shot him, didn't know who he had
11 encountered.

12 So the next thing they had to do is figure out who it
13 was. So they went to the station, got a roster of who was on
14 duty at that time on that day, which was February 17th, and
15 seized -- or took, administratively, the weapons from the
16 individuals that they had on their person.

17 Then Agent Sanchez took Osvaldo Davila to William
18 Beaumont Army Medical Center, because the bullet was still in
19 his leg. And they went to Beaumont, and Beaumont removed the
20 bullet. They took the bullet, matched it to the gun. The
21 Texas Department of Public Safety matched the bullet to the
22 gun, and found out that the person who had shot Osvaldo Davila
23 was the defendant, Ignacio Ramos. That the bullet that was
24 still lodged in his leg had come from the .40 caliber Beretta
25 pistol that Mr. Ramos was using on that date.

1 They did -- he did a little -- Agent Sanchez did a
2 little bit more investigation, and found out that the other
3 person that shot Osvaldo Davila -- because he told them it was
4 two individuals -- was the defendant, Mr. Jose Alonso Compean.

5 Now, Osvaldo Davila was injured. The bullet went
6 through his left lower buttock, transversed the urethra --
7 that's the tube that takes your urine from your bladder and
8 makes it go out so that you can urinate.

9 It didn't actually transverse the urethra. The
10 urethra was severed, but what it did was it hit the pelvic bone
11 and shattered -- four bullet fragments are still inside of him.

12 And then after it shattered the pelvic bone, either
13 the bullet itself or a piece of the pelvic bone severed the
14 urethra. And it also permanently damaged his urinary
15 sphincter. The bullet then lodged in his right thigh, which he
16 carried around with him for the three or four weeks before he
17 finally had surgery to remove the bullet.

18 In the investigation, Agent Sanchez found it was very
19 difficult to get the Border Patrol officers that were on duty
20 that day to talk. You've heard perhaps of the thin blue line,
21 because police officers wear blue uniforms, most of them, which
22 is, basically, law enforcement protecting each other. In this
23 case, the thin green line needed to be permeated. And it was
24 done so again, not with immunity, but with something called a
25 proffer letter.

1 In order to get the agents that responded that day to
2 speak, the Government had to give three of them proffer
3 letters. And that again is, if you tell the truth, the
4 Government will not prosecute you for any crime you may have
5 committed that you tell us about on that day.

6 Now, that was done with three separate agents. And
7 they will talk about it, and they will tell you about it. And
8 sometimes these agents had to be interviewed several times
9 before they said everything that happened on February 17, 2005.

10 On February 17th, 2005, it was a very cloudy day. In
11 fact, I think the National Weather Service said, that on a
12 scale of one to ten, it was a ten, meaning complete cloud
13 cover, the whole day. And it was also windy. The high peak
14 speeds that day were about 24 miles an hour.

15 And on that day, a little after 1:00 in the afternoon,
16 Defendant Compean was on the levee. The levee is an area --
17 this map is of the Fabens -- we're talking about the Fabens
18 Border Patrol station. And this map is an aerial map from the
19 satellites, that basically shows the area that the Fabens
20 station covers. This is downtown Fabens (indicating).

21 Agent Compean was up in the area that's on the top of
22 this, where the little pink flag is. And he -- using --
23 there's two types of radio traffic. Using the radio traffic
24 that uses a repeater, so that it can be recorded, he called
25 out, Van leaving 76 area going fast. And that's not a direct

1 thing that he called out. We do have the transcript.

2 And after that, the agents that were in the area that
3 heard it went to respond. The agents that were -- that went to
4 respond were almost all up on the levee road.

5 And if we can get the lights turned off -- may I,
6 Your Honor?

7 THE COURT: Yes, you may.

8 MS. KANOF: It's kind of hard to see. But the area
9 that we're talking about here, this -- I'm going to have to
10 orient myself.

11 This is Jess Harris Road (indicating), and it's on the
12 American side. These are the farms out in Fabens. And right
13 across, going parallel to the Rio Grande River is another road.

14 Then this area down here (indicating) is actually a
15 ditch, with water in it. You can't see it in this picture, but
16 in the actual photograph, you can see a little bit of blue.
17 It's a ditch that carries nasty water, basically. They call it
18 the Sierra Delta, the agents do.

19 That ditch is fairly steep. This diagram shows that
20 this is the -- the road that I just pointed out to you, the
21 ditch water, and then it goes back up. And then there's a
22 little space before you go up again, and you have the levee
23 road. And the levee road is right here (indicating). And
24 that's where the agents were driving that day.

25 After the levee road -- the area down here is called

1 the vega. It's a flat area, and the vega takes you all the way
2 to the border between the United States and Mexico, to the
3 river. And, as you see, the levee road is elevated, and the
4 vega is flat.

5 Most of the agents -- they were on a -- they had,
6 like, a special routine going that day. And it was kind of a
7 watch-the-line, and most of them were up on the levee road.

8 In order to get up on the levee road, though, you have
9 to go through gates. That ditch is in the way, so there are
10 some bridges that cross that ditch, so that you can drive over
11 it to get onto the levee road, and there are gates.

12 And one of the gates is located -- well, the gate that
13 most of them came on is down here. It's called the C.C. Bills
14 gate, and it's down here a little bit further (indicating).

15 So, on that date, most of the agents that you will
16 hear testify were patrolling the levee road that day.

17 Border Patrol has one mission, or a primary mission.
18 Their mission is to intercept immigrants, people who are
19 illegally in the United States. And that's basically what
20 they're supposed to do.

21 Since 9-11 they have a second requirement for while
22 they're patrolling, and that is antiterrorism. They're
23 supposed to be protecting the border against terrorists.

24 And, thirdly -- they do not have what's known as Title
25 21 authority, original Title 21 authority, that's drugs. But

1 should they have a drug seizure, they call the Drug Enforcement
2 Administration, and they take over from it. But they can seize
3 the drugs if they find them.

4 On February 17th, an individual named Oscar Juarez was
5 out patrolling the levee area. He was pretty far up. This
6 is -- the edge of this is going to be the ditch. This road
7 runs along the ditch, and then over here is going to be the
8 levee road, and then the vega, and then the river. He was
9 patrolling pretty close to the pink flag there.

10 And he heard the Defendant Compean call out that
11 this -- what he thought he heard was a minivan leaving the 76
12 area. So he starts looking for it. He comes down off the
13 levee, and he starts looking for the van. And, eventually,
14 Oscar Juarez who, by the way, did have to have a proffer letter
15 to talk to us, sees a full-sized van. And he's not really sure
16 whether it's the same van that Compean called out, but he
17 thinks it might be. It didn't match the description, but he
18 decides to follow it anyway.

19 And when he sees this van, the van is actually
20 traveling towards Fabens. It's traveling north, and it's
21 traveling on Jess Harris Road. And Jess Harris Road -- the end
22 of Jess Harris Road is where this entire incident occurred.
23 And that van is traveling north when Oscar Juarez first sees
24 it.

25 And when he sees the van, he tries to watch it, to

1 keep an eye on it. But he loses the van, because there's pecan
2 orchards out here, and the trees are in the way. Even though
3 it was February and they didn't have leaves, it was dense
4 enough so where he lost the van in a pecan orchard, because he
5 wasn't on Jess Harris behind him yet.

6 But then later on, as he continues to travel north to
7 try to find the van, he picks up the van again, and the van is
8 in front of him. And by this time, the van -- they're close to
9 Fabens. The van is in front of him, and he spots the van, and
10 he's behind it.

11 And when -- Osvaldo Davila is in that van. It's a
12 large gray van. He stops -- he's going fairly quickly up Jess
13 Harris Road north. When he gets to Fabens he stops for the
14 stop sign -- or the stoplight. There's only one stoplight in
15 Fabens. He stops at the one stoplight in Fabens.

16 And when Oscar Juarez, who is behind Osvaldo Davila,
17 stops, he sees the Defendant Ignacio Ramos parked on the corner
18 of Fabens and Alameda, in Fabens.

19 Then he sees Osvaldo, who obviously will tell you he
20 saw the Border Patrol agents, and decided he was going to turn
21 around and go back, Oscar Juarez sees him turn around and
22 proceed back south. And as Oscar Juarez attempts to make that
23 U-turn, the Defendant Ramos gets in between Oscar Juarez and
24 Osvaldo Davila in the grey van.

25 And Osvaldo Davila will tell you he was trying to make

1 it back to Mexico, that he was going as fast as he could in
2 that van without basically hurting himself or turning the van
3 over.

4 And Mr. Ramos is behind him. Several agents --
5 because they're looking for the van, they heard the callout,
6 there is converge on this scene in different areas. And you'll
7 hear their testimony. I won't get specific. But every agent
8 will tell you they were going at least -- that Osvaldo Davila
9 and Mr. Ramos were going at least 65 miles an hour.

10 The Border Patrol has a very strict policy about
11 high-speed chases, about hot pursuit chases. You cannot do it.
12 Since their primary responsibility is immigration, you let them
13 go. And -- unless you get on the radio, you call
14 communications to get a supervisor to approve that high-speed
15 chase, and then you have all kinds of things you have to
16 articulate. But the primary thing you have to be able to
17 articulate is that, if the suspect is allowed to flee, it would
18 present a danger to human life or cause serious bodily injury.

19 And in this particular -- and I think that the
20 supervisors will tell you that they don't authorize high-speed
21 pursuits. The Border Patrol does not, because it is
22 inconsistent with their mission of immigration stops and
23 detentions.

24 Oscar Juarez now is behind Osvaldo and Mr. Ramos, and
25 he says they're going very fast. In fact, he says that

1 Mr. Ramos is barely a car length behind Osvaldo, and it is a
2 hot pursuit without authorization.

3 Oscar Juarez had turned his light on when he got to
4 the stoplight, to do an immigration stop.

5 When Mr. Ramos turns around to get in between the two
6 of them, he rolls down his window, taps on the roof, and Oscar
7 Juarez understood that tap to mean, Turn your lights off.

8 The other thing about hot pursuit is that you must
9 have your lights on, and you must have your siren on. There's
10 a -- there's a weight, a scale, that law enforcement -- all
11 kinds of law enforcement -- has about hot pursuit. And that is
12 the danger of the community, the danger of the agent, and the
13 danger to the suspect, you know, may -- as a hot pursuit --
14 outweigh what you know about that suspect.

15 And, in this case, Oscar Juarez will say he, Oscar
16 Juarez, after following him, knew nothing about the suspect.

17 When -- the Government has photographs out in the area
18 that will show you that the speed limit in some places is 10
19 miles per hour, some places 15, some places 45, and some places
20 55. But in no place is it over 55 miles an hour. It's a rural
21 area. There are farmers, there are schools, and there are
22 other people in the public.

23 When -- Oscar Juarez drops about six or seven car
24 lengths behind, and it's more -- for more than one reason.
25 The -- it's dirty. They get to a dirt road, and the dust gets

1 so thick from the cars -- the van and Mr. Ramos' car, that he
2 can't see anyway. He drops back, because he doesn't want to
3 engage in a hot pursuit, but also because he can't see, and it
4 would have been a danger to him.

5 So, sooner or later, he gets to where these cars stop.
6 And the cars rest on the edge -- or actually, the van --
7 Osvaldo Davila will tell you that he -- his van -- he tried to
8 make the turn -- this is Jess Harris (indicating). He tried to
9 make the turn on Jess Harris, but because the van was big and
10 old, he couldn't do it. And he ended up being pushed up
11 against the ditch.

12 And, ladies and gentlemen you will see photographs
13 that were taken a whole year -- or actually about nine months
14 after this, and then a whole year after this incident, and the
15 grooves for the tires to the van are still there.

16 So Mr. Sanchez was able to determine exactly where the
17 van stopped. But besides that, the van is later towed by a
18 city tow car, or a wrecker, for the United States Border
19 Patrol.

20 Now, when he stops, Osvaldo Davila will tell you he
21 immediately jumped out and starting running. And remember
22 there's that ditch he's got to go to that has got water down
23 there. Oscar Juarez will tell you that when he, Oscar Juarez,
24 arrived, he saw the van, he saw Mr. Ramos' car immediately
25 behind the van. Mr. Ramos' door, passenger -- I mean driver's

1 door -- was still open, and he didn't see Mr. Ramos. In fact,
2 Oscar Juarez never saw Mr. Ramos. But he did see Mr. Compean.

3 And Oscar Juarez will tell you that he himself -- he
4 parked his car to the left of the van, close to the edge but
5 not too close, and walked up to the edge of the drainage ditch.

6 When he walked up to the edge of the drainage ditch it
7 was sandy, and he slipped. Oscar Juarez slipped. Preventing
8 himself from falling into the drainage ditch, he was able to
9 gain balance. But when he looked in the drainage ditch, he saw
10 Osvaldo Davila -- Aldrete-Davila in the drainage ditch. He
11 also saw Mr. Compean directly across from him.

12 Mr. Compean had been patrolling the levee, and he was
13 waiting. His car, service vehicle, was parked up on the levee.
14 The levee is higher. And he has come off the levee, and is on
15 the other side of the drainage ditch directly across from Oscar
16 Juarez.

17 And Oscar Juarez will tell you that the first thing he
18 saw was -- Oscar Juarez, by the way, will tell you that at no
19 time did he see Osvaldo with a weapon. At no time did he
20 see -- be -- feel in fear of his life or of Compean's life.
21 And that he, trained as a Border Patrol agent -- he had been a
22 Border Patrol agent about two years. That he went through in
23 his head all of the things that officers are taught to do in
24 order to determine whether or not there is a threat.

25 And he will tell you that what you do is you look at

1 their hands, to determine what kind of stance they are, how
2 they feel at that time. Is there anything in their hands? Do
3 their hands look menacing? That you can tell a lot -- and
4 you're taught to look at the hands of the suspect that you're
5 investigating, or that you're chasing.

6 He said that Compean, when he saw the driver, or when
7 the driver of the van, Osvaldo Aldrete-Davila, when he saw him,
8 he yelled at him. Compean yelled at him (speaking Spanish),
9 Stop. Stop. That he did stop. That Compean then had a
10 shotgun in his arms.

11 And when Oscar Juarez first saw him -- and we have the
12 gun right here. But I -- you know, I don't trust myself to
13 handle it right now. That he had it in what's called at port
14 arms. He was holding it up like this (indicating).

15 But that after he yelled (speaking Spanish), he
16 pointed the shotgun down at Osvaldo. And Oscar Juarez will
17 tell you Osvaldo did not make any threatening gestures and did
18 not have a gun or a weapon of any kind.

19 Osvaldo will tell you that he heard somebody say, Hit
20 him, hit him.

21 Oscar Juarez does not hear that, or does not recall
22 hearing that. But Mr. Compean made many statements in this
23 case, and he does say that he also heard someone say, Hit him.

24 Oscar Juarez then sees Compean take the shotgun from
25 port arms, and turn it around like he's going to hit Osvaldo in

1 the head.

2 Oswaldo will tell you that, and so will Oscar Juarez,
3 that at that point Agent Compean slipped and fell, and that
4 when he fell, he fell face-first, and he got dirty.

5 Oswaldo sees his out and takes off, in the words of
6 Oscar Juarez, like a jackrabbit. He starts running over the
7 levee, trying to run back to Mexico.

8 What happens after that we know -- like the judge told
9 you -- somewhat from circumstantial evidence and somewhat from
10 what Mr. Compean says. There's many versions of what happened.
11 And most come from different people Mr. Compean talked to, both
12 on February 17th, and later, during the investigation.

13 Oscar Juarez sees Compean get up and brush himself
14 off. He left his shotgun down on the ground and starts
15 immediately to go after the fleeing Oswaldo.

16 He says -- Oscar Juarez will tell you that Oswaldo was
17 never an aggressor, that he never charged Compean, and that he
18 never thought he was a threat to anyone.

19 Oscar Juarez then turns away from the scene, to walk
20 back to his car. When he walks back, he sees other people
21 arriving. But also, when his back his turned from the scene,
22 he hears a lot of gunshots.

23 He turns around and he sees Mr. Compean, who has not
24 gone very far, and he sees him -- this is the levee
25 (indicating). Oscar Juarez is over here on this side of the

1 ditch, and he sees Mr. Compean on this side of the levee road.
2 Here is -- the road -- the levee road is here (indicating),
3 where his car is parked. He sees him here from the waist up.
4 He can't see his whole body, because he's standing a little bit
5 below. But from the waist up, Oscar Juarez observed
6 Mr. Compean standing out in the open with his .40 caliber
7 Beretta service pistol standing like this (indicating) and
8 shooting and shooting and shooting. He sees him exchange
9 magazines, throw his first mag- -- a magazine holds the
10 bullets -- sees him throw the magazine, sees him put in another
11 magazine, and sees him continue to shoot.

12 He does not see him take cover. He does not see him
13 move. He just sees him standing out in the open, shooting.

14 By this time there's a lot of agents. There's a total
15 of nine agents that come out there that day. Included in those
16 agents is a supervisor -- two supervisors, Richards and Arnold.

17 The first thing that Mr. Richards does, kind of -- and
18 he's one of the last people, next-to-the-last person to get
19 there, but they all arrive fairly close. He kind of gets mad
20 at his agents because he said, That was not enough radio
21 traffic. You did a good job, but that's not enough radio
22 traffic. And he was very concerned that he did not have enough
23 information to know what was going on out there.

24 Arturo Vasquez is one of the agents that arrives
25 before the supervisor. Arturo Vasquez also got a proffer

1 letter.

2 Now, one thing you will hear in the testimony is there
3 is a pecking order in Border Patrol. I think it's the same in
4 all law enforcement. Some of these witnesses will tell you
5 they've also been police officers and other law enforcement.
6 And that pecking order has to do with how senior you are. And
7 both Oscar Juarez and Arturo Vasquez were junior agents. And
8 part of their decision not to say anything to anyone was not
9 just the thin green line, but because these were their senior
10 agents, and it's understood that they will do what is
11 necessary, and that you don't have to.

12 In addition to that, Oscar Juarez had ridden, as a
13 partner, so to speak -- they don't actually have partners, but
14 as a partner -- with both Defendants Ramos and Compean.

15 Oscar Juarez heard the radio traffic. He was also on
16 the levee road patrolling. He came off the levee road at the
17 C.C. Bills gate, and he goes to Jeff Harris Road. He sees the
18 van, then he sees Mr. Ramos, and then he sees Oscar Juarez. So
19 he -- I think he gets there next after Juarez did.

20 He -- I'm sorry. I take it back. He actually joins
21 part of the -- he doesn't join the chase, but he sees part of
22 the fast driving. And he's actually the only person who sees
23 the driver of the van. Of all of the agents, he's one of the
24 individuals, though, that will tell you they were going very
25 fast, too.

1 THE COURT: Two minutes, Ms. Kanof.

2 MS. KANOF: Thank you, Your Honor.

3 And he sees that the -- he sees that he has a
4 mustache.

5 Ladies and gentlemen, I think that you will hear the
6 evidence is that Vasquez meets Mr. Compean, the defendant,
7 about, oh, a few minutes later after this happens, as he's
8 coming off the levee road. Defendant Compean is -- and the
9 Defendant Compean shows him that he has collected his shell
10 casings and has -- and asks -- Mr. Vasquez tells him, I think
11 there's five more. I don't know how many I shot, but I think
12 there's five more. If you see them out there, would you get
13 them for me? And he does.

14 Basically, ladies and gentlemen, what the evidence
15 will show is that the two defendants never reported what
16 happened that day; that the defendants, by failure to report,
17 impeded the process of justice and the administration of
18 justice, because no investigation could be properly done; that
19 Mr. Compean destroyed tangible evidence, and in doing so, he --
20 they did it to cover up the fact that they had not followed
21 Border Patrol policy, and they had shot Osvaldo Davila in the
22 back inappropriately, and didn't want anybody to find out about
23 it.

24 And for a law enforcement officer, under color of law,
25 to shoot a fleeing individual in the back without cause, proper

1 cause, it's a violation of their Fourth Amendment right, which
2 are the last counts of the indictment.

3 There's a whole lot more evidence that you will hear,
4 ladies and gentlemen. And at the end of the evidence, I think
5 that you will understand that Border Patrol -- the purpose of
6 Border Patrol policy -- that the laws should be enforced fairly
7 and humanely, were not met on February 17, 2005.

8 THE COURT: Ms. Stillinger.

9 MS. STILLINGER: May it please the Court? Counsel.

10 OPENING STATEMENT

11 BY MS. STILLINGER:

12 Members of the Jury, it's one of the oldest phrases
13 you've heard, but it's so true. There's two sides to every
14 story. And I think that when there are motives to lie, you
15 find that those two sides are more divergent. The more motive
16 there is to lie, the more divergent those two sides are.

17 As Ms. Kanof said, it's right that what the lawyers
18 say in this case is not evidence, and it doesn't really matter
19 that much. But I think it's helpful at the beginning of the
20 trial, and we're going to be here a long time. So it's helpful
21 to orient you as to what this case is about. And I need to
22 tell you our side of the story, so you can be looking for the
23 kind of evidence that I think you need to pay attention to, and
24 you need to understand the facts from our perspective.

25 And here is a first helpful comment. And that is that

1 Mr. Ramos does not dispute that he shot Osvaldo Aldrete-Davila.

2 Okay? We're not going to have any dispute about that.

3 We're not going to have dispute that the bullet from
4 his gun ended up in this man.

5 There is no dispute that he did it in the line of
6 duty.

7 And I believe that the evidence will show that it was
8 a justified shooting. It was a justified shooting of a
9 suspected drug trafficker who led authorities on a chase, who
10 refused to follow instructions to surrender, who got into a
11 wrestling match with a fellow agent, that is, Mr. Compean, and
12 who brandished what appeared to be a gun.

13 And that's what the evidence will be in this case,
14 that Mr. Ramos, Agent Ramos at the time, did shoot this man
15 under those circumstances.

16 Most of the counts come down -- most of the counts of
17 the indictment -- you heard there's A lot of counts in this
18 indictment. And I think towards the end of this trial we will
19 go over those things much more specifically. But most of the
20 counts have to do with that shooting. Was it a justified
21 shooting, is the question that you are going to need to answer.

22 There's a number of assault counts, a civil rights
23 charge, use of a firearm charge. And all of those charges come
24 down to this simple question: Was it a justified shooting?
25 And I believe there's a very simple answer, and that answer is

1 yes.

2 And I'm going to ask you to look at Agent Ramos'
3 perspective on that day, February 17th, 2005. And why am I
4 going to look at Agent Ramos's perspective? Because you will
5 hear evidence that the reasonableness of the agent's belief --
6 and these are policies. These are Government policies. That
7 you will hear evidence that the reasonableness of the agent's
8 belief must be viewed from the perspective of the officer on
9 the scene who may often be forced to make split-second
10 decisions in circumstances that are tense, unpredictable, and
11 rapidly evolving. Reasonableness is not to be viewed from the
12 calm vantage point of hindsight.

13 And that's one of the things I want you to keep in
14 mind while you listen to the evidence in this case.

15 I'd like to tell you a little bit about those events
16 that were rapidly evolving that day.

17 Agent Ramos is working as a Border Patrol agent that
18 day. He hears a call on the radio, suspected drug trafficking
19 in progress. Not a lot of details, but he hears that call.
20 There's a drug offense apparently -- or a suspected drug
21 offense in progress.

22 A couple of agents go out to try to meet up with the
23 suspected drug trafficker. They find a van that seems to match
24 the description of the van that was called out, and there's a
25 pursuit. Actually, Agent Ramos does not initiate the pursuit,

1 another agent initiates that pursuit. Agent Ramos joins in
2 that pursuit.

3 And let me say, the prosecutors may tell you in this
4 case that it's not Border Patrol's job to enforce drug laws.
5 But you will hear evidence it is Border Patrol's job to patrol
6 the borders. And when something comes across the river that is
7 not an authorized port of entry, that is a subject of interest
8 to the Border Patrol. In fact, it is a subject that they are
9 supposed to investigate. And, although they suspect drugs,
10 because that's more common in their experience, it could be
11 anthrax. It could be terrorists. They don't know. They are
12 charged with patrolling the border and securing our borders.
13 And you will hear that that is a common practice, to pursue
14 drug offenses when they occur at the border. That's one of the
15 things Border Patrol does. You will hear of it as the trial
16 progresses.

17 I want to mention one other thing. Ms. Kanof was
18 talking about a high-speed chase, or high-speed pursuit.

19 And I want you to be clear, as you listen to the
20 evidence, there is a difference between a violation of policies
21 and a violation of law. And I don't think that this was a
22 high-speed pursuit. I think the evidence will show that there
23 was a pursuit.

24 I think the evidence will show that it is the Border
25 Patrol agents' supervisors who are charged with the

1 responsibility of monitoring pursuits. They have the
2 obligation to monitor radio traffic, and they have the
3 obligation to call the agents off if they think the pursuit
4 should not be continued. And I think you will hear evidence
5 that the supervisors in this case did not do that. I think you
6 will hear evidence that they did not follow proper policies,
7 and that they are very anxious to wash their hands of that fact
8 at this point in time.

9 But in any event, get back to what Agent Ramos is
10 experiencing that day. He experienced a pursuit of a person
11 driving a van, and they had some evidence that perhaps there
12 was a drug trafficking offense.

13 The pursuit does get a little fast. Agent Ramos is
14 not able to follow very closely, as they get onto a dirt road.
15 He's not able to follow closely, because his brakes don't work
16 very well on a dirt road. And the car is -- the van in front
17 of him is kicking up so much dirt he can't follow very closely.
18 He's not within a car's length of that van, because he can't
19 follow that closely.

20 In any event, that van keeps going. It rushes towards
21 this ditch, doesn't seem to put on his brakes. It's almost as
22 though he's trying to jump the drainage ditch Evel Knievel
23 style. You'll see pictures of the ditch and the dirt.

24 But the person driving this van, Mr. Osvaldo
25 Aldrete-Davila, does not apparently willingly stop but, rather,

1 his van gets sunk in in this dirt that's on the edge of the
2 ditch.

3 Agent Ramos is a little bit behind him, comes up upon
4 this, gets out of his vehicle, his service vehicle. And, by
5 the way, these agents all drive by themselves. I thought that
6 law enforcement traveled -- usually traveled in partners.
7 These Border Patrol agents apparently don't.

8 He comes upon this scene. The person that they've
9 suspected of drug trafficking has run down into the ditch.
10 Agent Ramos comes to the edge of the ditch. And this is -- as
11 you saw the picture -- and you will hear a lot of evidence
12 about -- this is an ugly ditch. It's very steep. It's very
13 deep. There is dirty, stinky water at the bottom of it, and a
14 lot of foliage. So we're not talking about a little ditch you
15 can jump across.

16 He sees, when he gets there, that his fellow agent,
17 Agent Compean, is on the other side of the ditch and is
18 blocking this person's -- Mr. Aldrete's -- escape to Mexico.

19 And what he sees, when he gets to the edge of the
20 ditch, he sees Agent Compean telling the guy, Stop. In
21 Spanish, (speaking Spanish).

22 Agent Ramos does the same thing on his side of the
23 ditch. He stops on the side of the ditch. He doesn't run
24 right down to chase him down there because, really, he would
25 rather coax the guy out. He would rather have this man follow

1 his instructions to come out of the ditch. He would rather not
2 go down there himself.

3 He does pull his weapon at that point, because this
4 man has led him on a chase, seems to be a dangerous person. He
5 pulls his weapon and tells the man to stop.

6 You know what? The man doesn't stop. He's got Agent
7 Compean on one side telling him to stop, you've got Agent Ramos
8 on the other side telling him to stop. The man keeps going.
9 The man keeps going.

10 Agent Ramos, when he sees he is going to get through
11 Agent Compean he says, I better go help. He does what he is
12 paid to do, what he is obligated to do as a Border Patrol
13 officer, and he decided to try to go help his other agent and
14 stop this man. He holsters his weapon and starts going down to
15 that ditch.

16 Now, keep in mind while this is happening, there's
17 other cars of agents approaching, two other vehicles
18 approaching, when this happens. Agent Ramos, curiously, is the
19 only one who will go down into the ditch, to cross the ditch,
20 to help Agent Compean on the other side. But in any event, he
21 scrambles down this ditch, and while he's down there he hears
22 gunfire, and he hears a number of shots. I don't think he
23 could tell you how many exactly. But he hears gunfire while
24 he's down there. When he's down in the ditch, and then he's
25 coming out of the ditch here (indicating), he hears gunfire.

1 He doesn't see what's going on with them, because he's
2 going down this ditch, and it's a very deep ditch. He doesn't
3 see Agent Compean, he doesn't see Mr. Aldrete while he's going
4 down this ditch, but he hears gunfire.

5 And imagine how that's influencing his state of mind.
6 Multiple gunshots going back and forth. He's thinking there's
7 an exchange of gunfire, that that guy might have had his
8 weapon, might be shooting at my fellow agent here.

9 He gets out of the ditch. He's going as fast as he
10 can. He gets out of the ditch, goes to where Compean is,
11 checks to see if he is okay, and he is. And he's watching the
12 suspected drug trafficker at the same time, as he's running
13 towards Mexico. And he sees the man turn around with something
14 shiny in his hand, that he believes is a weapon, and Agent
15 Ramos takes a shot at him and, apparently, hits him.

16 He doesn't realize that he hit him. He doesn't see
17 the man fall down. On the contrary, he's sees the man
18 continue. He's right near the river. And he sees the man
19 continue across the river to Mexico. He sees him a little bit
20 later on the other side getting picked up by people that appear
21 to be there for the purpose of picking him up. He doesn't
22 realize that he's hit him.

23 But, as I said, we're not disputing the fact he was
24 hit. We're not disputing the fact that he was hit with a
25 bullet from Agent Ramos' gun.

1 But, as often as you hear the prosecutor say this man
2 was shot in the back, you will need to look at the evidence.
3 And there will be evidence -- there will be medical evidence,
4 and it will show how Aldrete-Davila was shot. A bullet came in
5 here (indicating), and the bullet was lodged in the front of
6 his right thigh. And if you look -- and you'll hear evidence
7 about this and see the medical records about this -- that if
8 you're shot in the back, typically, a bullet goes straight
9 through you. It doesn't go at an angle. You will see that the
10 angle he was shot in is more consistent with someone who is
11 partially turned around to shoot. And that's what the physical
12 evidence will be, and I would ask you to keep that in mind.

13 It doesn't really matter how many times somebody says
14 he's shot in the back, you need to look at the evidence. And
15 the physical evidence is completely consistent with what these
16 agents saw that day.

17 The shooting occurred in the middle of the day, in
18 broad daylight. Okay? It was a cloudy day, but in the middle
19 of the day. There were a lot of other agents around, a number
20 that were there that heard the shots, that were there at the
21 time of the shooting, and a number of other agents that got
22 there shortly after.

23 And you will hear that there is evidence that Agent
24 Ramos never did anything to cover this up. He never told one
25 person, Hey, let's -- let's keep this quiet. He never picked

1 up any shotgun shells or any gun casings. He didn't do
2 anything to cover this up.

3 So, why are we here? You will hear evidence that
4 Mr. Aldrete-Davila came back to this country, got a lawyer, and
5 filed a \$5 million claim against the United States Government
6 for his injuries.

7 You may hear evidence that he has some motivation,
8 therefore, to color his testimony about how this occurred.

9 You will hear he has told lies to the investigating
10 agents in the case. And, somehow, the investigating agents and
11 the prosecutors have decided to take his word --

12 MS. KANOF: Objection, argument.

13 THE COURT: Sustained.

14 MS. STILLINGER: This case is based -- you will hear
15 that this case is based on Mr. Aldrete-Davila's version of the
16 events in this case. You will hear that they are --
17 Mr. Aldrete-Davila and several other witnesses -- have been
18 given immunity. And that means they will not be prosecuted.
19 If they testify for the Government, the Government will not
20 prosecute them. And that's the kind of evidence you will hear
21 in the case.

22 I believe, after hearing all of the evidence, you will
23 find that Agent Ramos' actions in shooting the suspected drug
24 trafficker, who appeared to be brandishing a weapon, that those
25 actions were justified completely.

1 I believe that you will have no doubt that Agent Ramos
2 did nothing to dishonor his badge, nothing to dishonor his
3 uniform, nothing to dishonor his position as a United States
4 Border Patrol agent. And he certainly did not commit any
5 criminal offenses. And I would ask you to find him not guilty
6 on all charges.

7 THE COURT: Ms. Ramirez?

8 MS. RAMIREZ: Thank you, Your Honor.

9 OPENING STATEMENT

10 BY MS. RAMIREZ:

11 Good afternoon, ladies and gentlemen. I'll always be
12 third when I talk to you. But I'm sure that you will remember
13 that my client, Jose Alonso Compean, appreciates your service
14 today. And I'm sure that he -- he and I know, and
15 Mr. Antcliff, that you will pay attention to everything that we
16 say.

17 My client is here today -- something that Ms. Kanof
18 said struck me. She said that the Government was here today --
19 or that everybody is here today because the laws were not
20 fairly and humanely enforced.

21 My client believes, and I believe, that my client is
22 here today because he was trying to do his job on February 17,
23 2005. I believe that on February 17, 2005, he was trying to
24 enforce the laws --

25 MS. KANOF: Objection, Your Honor, argument.

1 MS. RAMIREZ: I believe that the evidence will show
2 that my client was trying to enforce the laws fairly and
3 humanely.

4 My client, the evidence will show, is married, and he
5 is 29 years of age. He actually started his career in the
6 Navy, and decided to go into law enforcement, and wanted to be
7 a Border Patrol agent. He's been a Border Patrol agent since
8 2000, which means he's been a Border Patrol agent for about six
9 years.

10 His wife is sitting here in the audience. She's in
11 the first bench, and she will be here throughout the trial.

12 The first thing I want to tell you is that this case
13 has been pending for about a year. And I believe that the
14 evidence is going to show you that my client has not committed
15 any offense, that the Government will be unable to prove every
16 single --

17 MS. KANOF: Objection, Your Honor, argument.

18 MS. RAMIREZ: -- that the evidence will show that --

19 THE COURT: I'll overrule that objection.

20 Go ahead.

21 MS. RAMIREZ: -- that they will not be able to prove
22 every single element in this case.

23 On that day, on February 17, 2005, the evidence is
24 going to show that my client was doing his job, that he was on
25 the levee. You're going to, I think, hear three different

1 things. You're going to hear three different descriptions of
2 that area.

3 You're going to hear about a ditch that they call the
4 Sierra Delta.

5 You're going to hear about a levee, which comes off
6 the ditch. And remember the levee is raised; it comes off the
7 ditch.

8 And then you're going to hear about an area that
9 separates the levee from the Rio Grande River, and that is
10 called the vega. So keep those items in mind when you're
11 hearing the testimony.

12 My client, on that day, believed that there was a van
13 that was loaded with marijuana. And he called out a 1046,
14 which means a van, or an illegal drug trafficking activity,
15 perhaps. He called that out. And a couple of other agents, I
16 believe, started pursuing the van.

17 My client stayed on the levee, and he was waiting for
18 the van to come at him. When the van was coming at
19 Mr. Compean, it was not coming at a slow speed, as Ms. Kanof or
20 as other Government witnesses might tell you. But it was
21 coming, and it was not going to turn on that levee road that is
22 adjacent to the ditch. It was coming on that road, and it was
23 going to head into the ditch, if it had not stopped.

24 Osvaldo Aldrete-Davila, from what my client and from
25 what other witnesses are going to say, jumped out of that van

1 as it was still -- as it was still moving. He went into the
2 ditch, and he confronted my client. My client was standing
3 there, Agent Compean. And he, as other Border Patrol agents --
4 and the evidence will show -- carry firearms, as all Border
5 Patrol agents do.

6 This area is a very desolate area. There hardly are
7 any homes. There isn't any fences that separate the Mexican
8 border from the United States border.

9 When Mr. Aldrete-Davila was in the ditch, he ran down
10 into the ditch, and he confronted my client. My client did
11 have that shotgun in front of him. And he said (speaking
12 Spanish), Stop.

13 Mr. Aldrete-Davila did not stop. He came at my
14 client. My client was in fear for his life. My client tried
15 to stop Mr. Aldrete-Davila from coming at him.

16 We believe that Mr. Juarez, or Agent Juarez, the
17 evidence will show, was not in a position to see or to be able
18 to ascertain whether my client was in fear for his life.

19 This is not a case where everything works out very
20 well. My client is a law enforcement officer. But, as he
21 attempted to push away Mr. Aldrete-Davila, he slipped. He
22 didn't fall into the ditch, but he slipped.

23 Mr. Aldrete-Davila turns around, goes around my
24 client, goes up onto the levee, and tries to elude him and go
25 into the -- by going over the levee, down the vega, into the

1 Rio Grande River.

2 As you think about what my client was thinking about,
3 standing there in the ditch with a shotgun with somebody coming
4 at him, think about what a person coming at you would think --

5 MS. KANOF: Objection, Your Honor, argument.

6 THE COURT: I'll sustain.

7 MS. RAMIREZ: The evidence will show, we believe, that
8 the only witnesses that will be able to testify about what
9 happened between Mr. Aldrete-Davila and my client and Mr. Ramos
10 will be those three witness. We don't believe that any
11 witnesses, any other witnesses, will be able to testify about
12 what happened between Mr.- -- my client and Mr. Ramos and
13 Mr. Aldrete-Davila.

14 As Ms. Stillinger has already told you, Mr. Davila has
15 every reason to lie. He has gotten an immunity agreement, and
16 the immunity agreement is not from the Government. The
17 immunity agreement is actually from Ms. Kanof, or the U.S.
18 Attorney's office. They're the ones that have told him that he
19 is not going to get prosecuted for the marijuana that he was
20 carrying in the van that day.

21 Now, the Government is going to tell you that my
22 client did not know and couldn't have known that there was
23 marijuana in the van that day. And that is true.

24 MS. KANOF: Objection, Your Honor, argument, and also
25 motion in limine.

1 THE COURT: All right. I will sustain.

2 MS. RAMIREZ: It's true that my client did not know
3 that the van -- that the marijuana was in the van that day.
4 However --

5 MS. KANOF: Objection, Your Honor. Again, motion in
6 limine.

7 THE COURT: I'll sustain.

8 MS. RAMIREZ: However, I believe I can talk about the
9 immunity agreement.

10 THE COURT: Can we approach?

11 (Bench conference out of hearing of jury.)

12 THE COURT: Look, there is a general reference to drug
13 trafficking, and I understand you don't have any problems with
14 reference to it, but we can't go into the evidence until such
15 time as we approach, so I'm not going to --

16 MS. RAMIREZ: Okay. All right.

17 (Bench conference ends.)

18 THE COURT: Okay. You may proceed.

19 MS. RAMIREZ: Thank you, Your Honor.

20 We believe that Mr. Aldrete-Davila had every reason to
21 flee on that day.

22 We believe that the evidence is going to show that
23 when he confronted my client he did so -- and he did so without
24 being afraid.

25 We believe that the evidence is going to show that my

1 client was afraid of him. We believe that Mr. Aldrete-Davila's
2 movements towards my client made him believe that Mr. Davila
3 was going to do something to my client. It made my client
4 believe -- and it made him believe that he was in danger.

5 Ladies and gentlemen of the jury, the evidence is
6 going to show you that a Border Patrol agent, or any law
7 enforcement agent, is out in the field every day and needs to
8 make split-second decisions based on everything that has
9 happened about that incident, and sometimes they need to make
10 decisions also based on the things that they know about the
11 area in which they serve.

12 We believe that the evidence is going to show you that
13 every single witness in this case has a reason to lie. For
14 some reason or another, we believe the evidence is going to
15 show you that the Government witnesses have been able to come
16 in here and testify and not tell you what really happened on
17 February 17, 2005.

18 What we are not going to dispute is that my client did
19 shoot at Mr. Davila. However, my client shot at Mr. Davila
20 because he believed that the force that he used against him was
21 reasonably necessary to protect him -- to protect him, his
22 life, himself, which is what the evidence will show he is paid
23 to do every day on the border.

24 Remember, this -- the evidence is going to show you
25 that this is not the border as it is here downtown, as it is

1 even out in Zaragosa. This is a very desolate area. There is
2 nothing that stands between the border in the United States and
3 the border in Mexico.

4 Now, after Mr. Aldrete-Davila went into the river,
5 there is no indication, the evidence is going to show you, that
6 anything happened to him. Instead, the evidence is going to
7 show that there were lots of Border Patrol agents standing on
8 the levee. That nobody reported that there had been a shooting
9 on that day. That both Mr. Ramos and Mr. Compean walked back,
10 that there were two supervisors there, Richards and Arnold.
11 That Agent Richards actually wanted my client not to report
12 that anything had happened on that day.

13 After my client went over the levee, he struggled with
14 Mr. Davila. He tried to get Mr. Davila -- to stop him from
15 fleeing into Mexico, and that Richards knew about that, and he
16 didn't want my client to report it. He didn't want him to
17 report it, because it would be a lot of paperwork.

18 All the Border Patrol agents, we believe, knew that
19 there had been discharge of weapons on that day. And yet, none
20 of them reported it.

21 My client will tell you that he did pick up some
22 casings on that day. We will not dispute that. We will
23 dispute where the casings were picked up, though, because we
24 believe the evidence is going to show that sometimes people do
25 go out there and they shoot at animals and they shoot at other

1 things, and there are casings around that area.

2 We do believe that the evidence is going to show you
3 that those casings are not material to this case, and that they
4 may still be out there, because they were thrown in the ditch,
5 and nobody has bothered to go out there and check.

6 My client's intent was to never knowingly corrupt or
7 obstruct anything in this case. My client, on that day, was
8 doing his job fairly and humanely.

9 After all of this happened, he went back to the Border
10 Patrol station. Richards again asked him, Are you okay?

11 And he said, Yeah, I'm okay.

12 Do you need any medical attention?

13 No, I don't need any medical attention.

14 Well, he didn't need any medical attention. He had
15 scuffles, but he didn't need to go to a doctor. He didn't need
16 to go to a hospital. The evidence will show that.

17 The evidence will also show that, after
18 Mr. Aldrete-Davila went back to Mexico, he went to some kind of
19 a clinic that he doesn't remember, to get the wound taken care
20 of. And that at first, when he reported what had happened, he
21 forgot to tell everybody about some illegal drug trafficking.
22 That he said he had been coming into the United States
23 illegally, and that's how he got shot.

24 The Government will not be able to prove that
25 Mr. Davila was shot in the back, because that just didn't

1 happen. He was not shot in the back. The bullet went in
2 through his thigh -- I'm sorry, through his -- one of his
3 buttocks. I don't know how else to say it. And it came out
4 through his front thigh at an angle, because he was doing this
5 (indicating). He was doing that (indicating) at my client.
6 And the only witnesses to that will be Agent Compean, Agent
7 Ramos, and Mr. Davila, who didn't want to talk to the
8 Government until, again, he got that immunity agreement and an
9 attorney and is suing the Government for \$5 million.

10 Now, I understand -- I understand that Ms. Kanof has
11 come up here and told you a story. Ms. Stillinger has told you
12 something else.

13 I want you, please, to focus on what every single
14 witness tells you up there, and whether they have a reason to
15 lie or not. And I know, if you do that, then you will find
16 that my client, Jose Alonso Compean, didn't do anything wrong.
17 That, on that day, he was doing his job fairly and humanely.
18 That, on that day, the evidence will show he had a reason to
19 believe that his life was in danger. That, on that day, he was
20 justified in believing that that person, Mr. Aldrete-Davila,
21 who was coming at him when he had a weapon in front of him,
22 could hurt him, could harm him.

23 I hope that our evidence will show you that Agent
24 Compean did nothing that constituted a crime.

25 There will be evidence of policies. And please

1 remember that there's a difference between policies, breaking a
2 policy, and committing a crime. I believe that the evidence
3 will show you that Mr. Compean's conduct in this case did not
4 constitute a crime, did not rise to the level of constituting
5 criminal conduct.

6 And, if you hold the Government to their case, I know
7 that you will be able to find my client not guilty at the end
8 of this very long case. Thank you.

9 THE COURT: All right.

10 Ladies and gentlemen of the jury, you have heard
11 opening statements. However, you have received no evidence.

12 We are going to take a short break. Before we do, let
13 me tell you a couple of things, just so you're aware. We will,
14 during the course of this trial, get started pretty early in
15 the morning, depending on any given day, probably about 8:30.
16 We will take a morning break. We will take a break at
17 lunchtime. We will take an afternoon break, which is what
18 we're going to do right now. And then we will recess in the
19 afternoon, depending on our witnesses, at 5:00, 5:30, sometimes
20 6:00. Depending on where we're at with our witnesses.

21 And I'm just telling you that so you have some sense
22 of how the trial will proceed.

23 At this time, we are going to take a short recess.
24 Remember that you remain under all the rules of this Court.
25 You are not to discuss this case. And we will see you back

1 here in about 15 minutes.

2 At this time the Court stands in recess.

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

4 THE COURT: Before we actually take a recess, let me
5 ask the Government: I assume you have witnesses here. You are
6 prepared to call your first witness?

7 MS. KANOF: Yes, Your Honor.

8 THE COURT: Okay. Could the attorneys approach so I
9 can talk to you a minute?

10 (Off-the-record bench discussion.)

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

12 THE COURT: You may be seated.

13 You may call your first witness.

14 MS. KANOF: Rene Sanchez.

15 This witness has been sworn, Your Honor.

16 THE COURT: Whenever you're ready.

17 RENE SANCHEZ, GOVERNMENT'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MS. KANOF:

20 Q. State your name.

21 A. Rene Sanchez.

22 Q. How are you employed, sir?

23 A. I'm a Border Patrol agent.

24 Q. How long have you been with Border Patrol?

25 A. Six and a half years.

- 1 Q. Six and a half years?
- 2 A. Yes, ma'am.
- 3 Q. Where are you currently stationed?
- 4 A. Willcox, Arizona.
- 5 Q. How old are you, Agent Sanchez?
- 6 A. 33 years old.
- 7 Q. Okay. Where were you from?
- 8 A. El Paso, Texas.
- 9 Q. And you went to high school here in El Paso?
- 10 A. Yes, ma'am.
- 11 Q. Before going to high school here in El Paso, where did you
- 12 live?
- 13 A. In San Isidro, Chihuahua, Mexico.
- 14 Q. Okay. San Isidro, Mexico. Is that sort of on the
- 15 outskirts of Juarez, across the river?
- 16 A. Yes, ma'am.
- 17 Q. From the rural part of the county, El Paso County?
- 18 A. Yes.
- 19 Q. And you were born in the United States. Is that correct?
- 20 A. Yes.
- 21 Q. How old were you when you came to the United States?
- 22 A. I believe I was probably 16 or 15.
- 23 Q. And, Agent Sanchez, what did you do before you became a
- 24 Border Patrol?
- 25 A. I used to be employed by the City of El Paso as a toll

1 collector.

2 Q. Okay. And what else did you do?

3 A. And I used to work for the parks and recreation department.

4 Q. Also for the City of El Paso?

5 A. Yes, ma'am.

6 Q. As an adult, did you hold any other jobs before you went to

7 the United States Border Patrol?

8 A. No, ma'am.

9 Q. Okay. Agent Sanchez, you said you are currently assigned

10 to Willcox, Arizona. Is that correct?

11 A. Yes, ma'am.

12 Q. Where else have you been assigned?

13 A. Harlingen, Texas. And South Carolina, to the academy.

14 Q. Okay. And how long have you been in the Willcox, Arizona,

15 sector of the Border Patrol?

16 A. It's going to be two years in July.

17 Q. What are your duties and responsibilities as a Border

18 Patrol agent in Willcox, Arizona?

19 A. I do traffic check operations on Willcox, Benson, and

20 San Simon.

21 Q. Okay. And is San Simon in Arizona or in Mexico?

22 A. In Arizona, ma'am.

23 Q. Okay. Now, let me draw your attention to last year about

24 this time of year, February of last year, and ask if you were

25 assigned to Willcox, Arizona, at that time.

- 1 A. Yes, ma'am.
- 2 Q. As a Border Patrol agent, do you know agents that work in
3 other sectors?
- 4 A. Yes, ma'am.
- 5 Q. Okay. Did you know any people that worked in the El Paso
6 sector?
- 7 A. Yes, ma'am.
- 8 Q. And how did you know these people, these individuals?
- 9 A. I trained them at the academy. I was their PT instructor.
- 10 Q. Okay. So, at one point in time, you were an instructor at
11 the Border Patrol academy. Is that correct?
- 12 A. Yes, ma'am.
- 13 Q. And some of the individuals that are stationed here in
14 El Paso, then, were your trainees?
- 15 A. Yes, ma'am.
- 16 Q. Agent Sanchez, in late February, early March of last year,
17 did you get a phone call from your mother-in-law?
- 18 A. Yes, ma'am.
- 19 Q. Okay. You have a wife, I guess. Is that correct?
- 20 A. Yes.
- 21 Q. And she has a mother?
- 22 A. Yes.
- 23 Q. Where does her mother live?
- 24 A. Here in El Paso.
- 25 Q. Okay. And was she calling you from El Paso?

- 1 A. Yes, ma'am.
- 2 Q. And for what purpose did she call you?
- 3 A. She called me to inform me that her friend's son had been
- 4 shot by a Border Patrol agent.
- 5 Q. Okay. Her friend's son?
- 6 A. Yes.
- 7 Q. Who was this friend?
- 8 A. Osvaldo Aldrete-Davila.
- 9 Q. Okay. That was the son?
- 10 A. Yes.
- 11 Q. Okay. But the friend, was it a man or a woman?
- 12 A. Which friend, ma'am?
- 13 Q. Okay. You said she called to say her friend's son?
- 14 A. Yes.
- 15 Q. Who's is the friend?
- 16 A. It's Osvaldo's mother.
- 17 Q. Is your mother friends with Osvaldo's mother?
- 18 A. Yes, ma'am.
- 19 Q. What's your mother-in-law's name?
- 20 A. Gregoria Toquinto.
- 21 Q. Can you spell that for the court reporter, please?
- 22 A. T-O-Q-U-I-N-T-O.
- 23 Q. And, I'm sorry, you said the first name --
- 24 A. Gregoria.
- 25 Q. Gregoria?

- 1 A. Yes.
- 2 Q. And what is Osvaldo's mother's name?
- 3 A. Macaria. M-A-C-A-R-I-A.
- 4 Q. And is her last name Aldrete-Davila, just like Osvaldo's?
- 5 A. Yes, ma'am.
- 6 Q. Okay. And how does your mother-in-law know Osvaldo's
- 7 mother?
- 8 A. They were friends since childhood.
- 9 Q. Okay. And so your mother-in-law called you. Why did she
- 10 call you, if you know?
- 11 A. She told me -- just called me to -- letting me know what
- 12 happened, that Osvaldo had been shot while he was trying to
- 13 evade apprehension. He was running back to Mexico, that he got
- 14 shot in the back.
- 15 Q. And when -- why was she giving you this information?
- 16 A. Because she wanted to -- for me to make a report, to report
- 17 this incident.
- 18 Q. Okay. Based on the conversation that you had with your
- 19 mother-in-law, who wanted to report it, your mother-in-law or
- 20 Osvaldo's mother?
- 21 A. My mother-in-law.
- 22 Q. Okay. And what did you tell your mother-in-law?
- 23 A. That I needed more information as to when it happened, the
- 24 area, and the time, more or less.
- 25 Q. The time of day?

- 1 A. Yes, ma'am.
- 2 Q. The date. And other information that would assist you. Is
3 that correct?
- 4 A. Yes, ma'am.
- 5 Q. Did she have that information at the time, the first time
6 that you talked to her?
- 7 A. No, ma'am.
- 8 Q. Okay. What did you instruct her to do?
- 9 A. I told her to go back to Mexico and take her daughter's
10 cell phone. That way, I can talk to Osvaldo and find out all
11 the information that I needed.
- 12 Q. Okay. Her daughter is not your wife?
- 13 A. No, not my wife.
- 14 Q. Your wife's sister?
- 15 A. Yes, ma'am.
- 16 Q. Okay. And did she, in fact, then, take her daughter's cell
17 phone into Mexico to assist you in finding out what had
18 happened?
- 19 A. Yes, ma'am.
- 20 Q. Okay. What happened next?
- 21 A. I spoke to Osvaldo. And he told me that he had been shot
22 in the back while he was trying to -- to evade apprehension.
23 That he took off running, and he got shot in the back area.
- 24 Q. Do you know Osvaldo Aldrete-Davila?
- 25 A. Yes, ma'am.

- 1 Q. How do you know him?
- 2 A. I knew him when I was a little kid. We grew up on the same
3 town. His brother used to be my friend.
- 4 Q. Okay. And -- but Osvaldo is much younger than you. Is
5 that correct?
- 6 A. Yes, ma'am.
- 7 Q. And were you already in the United States by the time he
8 was seven years old?
- 9 A. Yes, ma'am.
- 10 Q. In that -- between the time that you came -- you're 33. Is
11 that correct?
- 12 A. Yes, ma'am.
- 13 Q. Do you know how old Osvaldo is?
- 14 A. No.
- 15 Q. Okay. But he was a kid when you left?
- 16 A. Yes.
- 17 Q. He wasn't your friend?
- 18 A. No.
- 19 Q. Did you keep in contact with his family over the years,
20 after you came to the United States?
- 21 A. No.
- 22 Q. Okay. So had you had any contact with his family since you
23 were 15 or 16 years old?
- 24 A. Yes.
- 25 Q. Okay. What contact did you have?

- 1 A. I was the chamberlain for Osvaldo's sister's quinceanera.
- 2 Q. Okay. You were her escort?
- 3 A. Yes, ma'am.
- 4 Q. Could you spell that word for the court reporter that you
- 5 used before?
- 6 A. Chamberlain?
- 7 Q. Yes.
- 8 A. It's C-H-A-M-B-E-R-L-A-I-N.
- 9 Q. How old were you then?
- 10 A. I was probably about 16 years.
- 11 Q. Okay. But I'm asking you, since you were 16 years old --
- 12 A. Yes.
- 13 Q. -- had you -- had you been friends with anyone in the
- 14 family?
- 15 A. With Osvaldo's brother.
- 16 Q. Osvaldo's brother?
- 17 A. Yes, yes.
- 18 Q. And you maintain a close relationship with him?
- 19 A. No.
- 20 Q. Okay. How often do you see Osvaldo's brother?
- 21 A. I haven't seen him since -- since I was about 18 years old
- 22 or less.
- 23 Q. Okay. So, since you were 18 years old, you didn't have any
- 24 relationship to the Aldrete-Davilas. Is that correct?
- 25 A. Yes, ma'am.

1 Q. However, when you got with your wife, her mother did have a
2 relationship with Mrs. Aldrete-Davila. Is that correct?

3 A. Yes.

4 Q. Okay. And so she called you to tell you about this,
5 correct?

6 A. Yes.

7 Q. When you talked to Osvaldo, did he give you the information
8 you needed?

9 A. Yes.

10 Q. Did he give you an idea of where it happened?

11 A. Yes, ma'am.

12 Q. Did he give you an idea of when it happened?

13 A. Yes.

14 Q. Did he know the date?

15 A. He asked his mother. And she told him that it was on
16 the -- I believe February 17th. I don't know the --

17 Q. Of last year?

18 A. Yes, ma'am.

19 Q. Okay. And, when you received this information, what did
20 you do?

21 A. I reported to my supervisor, field operation supervisor,
22 Russell Karhoff.

23 Q. And that's K-A-R-H-O-F-F. Is that correct?

24 A. Yes.

25 Q. And that's in Willcox, Arizona, correct?

- 1 A. Yes.
- 2 Q. And did he give you instructions?
- 3 A. Yes. He told me that we needed to find out the exact date,
4 time, and the area where it happened.
- 5 Q. In addition to doing that, by talking to Osvaldo
6 Aldrete-Davila yourself, did you also try to find out using
7 Border Patrol investigative techniques?
- 8 A. Yes, ma'am.
- 9 Q. Okay. What did you do?
- 10 A. I used a system called BPETS.
- 11 Q. What is that system?
- 12 A. You can see any apprehensions.
- 13 Q. When you say BPETS, what are the initials that you're
14 saying?
- 15 A. B-P-E-T-S.
- 16 Q. That's a Border Patrol computer. Is that correct?
- 17 A. Yes.
- 18 Q. Is it a national computer?
- 19 A. Yes, ma'am.
- 20 Q. And does it have information contained in it like
21 shootings?
- 22 A. Yes.
- 23 Q. If an agent shoots someone and reports it, would that
24 computer system have that information?
- 25 A. Yes.

1 Q. Were you able to locate any information about a shooting in
2 February of 2005 by looking in the computer?

3 A. No, ma'am.

4 Q. Okay. Were you able to find Mr. Aldrete-Davila's name by
5 looking in the computer?

6 A. No, ma'am.

7 Q. All right. So that -- that didn't work?

8 A. No.

9 Q. What else did you do?

10 A. I submitted my paperwork, my memorandum. And I got
11 contacted by Special Agent Chris Sanchez later on.

12 Q. Okay. And is that Chris Sanchez that I'm pointing out,
13 that's sitting over at counsel table?

14 A. Yes, ma'am.

15 Q. Okay. When -- the first contact he attempted to make, were
16 you available? The first time he tried to contact you, was it
17 successful?

18 A. No.

19 Q. Okay. Well, what happened next?

20 A. He left a message, and I called him back.

21 Q. Okay. And, when you called him back, what did you tell
22 him?

23 A. I told him what I had heard about the incident, and that
24 I -- I believe I submitted Mr. Aldrete's phone number --

25 Q. Okay.

- 1 A. -- in my memorandum.
- 2 Q. How had you obtained that phone number?
- 3 A. Through my mother-in-law.
- 4 Q. Okay. One of the things she did, when she went over to
5 hand him the cell phone, was to get his phone number. Is that
6 correct?
- 7 A. Yes, ma'am.
- 8 Q. Okay. And what -- did Agent Sanchez tell you to do
9 anything, or give you any instructions?
- 10 A. Just to talk to Aldrete-Davila.
- 11 Q. What did he want you to do?
- 12 A. He wanted Aldrete-Davila to contact Mr. Sanchez.
- 13 Q. Okay. And did you do that? Did you pass the message on?
- 14 A. Yes, ma'am.
- 15 Q. How did you pass that message on?
- 16 A. I spoke with Osvaldo. I spoke to Osvaldo via cell phone,
17 and I gave him Agent Sanchez's cell phone number. And I
18 believe they made contact after that.
- 19 Q. Okay. And did you have anything else to do with the case
20 after that time?
- 21 A. No, ma'am.
- 22 MS. KANOF: Pass the witness.
- 23 THE COURT: Could the attorneys approach?
- 24 (Bench conference:)
- 25 THE COURT: I saw Mr. Streep come in. Whose witness

1 is he? Mr. Streep came into the courtroom.

2 MS. RAMIREZ: He was listed as a witness.

3 THE COURT: He just walked in. You need to let him
4 know.

5 (End of bench conference; open court.)

6 Ms. Stillinger, you may proceed.

7 CROSS-EXAMINATION

8 BY MS. STILLINGER:

9 Q. Agent Sanchez, how big a town is San Isidro?

10 A. It's probably about a thousand people, maybe 2,000.

11 Q. Okay. So is it fair to say most of the families know each
12 other in that little town?

13 A. Yes, ma'am.

14 Q. Okay. And which of Osvaldo Aldrete-Davila's brothers is
15 your friend, or was your friend?

16 A. Yes, he was my friend.

17 Q. No, but which brother?

18 A. Sergio Aldrete-Davila.

19 Q. Okay. And is he older than Osvaldo --

20 A. Yes, ma'am.

21 Q. -- Aldrete-Davila?

22 A. Yes.

23 Q. Okay. And I understand you haven't lived in San Isidro
24 since you were maybe 16 -- 15, 16 years old, and you haven't
25 maintained a friendship. But do you kind of hear about how the

1 families are doing?

2 A. Yes, ma'am.

3 Q. Okay. And do you know when it was that you first got a
4 call from your mother-in-law about this incident?

5 A. I believe it was the 28th of February 2005.

6 Q. Okay. And, after you got the call from your mother-in-law,
7 you did some investigation on your own, correct?

8 A. Yes, ma'am.

9 Q. And then you wrote up a memo a few days later?

10 A. I believe -- yes. Yes.

11 Q. Okay.

12 A. After I got the information.

13 Q. Okay.

14 MS. STILLINGER: And may I approach the witness,
15 Your Honor?

16 THE COURT: You may.

17 BY MS. STILLINGER:

18 Q. Let me show you what I'm marking for identification
19 purposes as Defendant Ramos Number 1, and ask you: Is that the
20 memo that you're talking about?

21 A. Yes, ma'am.

22 Q. Okay. And the date on that memo is what?

23 A. March 3rd, 2005.

24 Q. Okay. And, in this memo, you talk about getting a phone
25 call from your mother-in-law on March 3rd, correct?

- 1 A. Yes.
- 2 Q. Okay. But are you saying that you actually got the phone
3 call from her a few days earlier than that?
- 4 A. I got it on the 28th.
- 5 Q. On the 28th of February. Okay. So you would agree with me
6 that that's incorrect, in the memo that you wrote?
- 7 A. The date is incorrect.
- 8 Q. I'm sorry?
- 9 A. Yes.
- 10 Q. Okay. And, I mean, is this a second phone call you're
11 talking about, when you say on March 3rd, at about 6:00 in the
12 evening, you got a call from your mother-in-law?
- 13 A. Yes.
- 14 Q. Okay. But you had actually heard from her, I guess, the
15 28th of February. That wasn't a leap year, so maybe three --
16 three or four days earlier you had gotten a call from her about
17 this?
- 18 A. Yes.
- 19 Q. Okay. And in those three or four days is when you did your
20 little investigation, correct?
- 21 A. Yes.
- 22 Q. Okay. And one of the things that you did was, you checked
23 this computer system, correct?
- 24 A. Yes.
- 25 Q. Okay. Are you authorized to investigate allegations of

1 misconduct by other Border Patrol agents?

2 A. I was investigating the information, to try to get the
3 exact date and what station this incident happened.

4 Q. Okay. I understand that's why you were doing it. But what
5 I'm asking is: Are you authorized to investigate allegations
6 of misconduct by other Border Patrol agents?

7 A. I have no idea, ma'am.

8 Q. Okay. That's not one of your duties that you're aware of,
9 is it?

10 A. No.

11 Q. Okay. And, in fact, you're not supposed to get on the
12 Government computer system to check on things for friends or
13 family members, are you?

14 A. No.

15 Q. Okay. But that's what you did, right?

16 A. No. I wasn't checking for friends or family.

17 Q. Okay. Well, this is your mother-in-law that's calling you
18 about this, right?

19 A. Yes.

20 Q. And this is her best friend's son, right?

21 A. Yes.

22 Q. Okay. So I guess it's not a friend or family member, but
23 it's a friend of a family member, right?

24 A. Of my mother-in-law.

25 Q. Right. Okay. And you're not supposed to use the computer

1 system to check on things for even friends of family members,
2 are you?

3 A. No.

4 Q. Okay. Now, in response to the call from your
5 mother-in-law, you told her, Why don't you go to Mexico and
6 meet with this guy and get the specifics?

7 A. Yes.

8 Q. Okay. And you weren't worried about sending your
9 mother-in-law to meet with this man in Mexico?

10 A. No.

11 Q. Okay. Because she knew him, right?

12 A. Yes.

13 Q. Okay. And you must have known something about him, right?

14 A. Yes. Yes, I knew him.

15 Q. Okay. And your understanding, at this point in time, is,
16 from -- from what she's told you, your understanding is that
17 this guy was just crossing illegally, but otherwise innocently,
18 correct?

19 A. Yes.

20 Q. Okay. And when he was crossing back he was shot, correct?

21 A. Yes.

22 Q. Okay. And that's -- that's the information that he was --
23 I guess it was -- that it was -- that was given to you at that
24 point in time, correct?

25 A. Yes.

1 Q. Okay. Of course, you found out later that was not correct,
2 correct?

3 A. Yes.

4 Q. You found out that was not the whole story, right?

5 A. Yes.

6 Q. Okay. And your mother-in-law, I guess, found that out?

7 A. Yes.

8 Q. And she -- she -- was she with you when you talked to him
9 on the phone and heard the whole story?

10 A. Who, my mother-in-law?

11 Q. Yes.

12 A. With me?

13 Q. Yes.

14 A. No.

15 Q. No, I'm sorry. Was she with him?

16 A. Yes.

17 Q. Okay. And I'm just trying to set up a time line. I guess
18 you actually talked to him on the -- on February 28th -- or,
19 I'm sorry. You talked to your mother-in-law on February the
20 28th?

21 A. Yes.

22 Q. You did some investigation. And I guess you talked to your
23 mother-in-law again on March 3rd, and that's the phone call
24 that we're talking about here?

25 A. Yes.

1 Q. Okay. And when you spoke -- okay. How -- how -- I
2 guess -- when is it that you spoke to Osvaldo Aldrete-Davila
3 for the first time?

4 A. On March 3, 2005.

5 Q. Okay. Okay. So the phone call you're talking about in
6 this memo is the call that your mother-in-law made when she's
7 over in Mexico with this guy. Is that right?

8 A. Yes, ma'am.

9 Q. Okay. Okay. And, after speaking to him, did you do more
10 investigation?

11 A. After speaking to him I just got the date, the -- the --
12 what happened. He told me the story. And that's how I based
13 my memo.

14 Q. Okay.

15 A. The story that he gave.

16 Q. Okay. And has your mother-in-law had some continued
17 involvement with Osvaldo Aldrete-Davila?

18 A. Not with him.

19 Q. Okay. She hasn't been assisting him with any of his
20 medical issues?

21 A. No, not that I'm -- I'm not aware.

22 Q. Okay. Hasn't been talking him to his doctor's
23 appointments?

24 A. Not that I'm aware, ma'am.

25 Q. Okay. And have you done anything else? Besides the things

1 you've told us about, anything else to assist

2 Mr. Aldrete-Davila?

3 A. No.

4 MS. STILLINGER: May I have just a moment, Your Honor?

5 THE COURT: Sure.

6 MS. STILLINGER: Let me clear this up and make sure

7 I've got this right.

8 BY MS. STILLINGER:

9 Q. I know -- you said that when you spoke to your
10 mother-in-law, the information that she conveyed to you was
11 that Aldrete-Davila was coming into the country illegally, but
12 otherwise innocently, and got shot when he was leaving,
13 correct?

14 A. Yes.

15 Q. How about Mr. Aldrete-Davila? Did he tell you the same
16 story, or did he -- at first, did he tell you that same story?

17 A. Yes.

18 Q. At first he did?

19 A. Yes.

20 Q. And then later he told you a different story, correct?

21 A. Yes.

22 Q. Okay.

23 MS. STILLINGER: Thank you.

24

25

1 CROSS-EXAMINATION

2 BY MR. ANTCLIFF:

3 Q. Good afternoon, sir.

4 A. Good afternoon.

5 Q. As I understand it, you've -- as a Border Patrol agent in
6 Willcox, Arizona, you perform traffic check operations in a
7 three-city area out there. Is that right?

8 A. Yes, sir.

9 Q. What does that mean, traffic check operations?

10 A. We check vehicles for alien -- illegal aliens, to arrest
11 them. We work mainly the highway and the checkpoint.

12 Q. Okay. Are the cities that you mentioned, are they fairly
13 close to the border?

14 A. It's about an hour and 15 minutes.

15 Q. Okay. Do you do anything else, other than traffic check
16 operations, looking for illegal aliens?

17 A. Yes.

18 Q. What else do you do?

19 A. I certify the agents on the use of the baton and O/C. And
20 I currently work at the Tucson garage, because I'm on light
21 duty.

22 Q. You're on light duty right now?

23 A. Yes.

24 Q. For an injury?

25 A. Yes, sir.

1 Q. What happened to you?

2 A. I fell and dislocated my right shoulder.

3 Q. Okay. Do you carry a firearm as part of your job duties?

4 A. Yes, sir.

5 Q. Are you qualified with that weapon?

6 A. Yes.

7 Q. When you were at the academy, did you instruct trainees, I
8 guess for lack of a better word, in their use of a weapon?

9 A. Yes.

10 Q. Your investigation, I guess the limited investigation that
11 you performed after you received information from your
12 mother-in-law, revealed that Mr. Osvaldo Davila did not want to
13 report this shooting. Is that right?

14 A. Yes.

15 Q. But his mother, your mother-in-law's friend, was interested
16 in making sure that got reported, correct?

17 A. Yes.

18 Q. Did Mr. Osvaldo Aldrete-Davila tell you why he did not want
19 to report this incident?

20 MS. KANOF: Objection, Your Honor. Motion in limine.

21 MR. ANTCLIFF: It calls for a yes or no.

22 THE COURT: All right. He can answer yes or no.

23 A. Yes.

24 MR. ANTCLIFF: May we approach?

25 THE COURT: You may.

1 (Bench conference:)

2 MR. ANTCLIFF: I was trying to run through it in my
3 head, and I can't figure out a way to get around it.

4 THE COURT: You're not there yet.

5 MR. ANTCLIFF: No.

6 (End of bench conference; open court.)

7 THE COURT: You may proceed.

8 BY MR. ANTCLIFF:

9 Q. Did your investigation reveal where Mr. Osvaldo Davila was
10 treated in Mexico for his injuries?

11 A. Yes.

12 Q. Where?

13 A. In a clinica in San Augustin.

14 Q. Do you know the name of it?

15 A. No.

16 MR. ANTCLIFF: I'll pass the witness.

17 THE COURT: Ms. Kanof?

18 REDIRECT EXAMINATION

19 BY MS. KANOF:

20 Q. Agent Sanchez, you were asked some questions about your
21 right to use the computer system to help friends. Were you
22 using the computer system to help friends or family?

23 A. No, ma'am.

24 Q. Hadn't your supervisor, Mr. Karhoff, told you to find out
25 more facts?

1 A. Yes, ma'am.

2 Q. And were you using the computer based on his orders to you?

3 A. Yes.

4 Q. When the defense counsel asked you about the clinic, when
5 you talked to Osvaldo Davila, did he still have the bullet in
6 his body?

7 A. Yes, ma'am.

8 Q. And did he indicate that to you?

9 A. Yes, ma'am.

10 Q. Okay. You were asked whether or not he told you a
11 different story.

12 Well, let's go back. The first two times that you
13 speak with him, his family is around. Is that correct?

14 A. Yes, ma'am.

15 Q. Did you ever get to speak to him when there's no one
16 around?

17 A. Not until the third time.

18 Q. Okay. And was that in person or was that on the telephone?

19 A. On the telephone.

20 Q. And were you clear that there was no one else around?

21 A. Yes. He told me there was no one.

22 Q. Did he give you a different story, or just additional
23 information?

24 A. He gave me additional information.

25 Q. Now, with regard to your being an instructor, you said that

1 you certify agents in the use of batons and O/C. What does
2 that mean?

3 A. It's -- I've got to recertify them once a year. It's a
4 four-hour course that I have to go through.

5 Q. Well, what's a baton?

6 A. It's a collapsable steel baton.

7 Q. Okay. Do all Border Patrol agents carry that?

8 A. If -- you have to get certified. You -- you're given the
9 option of either carrying a baton or O/C.

10 Q. What's the purpose of the baton?

11 A. It's a nondeadly force device.

12 Q. Okay. And is it for -- what does an agent use it for?

13 A. He uses it as an alternate use of force option.

14 Q. Oh, okay. An alternate. What's the first thing you're
15 supposed to use, if an agent feels like they're in fear?

16 A. Officer presence, verbal commands.

17 Q. Okay. Verbal commands?

18 A. Yes, ma'am.

19 Q. And then the next thing?

20 A. Takedown techniques.

21 MS. STILLINGER: Your Honor, I'm going to object to
22 this redirect being outside the scope of cross.

23 MS. KANOF: Mr. Antcliff asked him if he -- what he
24 did, and he certified agents in the use of baton and O/C, and
25 I'm exploring what that is.

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

2 BY MS. KANOF:

3 Q. What is O/C?

4 A. It's oleo resin capsicum. It's an inflammatory agent that
5 is made out of cayenne peppers.

6 Q. It's pepper spray?

7 A. Yes, ma'am.

8 Q. Okay.

9 MS. KANOF: That's all I have, Your Honor.

10 THE COURT: Thank you.

11 Ms. Stillinger?

12 RE-CROSS-EXAMINATION

13 BY MS. STILLINGER:

14 Q. Agent Sanchez, I'm just a little confused, because I
15 thought -- did you just say that you spoke to Aldrete-Davila
16 three times?

17 A. Yes, ma'am.

18 Q. Okay. Can you tell me -- I think we established that the
19 first time was March 3rd. Is that right?

20 A. Yes, ma'am.

21 Q. When your mother-in-law was with him?

22 A. Yes, ma'am.

23 Q. When were the other two times?

24 A. Then I was -- I don't know the exact date, but I know it
25 was probably within two weeks.

- 1 Q. Okay. And what was the purpose of speaking to -- I
2 guess -- you told us that you spoke to him one more time
3 because Agent Sanchez asked you to relay a message to him --
- 4 A. Yes, ma'am.
- 5 Q. -- to call Agent Sanchez, correct?
- 6 A. Yes.
- 7 Q. Okay. Was that the second time you spoke to him or the
8 third time?
- 9 A. That was the second time.
- 10 Q. Okay. That's the second time.
- 11 A. Yes.
- 12 Q. Then why do you speak to him a third time?
- 13 A. Because he didn't want to contact officer Chris Sanchez.
- 14 Q. Okay. He didn't want to talk to Agent Sanchez?
- 15 A. Yes, ma'am.
- 16 Q. So you called him, why?
- 17 A. I called him to convince him to talk to Mr. Sanchez.
- 18 Q. Okay. And how did you convince him to do that?
- 19 A. I told him that I -- that we're -- he should report it,
20 because that -- that had never gotten reported.
- 21 Q. Okay. Did you tell him that he might be able to file a
22 lawsuit against the Government for his injuries?
- 23 A. No, ma'am.
- 24 Q. You never spoke to him about that?
- 25 A. No.

1 Q. Okay. Okay. And, after that third time, have you spoken
2 to him again?

3 A. Yes, ma'am.

4 Q. Okay. And when was that?

5 A. Sunday.

6 Q. Like day before yesterday?

7 A. Yes, ma'am.

8 Q. Okay. And what was the purpose of that?

9 A. We were -- it was just -- yes, I just spoke to him.

10 Q. Just social?

11 A. Yes.

12 Q. Okay. And, Agent Sanchez, I was understanding that you
13 wrote the memo that I showed you, that I marked for
14 identification purposes as Defendant Ramos Exhibit 1, that that
15 was the memo that you wrote to your supervisor to advise him of
16 the situation, correct?

17 A. Yes, ma'am.

18 Q. Okay. And I understood that you checked the computer
19 before you wrote that memo, correct?

20 A. Yes.

21 Q. Okay. So you didn't ask for his permission, or get his
22 direction to check the computer on this issue, did you?

23 A. No. Once he issued me the clarification to get all the
24 information that I needed, it's -- it's pretty much he's giving
25 me the order.

- 1 Q. Okay. But that was after he got this memo, right?
- 2 A. The -- no. He told me before I did the memo.
- 3 Q. Okay. So you're saying there was some sort of oral
- 4 conversation -- I mean, an oral notification to your supervisor
- 5 before this memo?
- 6 A. Yes, ma'am.
- 7 Q. Okay. When would that have been?
- 8 A. That was February 28th.
- 9 Q. Okay. And you did not memorialize that in writing?
- 10 A. No.
- 11 Q. Okay. And he gave you authorization to use the computer
- 12 system to investigate, to find out what you could about this
- 13 event?
- 14 A. He didn't tell me to use just anything. He just told me to
- 15 find out the facts --
- 16 Q. Okay.
- 17 A. -- of what happened, because I didn't have enough
- 18 information.
- 19 Q. Okay. And you took that to mean that you could go ahead
- 20 and use the computer system, correct?
- 21 A. Yes.
- 22 Q. Okay. Did you disclose to him that the subject of this
- 23 incident was your mother-in-law's best friend's son?
- 24 A. Yes.
- 25 Q. You did disclose to him that there's a family connection?

1 A. Yes.

2 Q. Okay. You didn't -- and you're saying you did that orally
3 with him, correct?

4 A. Yes.

5 Q. Okay. But there's nothing in the memo that you wrote about
6 that, is there?

7 A. No.

8 Q. Okay. And when you sent your mother-in-law -- or suggested
9 to your mother-in-law that she -- she go to Mexico to meet with
10 Osvaldo Aldrete-Davila, did you know what he did for a living?

11 A. Excuse me?

12 Q. Did you know how he was employed or what he did for a
13 living?

14 A. Yes. Before, I knew what he -- that he used to be a truck
15 driver.

16 Q. Okay. That he used to be a truck driver?

17 A. Yes.

18 Q. Okay. How did you know that?

19 A. Because I saw him in 2004 -- I don't know the exact date.
20 I saw him in Reynosa, Tamaulipas, that's across from McAllen,
21 Texas.

22 Q. Okay. Okay. And was that a social visit or --

23 A. Yes.

24 Q. Okay. Because I thought you had told Ms. Kanof you hadn't
25 seen him since you were about 16 -- 15, 16 years old.

- 1 A. I hadn't seen Sergio, his brother.
- 2 Q. Oh, okay. You had seen Osvaldo Aldrete-Davila?
- 3 A. Yes.
- 4 Q. Okay. And was this, the meeting that you -- or the visit
5 that you had in 2004, was that a chance meeting, or were you
6 going to some event together?
- 7 A. No, that was a chance meeting.
- 8 Q. Okay. What were you doing there?
- 9 A. I was visiting a friend of mine that is an engineer for
10 Delphi. We grew up in the same town, and that's how I ran into
11 Aldrete.
- 12 Q. Oh, okay. And I guess that I should ask, because I was
13 confused about that.
- 14 Have you had any other contacts with him since you
15 were a kid?
- 16 A. Yes. That time in 2004.
- 17 Q. Okay.
- 18 A. And, now, that I found out that he had been shot in the
19 back.
- 20 Q. Okay. Just the ones that you told us about having to do
21 with this case?
- 22 A. Yes. Yes.
- 23 Q. No other social visits besides this?
- 24 A. No. No.
- 25 Q. Okay.

1 MS. STILLINGER: Can I have a just a moment,
2 Your Honor?

3 THE COURT: Sure.

4 BY MS. STILLINGER:

5 Q. And -- and -- and I'm sorry, just one other question,
6 Mr.- -- Agent Sanchez.

7 Do you keep track with your old friends from
8 San Isidro?

9 A. Yes.

10 Q. Generally?

11 A. Yes. I see them -- not all of them, because a lot of
12 people have moved to different places.

13 Q. Uh-huh. And do you go to San Isidro to see your family, or
14 your wife's family?

15 A. Not to San Isidro, to Tres Sacales.

16 Q. Which is where, I'm sorry?

17 A. It's across from Fabens.

18 Q. Okay. Okay. Which is very close to San Isidro, right?

19 A. Yes, ma'am.

20 Q. Okay.

21 MS. STILLINGER: Thank you.

22 THE COURT: Mr. Antcliff?

23 RE-CROSS-EXAMINATION

24 BY MR. ANTCLIFF:

25 Q. Sir, you mentioned that you had contact with Mr. Davila

- 1 this past Sunday. Is that right?
- 2 A. Yes.
- 3 Q. How did that come about?
- 4 A. I just saw him at the same vehicle with -- that I came over
5 here to meet with Chris Sanchez.
- 6 Q. You saw him in a vehicle, or you were riding together? I'm
7 not following.
- 8 A. We were riding together in the same vehicle. They picked
9 me up here in downtown.
- 10 Q. Okay. Were you the driver?
- 11 A. No, sir.
- 12 Q. And you-all came downtown together?
- 13 A. No, sir.
- 14 Q. Where did you go?
- 15 A. He went to the -- I don't know what building, it's-- it's
16 not the -- we went to the federal building, I believe.
- 17 Q. Okay. So the contact that you had with him, you were
18 coming down here to prepare for your testimony today. Is that
19 right?
- 20 A. Yes.
- 21 Q. And meeting with the prosecutors in this case?
- 22 A. Yes.
- 23 Q. And Mr. Davila happened to be there, as well, in the
24 vehicle?
- 25 A. Yes.

1 Q. And you spoke with him?

2 A. I -- I said hi to him.

3 Q. That's all?

4 A. Yes.

5 MR. ANTCLIFF: Very well. I'll pass the witness.

6 THE COURT: Ms. Kanof?

7 REDIRECT EXAMINATION

8 BY MS. KANOF:

9 Q. Agent Sanchez, you were walking downtown on Sunday. Is
10 that correct?

11 A. Yes.

12 Q. And this Agent Sanchez saw you walking downtown?

13 A. Yes.

14 Q. And he picked you up at the Allright parking lot. Is that
15 correct?

16 MS. STILLINGER: Objection, leading, Your Honor.

17 A. Yes.

18 BY MS. KANOF:

19 Q. Did he pick you up at the Allright parking lot?

20 A. Yes.

21 Q. And how long was the drive from the Allright parking lot to
22 the federal building, where the U.S. Attorney's office is?

23 A. Less than a minute.

24 Q. Less than a minute?

25 A. Yes.

- 1 Q. And did you talk about the case?
- 2 A. No.
- 3 Q. Okay. And Agent Sanchez was driving the vehicle?
- 4 A. Yes.
- 5 Q. What were you doing in Reynosa?
- 6 A. I have a friend there who is an engineer for Delphi. He's
- 7 the head engineer.
- 8 Q. Okay. And is this friend from San Isidro?
- 9 A. Yes, ma'am.
- 10 Q. Okay. And what -- were you in Harlingen at that time?
- 11 A. Yes, ma'am.
- 12 Q. Okay. You were stationed as a Border Patrol agent in
- 13 Harlingen. Is that correct?
- 14 A. Yes.
- 15 Q. And did you go into Mexico to visit your friend that worked
- 16 for Delphi?
- 17 A. Yes, ma'am.
- 18 Q. What's your friends name?
- 19 A. Jose Osuna Toquinto.
- 20 Q. And so when you went to see him in Reynosa,
- 21 Aldrete-Davila -- Osvaldo Aldrete-Davila was there, also?
- 22 A. Yes.
- 23 Q. Okay. At -- at -- it was at a house or a hotel?
- 24 A. Yes. It was his mom's house.
- 25 Q. Okay. And you passed pleasantries. Is that correct?

1 A. Excuse me?

2 Q. You just spoke as friends?

3 A. Yes.

4 Q. Okay. And -- but, other than that, you haven't seen him
5 any other time since you were a child?

6 A. No.

7 Q. Okay. Was that yes, you hadn't, or no, you hadn't?

8 A. No, I haven't seen him since I was a child.

9 Q. Okay. And I think Mr. Antcliff's question was: Did you
10 know how Aldrete-Davila was employed?

11 A. Yes, ma'am.

12 Q. Is that when you learned how he was employed?

13 A. Yes.

14 Q. And what did you say was his employment?

15 A. He was a truck driver.

16 Q. What kind of a truck driver?

17 A. Commercial truck driver.

18 Q. Okay.

19 MS. KANOF: Thank you.

20 THE COURT: Ms. Stillinger?

21 RECROSS-EXAMINATION

22 BY MS. STILLINGER:

23 Q. Mr. Alderete -- I'm sorry. Agent Sanchez, your friend in
24 Reynosa, is he related to your wife's family?

25 A. His mother is a cousin of my mother-in-law.

1 Q. Okay. I just heard the name --

2 A. Yeah, she's adopted. She was adopted.

3 Q. I'm sorry?

4 A. She is adopted.

5 Q. Oh, okay. I just noticed the name Toquinto.

6 A. Yes.

7 Q. So this mutual friend that is Osvaldo Aldrete-Davila's
8 friend and your friend, he's related to your wife's family,
9 correct?

10 A. Yes.

11 Q. Okay. And, I'm sorry. You said it was in 2004 you saw
12 them. Do you remember when in 2004?

13 A. No, ma'am.

14 Q. Okay.

15 MS. STILLINGER: Thank you.

16 MR. ANTCLIFF: I don't have anymore questions,
17 Your Honor.

18 MS. KANOF: Nothing further from the Government.

19 THE COURT: All right. Is he free to go, or just step
20 down?

21 MS. KANOF: We request that he wait, Your Honor.

22 THE COURT: All right. You can step down. You need
23 to stay around in case we need you again. Thank you.

24 THE WITNESS: Yes, ma'am.

25 MS. KANOF: The Government calls Agent Chris Sanchez.

1 THE COURT: Was he sworn in with everyone else?

2 THE WITNESS: No, Your Honor.

3 (Witness sworn.)

4 THE COURT: Whenever you're ready.

5 MS. KANOF: Thank you, Your Honor.

6 CHRISTOPHER SANCHEZ, GOVERNMENT'S WITNESS, SWORN

7 DIRECT EXAMINATION

8 BY MS. KANOF:

9 Q. State your name for the record, please.

10 A. Christopher Sanchez.

11 Q. How are you employed?

12 A. I'm a special agent with the U.S. Department of Homeland
13 Security, Office of Inspector General, in El Paso, Texas.

14 Q. Okay. That's a lot of words. What does that mean?

15 A. U.S. Department of Homeland Security, basically we
16 investigate fraud, waste, and abuse within the programs of the
17 Department of Homeland Security, and also employee misconduct.

18 Q. Okay. So, basically, you investigate other employees
19 within your department?

20 A. Yes, ma'am.

21 Q. What law enforcement agencies does the Department of
22 Homeland Security encompass?

23 A. Basically, all the law enforcement agencies under the
24 umbrella of the Department of Homeland Security. That includes
25 the Border Patrol, Customs and Border Protection officers, the

1 Immigration and Customs Enforcement.

2 Q. Okay. What did you do before you became a DHS-OIG agent?

3 A. I was a special agent with the U.S. Immigration and Customs
4 Enforcement. And, before that, I was with U.S. Customs Service
5 as a special agent.

6 Q. Okay. Where were you stationed?

7 A. I was in Phoenix, Arizona.

8 Q. And, before that, what did you do?

9 A. I was a special agent with the Department of Veterans
10 Affairs, Office of Inspector General, in Phoenix.

11 And, before that, a special agent with U.S. Department
12 of Commerce, Office of Export Enforcement, in Chicago.

13 Q. Okay. And before that?

14 A. No other federal service before that. I served
15 approximately eight years in the U.S. Marine Corps.

16 Q. You were a Marine?

17 A. Yes, ma'am.

18 Q. Special Agent Sanchez, when did you become assigned to
19 El Paso, Texas?

20 A. November of 2004.

21 Q. And you had been in Phoenix before that, correct?

22 A. Yes, ma'am.

23 Q. Were you a DHS-OIG agent in Phoenix, or did you move to
24 El Paso to become a DHS-OIG agent?

25 A. I moved here.

1 Q. Okay. And when you got to El Paso, what was the first case
2 that you were asked to investigate?

3 A. An assault case.

4 Q. Was this the case?

5 A. No, ma'am, it was a different case.

6 Q. Oh, okay. So you investigated assault cases. Is that
7 right?

8 A. Yes, ma'am.

9 Q. What kind of assaults are you talking about?

10 A. Allegations of -- mostly, it's against the Border Patrol
11 agents, where alleged -- people allege that they've been hit or
12 abused by Border Patrol agents.

13 Q. How long had you been here before you were assigned this
14 case?

15 A. I got here in November. So approximately about four and a
16 half months.

17 Q. And so sometime in March of 2005, did you get assigned a
18 case to investigate where an alleged victim named Osvaldo
19 Aldrete-Davila was involved?

20 A. Yes, ma'am.

21 Q. How did you -- how did that case come to you?

22 A. I was the duty agent for my office, meaning any calls that
23 come in, any allegations, we have to work up.

24 Basically, the Office of Internal Audit of the U.S.
25 Border Patrol handed me a memorandum. And I proceeded from

1 there.

2 Q. Okay. And you said U.S. Border Patrol handed you that
3 memorandum?

4 A. The U.S. Border Patrol Office of Internal Audit, basically,
5 the internal affairs for the Border Patrol.

6 Q. And is that here in El Paso or is that in Washington, D.C.?

7 A. That's here in El Paso.

8 Q. Okay. Do you recall who provided that to you?

9 A. Field operations supervisor, Oscar Benavides.

10 Q. And when -- what was the nature of that memo?

11 A. It was a memorandum from Rene Sanchez, the gentleman that
12 was just here. And I believe, also, there's another memorandum
13 from his supervisor, detailing what Rene Sanchez had told him.

14 Q. And that would be Karhoff, this guy we've heard about?

15 A. I don't recall the name on the memo.

16 Q. Okay. So you had two memos to work off of. Is that
17 correct?

18 A. Yes, ma'am.

19 Q. And they gave them to you and told you to go forth and
20 investigate?

21 A. Basically.

22 Q. What did you do?

23 A. The first thing we did, just looking at the memos -- again,
24 it identified that Aldrete-Davila had crossed from Las Pompas.
25 And, not being familiar with the area, being new to El Paso, I

1 had asked the Border Patrol agents, Where is Las -- who covered
2 Las Pompas?

3 And they stated the Ysleta Border Patrol station did.

4 Q. Okay. So, originally, you thought this might have happened
5 in the Ysleta Border Patrol station. Is that correct?

6 A. Yes, ma'am.

7 Q. And so you were trying -- you didn't know who the agents
8 involved were at that time, did you?

9 A. No, ma'am.

10 Q. And what was your primary objective in this investigation?

11 A. Identifying who the Border Patrol agents were.

12 Q. Okay. And so what you had to go on was Las Pompas?

13 A. At that time, yes, ma'am.

14 Q. And what did you do, with regard to the Ysleta station?

15 A. Initially, requested who was on duty on February 17th. And
16 I also requested to get the radio traffic.

17 Q. Okay. And what happened next?

18 A. It took, I think, a day or two days to go through the radio
19 traffic.

20 Again, during this same time period, I reached out for
21 Rene Sanchez, and he hadn't called me back.

22 Q. What's radio traffic?

23 A. Basically, the radio transmissions that Border Patrol
24 agents have between each other and sector.

25 Q. Okay. And you said -- and is that recorded somehow?

- 1 A. If it's going off the repeater, it's recorded.
- 2 Q. Okay. What's a repeater?
- 3 A. Basically, it's the tower that, I guess, transmits the
4 radio from one unit to another. It just helps them out if
5 they're, I guess, at a distance. Usually the Border Patrol
6 agents, a lot of times, use local traffic, car to car.
- 7 Q. In your investigation, did you find out whenever an agent
8 was using his radio on the repeater station that there was a
9 transcript of that generated, a tape?
- 10 A. It's a recording, yes, ma'am.
- 11 Q. A tape. And then you can order a transcript from a tape,
12 correct? They'll make one?
- 13 A. Yes, ma'am.
- 14 Q. All right. So you got the radio traffic. Did you get the
15 tape?
- 16 A. I got the tapes.
- 17 Q. And then did you listen to the tapes?
- 18 A. I started listening to the tapes of the Ysleta Border
19 Patrol station.
- 20 Q. Okay. Did you -- did you listen for just February 17th, or
21 did you listen to other days around that time?
- 22 A. I believe just February 17th. I wasn't sure of the time,
23 so I was looking at them from, I think, 12:00 to 5:00.
- 24 Q. Okay. Did you find anything in that radio traffic that
25 would indicate to you that a shooting had occurred?

- 1 A. With the Ysleta Border Patrol station, no.
- 2 Q. So what did you do next?
- 3 A. Again, I reached out for Rene Sanchez, and waiting for him
- 4 to call me back. When he called me back, that's when I knew
- 5 where to go.
- 6 Q. Okay. And so you had a conversation with Rene Sanchez. Is
- 7 that correct?
- 8 A. Yes, ma'am.
- 9 Q. And, based on that conversation, what did you do?
- 10 A. I learned it was at the Fabens area. And, at that time, I
- 11 went back to the Border Patrol, requested the radio traffic
- 12 and, again, the people that were assigned on the shift that
- 13 day.
- 14 Q. Okay. You got a roster of everybody that was working that
- 15 day. Is that correct?
- 16 A. Yes, ma'am.
- 17 Q. And did you listen to the Border Patrol traffic for the
- 18 entire day, in order for you to attempt to identify a shooting?
- 19 A. No, ma'am.
- 20 Q. What did you do?
- 21 A. Again, I knew more or less it happened in the afternoon.
- 22 So, again, I requested about, I think, 1:00 to 5:00 or 6:00.
- 23 Q. Okay. Based on the information that was provided to you by
- 24 Rene Sanchez?
- 25 A. Yes, ma'am.

1 Q. Okay. That it had happened in the afternoon?

2 A. Yes, ma'am.

3 Q. What did you learn when you were listening to that radio
4 traffic that assisted you?

5 A. I was able to identify some of the agents that were
6 involved. And also, based on the roster, that confirmed who
7 was there that day.

8 Q. Okay. And so now you had a location and the people that
9 were working that day. Is that correct?

10 A. Yes, ma'am.

11 Q. What did you do next?

12 A. Again, when I reached out for Rene Sanchez -- because he
13 had left -- on the memorandum, he had stated he had left the
14 number for Osvaldo Aldrete-Davila.

15 I believe I tried to contact that number, but
16 nothing -- I could never get through. So that's when I had
17 asked Rene Sanchez to have Osvaldo call me.

18 And then -- so it was on, I believe, March 10th, Rene
19 Sanchez called me.

20 On March 11th, Osvaldo Aldrete-Davila called me and
21 gave me more specifics.

22 Q. Okay. So, on March 11th, you talked to Osvaldo. Is that
23 correct?

24 A. I believe so, yes, ma'am.

25 Q. Based on the information that he provided to you, what did

1 you do?

2 A. I knew the area. I knew -- I had a better idea of the time
3 period. So I, you know, again, listened to radio
4 transmissions.

5 Q. Did you have -- eventually have that transcribed?

6 A. I transcribed it.

7 Q. You did it yourself?

8 A. Yes, ma'am.

9 Q. Okay. Go ahead.

10 A. And after that, again, I identified -- identified Border
11 Patrol paperwork, which I went to the Border Patrol and
12 received, as far as the van that was involved that day. So I
13 knew the van. And then, with the van, I knew it had been
14 towed, so I contacted -- I believe it's Robertson's Auto
15 Towing. And I obtained -- I was -- actually, I was able to
16 speak to the tow truck driver that towed the vehicle that day.

17 Q. Okay. So when you found the tow truck driver, did you have
18 him do something for you?

19 A. I went out and met him. And he took me to the exact spot
20 where he picked up the van. And I believe that was March 15th.

21 Q. Okay. And the spot that he pointed out, how did he
22 remember where he had picked up this van, now, it's almost a
23 month before?

24 A. Again, it was -- once you're down there, it's pretty easy.
25 But again, he pointed out -- you could still see the -- I guess

1 it was the front tires of the van, where it had gone into the
2 drainage ditch.

3 Q. Is this a desolate area?

4 A. It's a farming community.

5 Q. But it is desolate?

6 A. Depends on your --

7 Q. Are there businesses down there?

8 A. No, ma'am.

9 Q. Are there schools down there?

10 A. I believe there's schools in Fabens, but not in that area.

11 Q. Okay. But not right next up to the levee?

12 A. No, ma'am.

13 Q. Correct? Okay.

14 And how is it that you were able to locate that
15 position where the van had been?

16 A. You could see the tire tracks, when the tow truck driver
17 pointed it out to me.

18 Q. Okay. Did you take photographs on that date?

19 A. I took some photographs.

20 Q. Okay. Have you been out there several times to take
21 photographs?

22 A. I have been out there several times.

23 Q. In fact, did you go out there last Friday, since it was
24 exactly a year from the event, and take some photographs, in
25 order to determine what the foliage was like in February?

- 1 A. Yes, ma'am.
- 2 Q. Okay. And could you still see the tracks?
- 3 A. You could still see them.
- 4 Q. Okay. The front tire tracks of the van?
- 5 A. Yes, ma'am.
- 6 Q. Okay. So, at that point in time, you knew where the van
- 7 had stopped. What did you do next?
- 8 A. I believe, like I said, March 15th was that date.
- 9 On March 16th, I went out there with a metal detector,
- 10 because we knew about -- to see if we could find any casings.
- 11 Again, we weren't really sure where the shooting had occurred.
- 12 And I just went out there with a metal detector and tried on
- 13 the levee, down there by the drainage ditch, and into the vega.
- 14 Q. Let's talk a little bit about the drainage ditch.
- 15 Is that inviting water?
- 16 A. No. It's basically sewage water, to my understanding.
- 17 Q. Okay. And were you able to go into the -- is it murky,
- 18 dark?
- 19 A. It's dirty water.
- 20 Q. Okay. Were you able to go into the water to look for
- 21 casings?
- 22 A. No, ma'am.
- 23 Q. Okay. Were you -- did you even know that the casings were
- 24 in the water at the time?
- 25 A. Not at that time.

1 Q. Okay. You hadn't talked to Arturo Vasquez at that time?

2 A. No, ma'am.

3 Q. You hadn't talked to the Defendant Compean at that time?

4 A. No, ma'am.

5 Q. Okay. Later on you do, though. Is that correct?

6 A. Yes, ma'am.

7 Q. And were any other attempts made, in the entire process of
8 this investigation, to try to find the casings?

9 A. I believe one or two days after that we had the sector
10 evidence team go out. And they attempted to actually go in
11 near the water, in around the water, because -- and see if they
12 could find anything. They also -- we also scoured the levee
13 and the vega.

14 Q. Okay. What's the sector evidence team?

15 A. The sector evidence team is -- they're the ones who get
16 called out when there's any, like, assault, shooting, so forth.
17 And they conduct an investigation.

18 Q. Border Patrol CSI?

19 A. Well, I mean, they're -- they're Border Patrol agents that
20 are certified to be a part of the evidence team.

21 Q. They're certified to collect evidence at a scene?

22 A. Right.

23 Q. And are they trained?

24 A. Yes, ma'am.

25 Q. Okay. And were they able to find any casings?

- 1 A. No, ma'am.
- 2 Q. So, not just these casings that were part of this case, but
3 did not locate any casings in the area around where the van was
4 parked?
- 5 A. Not where the van was parked.
- 6 Q. Okay. Where did they look?
- 7 A. Again, they looked around the drainage ditch, on the levee,
8 the levee road and into the vega, the south side. There were
9 no shell casings that related to this case.
- 10 Q. Okay. But even that didn't relate to this case?
- 11 A. Again, when I was out there, I did -- I think I found a
12 couple of shotgun shell casings. And that -- I think that's
13 the only thing we ever really saw was old shotgun shell
14 casings.
- 15 Q. What kind of weapons were issued to Mr. Ramos and Compean
16 by the Border Patrol?
- 17 A. They were issued a .40 caliber Beretta.
- 18 Q. Did you find any casings that would come from a gun like
19 that?
- 20 A. No, ma'am.
- 21 Q. Did you find any casings that would come from any handgun?
- 22 A. No, ma'am.
- 23 Q. You said you found shotgun shells. Is that correct?
- 24 A. Old shotgun shell cas- -- you know, weathered. You could
25 tell that they had been there for a while.

1 Q. Okay. You didn't find any new ones?

2 A. No, ma'am.

3 Q. Okay. Now, what did you do next?

4 A. After that, that was March -- that was the morning of March
5 16th, when I was there with the metal detector.

6 We had also -- like I said, I spoke to Aldrete-Davila
7 on, I believe, March 11. And, basically, during that time
8 period, I arranged a meeting with him at the American consulate
9 in Ciudad Juarez.

10 Q. Okay. Did -- Mr. Aldrete-Davila didn't want to talk to
11 you, did he?

12 A. No, he did not want to talk to me.

13 Q. Okay. And Mr. Gonzalez and I were not the prosecutors of
14 this case at that time, were we?

15 A. No, you were not.

16 Q. Okay. The prosecutor who was handling that case at that
17 time, what decision did she make?

18 A. She made the decision to give him -- I believe it's a
19 limited use immunity.

20 Q. Okay. And you're not a lawyer, correct?

21 A. No, I'm not.

22 Q. But did she also instruct you what -- when you -- she
23 didn't go with you to Juarez, correct?

24 A. No, ma'am, she did not.

25 Q. Okay. Just -- you went to interview him with another

- 1 agent?
- 2 A. With my supervisor and another agent.
- 3 Q. Okay. And -- but what did she instruct you to instruct
- 4 Aldrete-Davila was the meaning of the immunity agreement?
- 5 A. That -- to provide full cooperation.
- 6 Q. Okay. In exchange for?
- 7 A. In exchange, he would not be prosecuted.
- 8 Q. Okay. For anything he's ever done in his entire life?
- 9 A. No, for the incidents that occurred that day.
- 10 Q. Okay. Now, you do go to Juarez and talk to him. Is that
- 11 correct?
- 12 A. That's correct.
- 13 Q. And when you go to Juarez and meet with him, do you find
- 14 that he's injured?
- 15 A. Yes, ma'am.
- 16 Q. What is wrong?
- 17 A. When he walked into the American consulate, he had a -- he
- 18 was limping. He had crutches, and he had a large -- he had a
- 19 catheter coming out. It was like a red hose, and it was
- 20 attached to a large urine bag.
- 21 Q. Okay. At this point in time, did you know who shot him?
- 22 A. No, ma'am.
- 23 Q. Could he identify who shot him?
- 24 A. No, ma'am.
- 25 Q. Did you attempt to make an identification with him?

1 A. I had the driver's license photos of the different Border
2 Patrol agents that were on duty that day, and he could not
3 identify any of them.

4 Q. Okay. How many Border Patrol agents were on duty that day?

5 A. I think 11 or 12. I would have to think about it.

6 Q. Were the defendants among those photographs?

7 A. Yes, ma'am.

8 Q. The defendants' pictures among those?

9 A. Yes, ma'am.

10 Q. Okay. And he couldn't identify who had -- he had
11 encountered on that day?

12 A. No, ma'am. He could only describe one agent that he
13 encountered on the drainage ditch.

14 Q. Okay. And how did he describe that agent?

15 A. The shortest, heavysset, with dark skin.

16 Q. Okay. And I'm going to call you back to testify later
17 about the specifics. But let me ask you what you did about his
18 medical condition.

19 A. At that time, we obtained -- after we had spoke to him, we
20 obtained a border crossing card and brought him in to the
21 William Beaumont Army Medical Center, and -- to determine if it
22 could be removed safely, without endangering his life.

23 He stated that he wanted the bullet removed, and we
24 determined it could be -- it could be removed without
25 endangering his life, and so they did so.

1 Q. Okay. Were you present with him in the operating room?

2 A. I was present, right behind the doctor who did the surgery.

3 Q. Okay. Now that you knew you had a bullet, what, if
4 anything, did you do with regard to the guns that were
5 possessed by the agents that were on duty from the Fabens
6 station on that day?

7 A. Basically, we came up with the ruse, working again with the
8 members of the Office of Internal Audit, U.S. Border Patrol,
9 here in the El Paso sector. One of the other agents went down
10 to the Fabens Border Patrol station under the ruse that we're
11 doing an audit, and we're exchanging -- we gave them new
12 weapons for their weapons. And, again, so we could run
13 ballistics.

14 Q. Let me go back just a second. I think I failed to ask you
15 this.

16 Before, when you were first assigned the case, did you
17 try to find out if there was any paperwork filed on a shooting
18 that occurred February 17, 2005?

19 A. Yes, ma'am.

20 Q. What were those efforts?

21 A. I just contacted the -- again, through the U.S. Border
22 Patrol, with their cooperation. And they stated there was no
23 report of a shooting on February 17, 2005.

24 Q. As a result of your investigation, have you learned that a
25 shooting must be reported -- a discharge of a weapon must be

1 reported immediately?

2 A. Border Patrol policy, any shooting, any discharge of
3 weapon, must be reported in -- within one hour.

4 Q. Okay. And by "any discharge," even an accidental
5 discharge?

6 A. Even an accidental discharge. Even if a person has
7 observed a shooting, they should be reporting it.

8 Q. Okay. And does that report generate paperwork?

9 A. Yes, ma'am.

10 Q. And does that paperwork generate an official investigation
11 or proceeding?

12 A. Yes, ma'am. Again, like I said, the evidence team would be
13 called out, and there -- then there's -- the paperwork that
14 they do, a significant incident report, would be written.

15 There's several -- several documents that would be --

16 Q. And you couldn't find anything like that?

17 A. No, ma'am.

18 Q. Okay. Now, back to Beaumont and the bullet. You took
19 custody of the bullet. Is that correct?

20 A. Yes, ma'am.

21 Q. And you took that bullet where?

22 A. It was taken to the Texas Department of Public Safety crime
23 lab.

24 Q. And now, you -- in order to compare a bullet, you have to
25 have some gun to compare it to, correct?

- 1 A. Yes, ma'am.
- 2 Q. So you engaged in this ruse?
- 3 A. Yes, ma'am.
- 4 Q. And you collected the weapons of all of the agents that
5 were on duty at that time that you understood the shooting to
6 have occurred?
- 7 A. On that day we went to Fabens station we collected all but,
8 I believe, three of the weapons.
- 9 Q. What weapons were you not able to collect?
- 10 A. I believe Ignacio Ramos was on regular day off. Oscar
11 Juarez was on a regular day off, and Mr. Compean was on annual
12 leave.
- 13 Q. So you didn't get their weapons on that date. Is that
14 correct?
- 15 A. No, ma'am.
- 16 Q. Were you able to get their weapons at some point in time?
- 17 A. Yes, ma'am.
- 18 Q. Okay. And when was that?
- 19 A. On March -- I believe it was the morning of March 18th,
20 Mr. Ramos's weapon -- the agents went to his house and were
21 able to obtain the weapon. And that was immediately submitted
22 to the crime lab.
- 23 Q. Okay. And was the Texas Department of Public Safety crime
24 lab able to match the bullet with a weapon?
- 25 A. Yes, ma'am.

1 Q. And who was assigned that weapon on February -- that the
2 bullet matched -- on February 17th?

3 A. Ignacio Ramos.

4 Q. And is that the first time you knew who had shot Osvaldo
5 Davila?

6 A. Yes, ma'am.

7 Q. Okay. And so then you knew who one agent was that was
8 involved, correct?

9 A. Yes, ma'am.

10 Q. How did you find out who the other agent was?

11 A. Again, going back one day, February 17th, the first person
12 I went to out of those three agents was Oscar Juarez.

13 Oscar Juarez was the one that stated that Ignacio
14 Ramos and Jose Compean were the two agents that chased the
15 alien into the vega.

16 And, therefore, I knew who one of them was -- one or
17 both of them, was my shooter. And that's one reason we then
18 went to Ramos's house and got the weapon.

19 Q. Okay. And after that -- after you had determined who was
20 involved in this shooting, you proceeded to complete your
21 investigation. Is that correct?

22 A. That's correct. And also, on the -- on how I knew who the
23 shooter was, is that same day, I believe the same time -- about
24 the same time period they were collecting Mr. Ramos's weapon,
25 we were conducting interviews again with Oscar Juarez and

1 Arturo Vasquez. And they provided more details about the
2 shooting.

3 Q. Okay. And I'll -- we'll talk about that when I call you
4 back later on in the trial.

5 But physically, with regard to physical evidence, you
6 got -- when you said "the weapons," Border Patrol agents are
7 assigned .40 caliber Berettas, correct?

8 A. Yes, ma'am.

9 Q. Those are handguns. Is that correct?

10 A. Yes, ma'am.

11 Q. Are they assigned any other kinds of weapons?

12 A. They can check out a shotgun or an M-4. They can check out
13 weapons when they go on duty that day. Then they have to
14 return them at the end of the shift.

15 Q. Did you determine whether or not either Mr. Ramos or
16 Mr. Compean had checked out a weapon on that day?

17 A. Mr. Compean checked out a shotgun. And Mr. Ramos, I
18 believe, had checked out an M-4.

19 Q. What's an M-4?

20 A. That's basically an automatic rifle.

21 Q. Okay. And did you collect the shotgun that had been
22 checked out by Mr. Compean, as well?

23 A. Yes, I did.

24 Q. Okay. And what did you do with that weapon?

25 A. We collected them. We still have it. It's on the table

1 right now.

2 Q. Okay.

3 MS. KANOF: Your Honor, I will pass the witness for
4 this portion of this testimony.

5 THE COURT: All right.

6 Ms. Stillinger?

7 CROSS-EXAMINATION

8 BY MS. STILLINGER:

9 Q. Agent Sanchez, you said in March 2005 is when you first
10 became aware of this case, correct?

11 A. Yes, ma'am.

12 Q. Okay. And you were given a memo prepared by Rene Sanchez
13 and also a memo prepared by Supervisor Karhoff?

14 A. Yes, ma'am.

15 Q. Okay. And that basically gave you the background
16 information on the case. Is that right?

17 A. The background, yes, ma'am.

18 Q. Okay. And do you have a copy of that memo that the
19 Supervisor Karhoff -- his memo?

20 A. I believe so.

21 Q. Okay. Do you have it with you in court?

22 A. No, ma'am, I don't.

23 Q. Okay. You could get me a copy if I asked you for a copy?

24 A. Yes, ma'am.

25 Q. Okay. And your understanding, after reviewing those memos,

1 was that this man, Osvaldo Aldrete-Davila, had entered the
2 United States illegally February 17th and -- otherwise
3 innocently -- and had run back and gotten shot in the back. Is
4 that correct?

5 A. That's basically what the memo stated.

6 Q. Okay. Okay. Okay. And I understand you began your
7 investigation -- I guess -- my understanding is the first thing
8 you did to investigate was look at radio traffic. Is that
9 right?

10 A. Again, we -- I assumed it was Ysleta, because it -- and in
11 the memos it states Las Pompas.

12 Q. Right.

13 A. And again, not being familiar with the area, the Border
14 Patrol agents advised me that Ysleta Border Patrol station
15 covered Las Pompas. And that's one reason I initially
16 requested that radio traffic coming from the people that were
17 on duty.

18 Q. Okay. And who advised you of that?

19 A. U.S. Border Patrol.

20 Q. Okay. These people in the office that gave you the memos?

21 A. The Office of Internal Audit, yes, ma'am.

22 Q. The Office of Internal Audit. Okay.

23 And is Las Pompas in the Ysleta section?

24 A. My understanding, it is.

25 Q. Okay. But you later found out that's not where this

1 incident occurred, correct?

2 A. Correct.

3 Q. Because, in fact, Mr. Aldrete-Davila was not telling the
4 true story, correct?

5 A. Well, he crossed -- he basically said Las Pompas,
6 San Elizario, area.

7 Q. Right.

8 A. So I just -- I looked at Las Pompas. I didn't think about
9 San Elizario.

10 Q. Right. And he still says that's where he crossed, entered
11 into the United States, correct?

12 A. Well, it was around the San Elizario area, yes, ma'am.

13 Q. But that's not where the shooting occurred, right?

14 A. No, ma'am.

15 Q. Okay. Because he wasn't telling the truth about how it
16 happened, was he?

17 MS. KANOF: Objection, Your Honor. That's speculative
18 and -- and assuming facts not in evidence.

19 THE COURT: All right. Well, I'm not sure I
20 understand the question. I'll sustain.

21 Restate the question.

22 BY MS. STILLINGER:

23 Q. Let me ask you this way: You were looking at Las Pompas,
24 because your understanding was that Mr. Aldrete-Davila got shot
25 right when he crossed in and was trying to cross back, correct?

- 1 A. That's what I believe the memo stated.
- 2 Q. Okay. And that was the information you had at that time,
3 correct?
- 4 A. That's the way Rene Sanchez reported it.
- 5 Q. Okay. And again, you didn't have any other information at
6 that point in time, right?
- 7 A. Not at that time, no.
- 8 Q. Okay. You later found out that wasn't how it happened,
9 correct?
- 10 A. Correct.
- 11 Q. It had happened in the Fabens area, correct?
- 12 A. Correct.
- 13 Q. Okay. Now, reviewing the radio traffic, I -- I -- I'm
14 afraid this is be going to be a little bit boring, but I need
15 to know about this. But I didn't understand what you were
16 saying about using a repeater. What is a repeater?
- 17 A. There's a repeater, or what they call the tower, is
18 basically -- they -- it records the conversations. It's
19 basically a -- again, not being a radio person, but it
20 basically records the conversations between the Border Patrol
21 agents when they're using the repeater. It gets -- it just
22 helps them if, you know, it's a long distance or whatever. But
23 again, a lot of the agents will use the local traffic.
- 24 Q. Okay. Let me -- let me ask it this way. Do the
25 different -- there's different areas. Border Patrol is split

- 1 up into different -- what do you call the different sections?
- 2 A. Stations.
- 3 Q. Stations. Okay. So there's -- Ysleta is one. And Fabens
- 4 is a different one, correct?
- 5 A. Correct.
- 6 Q. Okay. And there's one for the downtown area. Is that
- 7 right?
- 8 A. El Paso Unit 1.
- 9 Q. That's called El Paso. Okay. And are there a couple -- I
- 10 think there's five altogether, right?
- 11 A. Santa Teresa, I believe. Deming.
- 12 Q. Okay. And do each one of these stations have its own
- 13 channel on the radio?
- 14 A. I believe so.
- 15 Q. Okay. But there's only one place where the radio traffic
- 16 is recorded. Is that correct?
- 17 A. Sector records the radio traffic.
- 18 Q. Okay. And sector covers all these different stations,
- 19 right?
- 20 A. To my knowledge.
- 21 Q. Okay. And it doesn't record all five channels at once,
- 22 right?
- 23 A. I don't know, ma'am.
- 24 Q. Okay. Well, doesn't -- in sector, don't they jump around
- 25 from the different stations to monitor the radio traffic on all

1 the different stations?

2 A. Again, I don't know, ma'am.

3 Q. Okay. When you were looking at the radio traffic for
4 Fabens, having to do with this case, for instance --

5 A. Yes, ma'am.

6 Q. -- the radio traffic that's recorded doesn't start at the
7 beginning of this incident, does it?

8 A. Not what I requested. I think I, again, stated I
9 requested, like, 1:00 to 5:00 p.m., because I did know more or
10 less what time it was, at that time.

11 Q. Okay.

12 MS. STILLINGER: If I could have just a moment,
13 Your Honor.

14 May I approach the witness, Your Honor?

15 THE COURT: You may.

16 MS. STILLINGER: I'm just going to mark this right now
17 for identification purposes as Defendant Ramos 3.

18 BY MS. STILLINGER:

19 Q. And is that -- is that the --

20 THE COURT: Let me ask you. You skipped 2. Did you
21 intend to do that?

22 MS. STILLINGER: Well, actually, I've already marked
23 one as 2, but I haven't shown it to him yet.

24 THE COURT: That's fine.

25 MS. STILLINGER: Thank you.

- 1 BY MS. STILLINGER:
- 2 Q. Is that the radio traffic that you're talking about?
- 3 A. Yes, ma'am.
- 4 Q. Okay. And, actually, that's the second page of the report.
- 5 I think your report starts on the previous page. Is that
- 6 right?
- 7 A. Yes, ma'am.
- 8 Q. Okay. And -- and if you would look at the front page of
- 9 that and see, what time does that radio traffic start?
- 10 A. I have it starting at 1311, 1:11 p.m.
- 11 Q. Okay. And if you requested the radio traffic from 1:00 on,
- 12 this, obviously, doesn't have the 11 minutes that would have
- 13 been before that.
- 14 A. Yes, ma'am.
- 15 Q. Okay. And do you believe that this is a continuous
- 16 recording of this channel?
- 17 A. I don't understand your question.
- 18 Q. Okay. You have a tape recording of radio traffic, correct?
- 19 A. Correct.
- 20 Q. Okay. And you prepared this transcript from that tape
- 21 recording?
- 22 A. Yes, ma'am.
- 23 Q. Okay. What I'm asking you: Was that recording
- 24 continuously on the Fabens channel of radio traffic?
- 25 A. There was a continuous recording of the radio traffic in

1 Fabens on that day.

2 Q. Okay. And how do you know that?

3 A. That's what I was informed, when I requested from the
4 Office of Internal Audit, that's what -- the information they
5 provided to me.

6 Q. And the Office of Internal Audit, what do they have to do
7 with making the tape recordings?

8 A. They can obtain a -- I think it's via the computer, they
9 can download the -- they can put in what times they want to
10 listen to, and then they can download that.

11 Q. Okay. So it's your understanding they actually record --
12 where they record the radio transmissions, they're recording
13 all of the channels for all the stations at the same time?

14 A. Again, I don't know, ma'am.

15 Q. Okay. Let me move on.

16 There was nothing about a shooting in this traffic,
17 correct?

18 A. No, ma'am.

19 Q. Okay. So that's not what caught your eye that this event
20 might have something to do with the shooting of Aldrete-Davila.
21 Is that right?

22 A. That's correct.

23 Q. Okay. You first spoke to Osvaldo Aldrete-Davila on March
24 11th?

25 A. Yes, ma'am.

1 Q. Okay. And Mr. Aldrete-Davila told you at that time that he
2 had an appointment to have the bullet removed from his leg,
3 didn't he?

4 A. He said he had an appointment, yes, ma'am.

5 Q. Okay. And did you try to convince him not to have the
6 bullet removed?

7 A. Yes, ma'am.

8 Q. Okay. Why was that?

9 A. I stated that, you know, we needed it for the -- it's the
10 best evidence. Because I think he stated that, I will have it
11 removed, and I will mail it to you.

12 Q. All right. Okay. And you didn't want to have a -- you
13 were concerned about preserving the evidence, correct?

14 A. Yes, ma'am.

15 Q. Okay.

16 MS. STILLINGER: Your Honor, I think I need to
17 approach the bench at this point.

18 THE COURT: All right.

19 (Bench conference:)

20 THE COURT: Wait till everybody is here. I'm going to
21 ask you to speak right into this.

22 MS. STILLINGER: Yes, ma'am.

23 Your Honor, on direct, this agent testified that
24 Aldrete-Davila didn't want to come back into this country, and
25 that he had to be convinced to do that.

1 Now, and they even brought up the fact of the immunity
2 agreement. I think that opens the door for me to ask why he
3 didn't want to come in. I mean, we can't make it sound like
4 he's a Boy Scout. They had to convince him to do his duty.
5 They convinced him by giving him an immunity agreement.

6 MS. KANOF: That's fine, Your Honor. We all know this
7 is going to come out when he testifies.

8 MS. STILLINGER: So, I mean -- but I mean,
9 specifically right now, I think they opened the door that --
10 saying he had to be convinced. I think I'm entitled to ask why
11 did he have to be convinced.

12 THE COURT: Response?

13 MS. KANOF: Your Honor, the Court's ruling is that
14 they can't go into it except for the immunity agreement. And
15 that's part of the immunity agreement. We gave him an immunity
16 because he didn't want to cooperate. I think that goes to the
17 fact that he had marijuana --

18 THE COURT: I will sustain the objection. It doesn't
19 open the door.

20 MS. STILLINGER: Could I at least ask -- they've
21 asked, Did he get immunity from the events of that day. Could
22 I at least ask, Did it turn out he had committed a criminal
23 offense that day?

24 MS. KANOF: I would object to that. It's the whole
25 purpose of all of the Government's motions in limine, is that

1 we're not trying Mr. Davila. And the Court did rule, if the
2 case law is clear, that you can cross-examine him about the
3 immunity, and ask him for the limited purposes of the immunity.
4 But other than that -- we can be trying the case for weeks.

5 MS. STILLINGER: I think --

6 MS. RAMIREZ: Well, Judge, I think he gives the jury a
7 misconception that they might have given him testimony immunity
8 for crossing into the United States illegally. And that's not
9 the case in this case.

10 THE COURT: I'll sustain the objection.

11 (End of bench conference; open court.)

12 THE COURT: You may proceed, Ms. Stillinger.

13 BY MS. STILLINGER:

14 Q. Agent Sanchez, after you spoke to Osvaldo Aldrete-Davila,
15 he told you that he had been shot, correct?

16 A. Yes, ma'am.

17 Q. And that he had been knocked down and was bleeding on the
18 ground, correct?

19 A. Yes, ma'am.

20 Q. Okay. So, when you went out to the scene of this event,
21 did you also look for blood?

22 A. Yes, ma'am.

23 Q. Okay. Did you find any?

24 A. No, ma'am.

25 Q. And why is it -- I know that you said you were not able to

1 get into the water to check for bullet casings. Why would that
2 be?

3 A. Well, at the time when I first went out there, I didn't
4 know that there was any casings that had been thrown into the
5 ditch.

6 Q. Okay. I thought -- I thought you said to Ms. Kanof that
7 you were not able to go into the water to look for the casings.

8 A. When I went out there by myself, I didn't. I didn't go in
9 there. I just -- and, plus, the metal detector that I had
10 was -- you know, we just went around the levee and the vega.

11 When the El Paso sector team went out there, whatever
12 reason, I guess, they tried to get in there. But there again,
13 the metal detector -- the water was really deep. You just
14 couldn't detect anything with the metal detector, to my
15 knowledge.

16 Q. Oh, okay. It's more of an issue of the metal detector
17 working underwater. Is that what you're saying?

18 A. My understanding.

19 Q. Okay. Now, you talked about the immunity agreement that
20 was given to Mr. Aldrete-Davila.

21 MS. STILLINGER: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 BY MS. STILLINGER:

25 Q. I'm going to show you what I marked as Defendant Ramos

1 Exhibit Number 2. And, other than the received stamp that
2 unfortunately shows when I received it, which was in February
3 of this year, other than that, is this the immunity agreement
4 we're talking about?

5 A. It looks like it, yes, ma'am.

6 MS. STILLINGER: Your Honor, I move to admit Defendant
7 Ramos's Exhibit Number 2.

8 MS. KANOF: I would object, Your Honor. The case law
9 is contrary to the admission of the actual agreement.

10 THE COURT: All right. I'll sustain the objection at
11 this time.

12 BY MS. STILLINGER:

13 Q. Agent Sanchez, but that is the -- the -- that is a copy of
14 the agreement that you took to the Mexican consulate in Juarez
15 and presented to Mr. Aldrete-Davila, correct?

16 A. Yes, ma'am.

17 Q. Okay. And who came with Mr. Aldrete-Davila to the
18 consulate?

19 A. His wife. Again, I don't recall her name. His sister,
20 Gladys Davila, and his mother, Macaria Davila.

21 Q. Okay. Did he have a lawyer with him?

22 A. No, ma'am.

23 Q. All right. He had told you he was going to have a lawyer,
24 correct?

25 A. Yes, ma'am.

1 Q. Okay. But he -- you didn't deal with a lawyer of his. Is
2 that right?

3 A. No, ma'am.

4 Q. Okay. And I take it, in the Mexican consulate in Juar- --
5 I'm sorry, the American consulate in Juarez, you don't have any
6 authority to arrest somebody there, even if you wanted to. Is
7 that right?

8 A. Not to my knowledge. No, ma'am.

9 Q. Okay. So a person is basically safe from your arrest
10 powers over there. Is that right?

11 A. To my knowledge.

12 Q. Okay. And you said that that immunity agreement gives him
13 what we call limited use immunity, I think were the words that
14 you used.

15 A. That's what it's called.

16 Q. Okay. Do you -- well, what it says is that anything that
17 Mr. Aldrete-Davila tells you cannot be used against him. Is
18 that right?

19 A. To my understanding, yes, ma'am.

20 Q. Okay. But didn't you also explain to Mr. Aldrete-Davila
21 that he would not be prosecuted for anything that he did on
22 that day, February 17, 2005? Is that right?

23 A. I don't believe -- I don't know if I stated that to him.
24 That was a limited use immunity. As far as any stuff that I
25 did that day, he would not be prosecuted for.

1 Q. I'm sorry, could you say that again?

2 A. I guess the answer is yes to your question.

3 Q. Okay. That's what I understood, is that -- I think you
4 said it was Ms. Gardes, an Assistant U.S. Attorney, told you to
5 tell him he would not be prosecuted for anything that he did
6 that day. Is that right?

7 A. Well, basically, again, just going off the limited use
8 immunity, explained the parameters of what his immunity would
9 be.

10 Q. Okay. Well, this is why I'm asking you. Because the
11 document that I've shown you, which you showed to him -- and
12 let me back up just a second.

13 Did somebody translate that immunity agreement?

14 A. Yes, ma'am. A foreign national, the -- assigned to the
15 Mexico -- or the American consulate in Ciudad Juarez translated
16 it.

17 Q. Okay. And I take it that this person was probably a
18 professional translator, or qualified to translate it, right?

19 A. Yes, ma'am.

20 Q. Okay. That document just provides immunity from the use of
21 his testimony, correct?

22 A. I'd have to read it, but I believe you're correct.

23 Q. Okay. It does not say, You have complete immunity from any
24 criminal offenses you may have committed on February 17th, does
25 it?

1 A. Again, I would have to read it.

2 Q. Well, go ahead and have a look. Because, my understanding,
3 you're the one that explained this to him, right?

4 A. Right. But it's been a while.

5 Q. Okay. No, go ahead and have a minute to look at it.

6 A. (Witness reading.)

7 Q. Okay. You've had a chance to look at that immunity
8 agreement?

9 A. Yes, ma'am.

10 Q. Okay. And, Agent Sanchez, am I correct that it does not
11 say that he has full immunity from any criminal offense on
12 February 17, 2005?

13 A. It doesn't look like it, no, ma'am.

14 Q. Okay. But is that what you explained to
15 Mr. Aldrete-Davila?

16 A. I explained that he would not be prosecuted for any -- any
17 statements that he gave while we were at the American
18 consulate. And that's my understanding of what I told him.

19 Q. Okay.

20 MS. STILLINGER: Could I approach the witness again,
21 Your Honor?

22 THE COURT: Sure.

23 MS. KANOF: To refresh his memory?

24 MS. STILLINGER: Yes.

25

1 BY MS. STILLINGER:

2 Q. Agent Sanchez, I'm showing you what I've marked for
3 identification purposes as Defendant Ramos Number 4.

4 A. Okay.

5 Q. And if you could, look down to -- is this a report that you
6 prepared?

7 A. Yes, ma'am.

8 Q. Okay. And I'm not going to read aloud for a minute. I'm
9 just showing this to you to perhaps refresh your memory. But
10 could you read down -- you can read the whole thing if you
11 like. But, specifically, I'm referring to the sixth
12 paragraph -- no, I'm sorry, the seventh paragraph.

13 A. (Witness reading.) That's correct.

14 Q. Okay. Now, would you agree with me, upon reviewing your
15 memo, that you did, in fact, tell him that he wasn't going to
16 be prosecuted at all for the criminal offense that he made --
17 for a criminal offense he may have committed that day?

18 A. Yes, ma'am.

19 Q. Okay. And that is a bigger immunity, a broader immunity,
20 than what's in that written document, Defendant's Exhibit
21 Number 2, correct?

22 A. I believe so.

23 Q. Okay. But I think you said that you told him that, because
24 that's what the Assistant U.S. Attorney instructed you to tell
25 him, correct?

1 A. Yes, ma'am.

2 Q. Okay. So you have some sort of, I guess oral agreement,
3 that he's not going to be prosecuted for whatever criminal
4 offense he may have committed on February 17, 2005, correct?

5 A. Yes, ma'am.

6 Q. And Mr. Aldrete-Davila would not speak to you until he had
7 that promise from you, correct?

8 A. That's correct.

9 Q. Okay. Did you find out -- by the way, I know we talked
10 about his appointment to get his bullet removed. Did you find
11 out where he was getting medical treatment?

12 A. No, ma'am.

13 Q. Okay. Did you -- did you later try to find out about that?

14 A. I tried to find it out, but I couldn't find out.

15 Q. Okay. I know Agent Rene Sanchez just testified, and he
16 said that he knew what clinic he had been to, and that he had
17 provided that to you. Do you remember him providing that to
18 you?

19 A. That was never --

20 MS. KANOF: I would object, Your Honor. That's not
21 what Agent -- that's assuming facts not in evidence. I
22 remember the testimony being that Agent Sanchez didn't know the
23 name of the clinic.

24 THE COURT: Well, I'll sustain the objection.

25

1 BY MS. STILLINGER:

2 Q. Agent Rene Sanchez never told you anything he knew about
3 the clinic where the treatment was performed?

4 A. No, ma'am.

5 Q. Okay. And you were not able to find out that later,
6 because Mr. Aldrete-Davila wouldn't tell you?

7 A. Correct.

8 Q. Okay. Agent Sanchez, you testified a little bit about
9 Border Patrol regulations concerning the reporting of
10 shootings. Is that right?

11 A. Yes, ma'am.

12 Q. Okay. And you've never actually worked as a Border Patrol
13 agent, have you?

14 A. No, ma'am, I have not.

15 Q. Okay. But that's one of the things you did, is -- working
16 for your agency -- is you reviewed what the regulations are,
17 correct?

18 A. Yes, ma'am.

19 Q. Okay. And there is a regulation that says, Within one hour
20 of a discharge, even an accidental, completely innocent
21 discharge of a firearm, you have to report it, correct?

22 A. Yes, ma'am.

23 Q. And that's whether or not somebody has been hit?

24 A. Yes, ma'am.

25 Q. Whether or not it was a justified shooting or not a

1 justified shooting, correct?

2 A. You have to report any shootings.

3 Q. Right. Even an accidental discharge, that's not even
4 technically a shooting, you're not trying to shoot anything,
5 right?

6 A. Yes. Any discharge has to be reported.

7 Q. Okay. And do you know what the administrative penalty is
8 for failing to report the discharge of a firearm?

9 A. No, ma'am.

10 Q. Okay. You never looked into that?

11 A. No, ma'am.

12 Q. Okay.

13 MS. STILLINGER: May I approach the witness,
14 Your Honor?

15 THE COURT: You may.

16 BY MS. STILLINGER:

17 Q. I'm showing you --

18 MS. STILLINGER: And I should mark this one, too, I'm
19 sorry, as Defendant Ramos Number 5.

20 THE COURT: You skipped 4. Did you mean to?

21 MS. STILLINGER: No. Actually, the report I just
22 showed Agent Sanchez for identification purposes to refresh his
23 memory was Number 4.

24 THE COURT: Okay. Sorry. I missed that one. Go
25 ahead, then.

1 MS. STILLINGER: It's confusing, when we're not
2 admitting them.

3 THE COURT: All right. DR-5 then. Go ahead.

4 BY MS. STILLINGER:

5 Q. Number 5, which you can see is entitled U.S. Customs and
6 Border Protection. Have you ever seen --

7 A. Yes, ma'am, I did. I think, now that you've shown it to
8 me, I've seen that.

9 Q. Okay. And, again, you can look at it as much as you would
10 like. But I would specifically like to direct your attention
11 to the third page here.

12 I'll put it right in front of you here, where it talks
13 about the nature of offense being failure to report a discharge
14 of a firearm.

15 Have you looked at that before?

16 A. I think I briefly looked at it.

17 Q. Okay. And do you recall looking at the administrative
18 penalty for the failure to report a discharge of a firearm?

19 A. Again, like I said, when I first got it, I think I might
20 have briefly looked at it, when I was getting the documents
21 from Border Patrol regarding firearms policy.

22 Q. Okay. Well, now that your memory has been refreshed, what
23 is that administrative penalty for failing to report the
24 discharge of a firearm?

25 A. Well, there is a couple. The first offense, subsequent

1 offenses.

2 Q. Okay. How about the first offense?

3 A. A written reprimand to five days' suspension.

4 Q. Okay. That would be the range of punishment?

5 A. That's what it states.

6 Q. Okay. The least serious being just a written reprimand,
7 with no, I guess, financial penalty, correct?

8 A. The five days' suspension doesn't say if it's without pay
9 or not.

10 Q. Okay. But isn't that a range of punishment? I'm mean --
11 I'm sorry --

12 A. A written reprimand to a five-day suspension.

13 Q. Okay. So my understanding -- and correct me if I'm
14 wrong -- is that that's giving you a range. It could go
15 anywhere from a written reprimand all the way up to a five-day
16 suspension, correct?

17 A. Yes, ma'am.

18 Q. Okay.

19 MS. STILLINGER: And, Your Honor, I would like to move
20 to admit Defendant Ramos Exhibit Number 5.

21 MS. KANOF: I would object, Your Honor, because
22 Ms. Stillinger's firearms policy is not complete.

23 And also, I -- first of all, it's not a complete
24 policy. And, second of all, the fact that this agent viewed it
25 doesn't make it admissible for any purpose in the trial, just

1 that he read it.

2 THE COURT: I'll sustain.

3 BY MS. STILLINGER:

4 Q. Agent Sanchez, what steps did you take to confirm the
5 veracity of Mr. Aldrete-Davila's version of the events of
6 February 17, 2005?

7 A. It was confirmed through other agents.

8 Q. Okay. Well, let me ask you this. There -- there were no
9 other agents that observed Aldrete-Davila as he was running
10 from the levee to the river, were there? None others besides
11 Agent Ramos and Agent Compean, were there?

12 A. That's correct.

13 Q. So, on the issue of whether or not he brandished a
14 weapon --

15 MS. KANOF: Your Honor, I'm going to object as to
16 outside the scope of direct. He will be recalled for this
17 purpose later.

18 MS. STILLINGER: We can do that later, then.

19 THE COURT: All right.

20 MS. STILLINGER: That would be fine.

21 I think, on the scope of his direct, that's all I have
22 right now.

23 THE COURT: All right.

24 MS. STILLINGER: If I could just approach and retrieve
25 my exhibits.

1 THE COURT: Sure.

2 Mr. Antcliff, are you going to do cross?

3 CROSS-EXAMINATION

4 BY MR. ANTCLIFF:

5 Q. Agent Sanchez, part of what you're trained to do, in the
6 position that you have, is make reports of everything that you
7 do during the course of an investigation. Is that correct?

8 A. Yes, sir.

9 Q. And, in this case, you would agree that you have made a
10 substantial number of reports?

11 A. Quite a few.

12 Q. Okay. Do you recall drafting a report regarding your
13 activities in searching for shell casings out at the area in
14 question?

15 A. I don't believe I did a report that day.

16 Q. Okay. There's a variety of reasons that you're trained to
17 make reports. And one of those reasons is to have a record
18 contemporaneous with whatever facet of the investigation you
19 are performing. Is that correct?

20 A. Yes, sir.

21 Q. As I understand what you said about Border Patrol policy
22 and the discharge of a firearm, any discharge of a firearm must
23 be reported within an hour, and any agent observing such a
24 discharge has an obligation to report, as well. Is that
25 correct?

1 A. I believe so, sir.

2 Q. On February 17, 2005, out at the levee and the ditch and
3 the vega and all of that area, there were a number of agents
4 who responded to that area. Would you agree?

5 A. Yes, sir.

6 Q. More than five?

7 A. Yes, sir.

8 Q. More than ten?

9 A. I believe so, sir.

10 Q. Okay. Are you aware of any report from any agent regarding
11 the discharge of a firearm out there that day?

12 A. No, sir.

13 Q. During the course of your investigation, you have learned
14 that other agents in the -- other Border Patrol agents in the
15 Fabens sector have discharged their firearm and not reported it
16 on other occasions?

17 MS. KANOF: Objection, Your Honor, relevance and
18 outside the Court's motion in limine.

19 THE COURT: I'll sustain.

20 MR. ANTCLIFF: May I have a moment?

21 THE COURT: Yeah.

22 MR. ANTCLIFF: Can we approach?

23 THE COURT: Sure.

24 (Bench conference:)

25 THE COURT: Whoever's going to talk, you need to talk

1 into this loud enough.

2 MR. ANTCLIFF: I'm missing something here. If it's
3 the dangerous issue, I'm not going to the dangerousness of the
4 border.

5 THE COURT: No, we're talking about other shootings.

6 MR. ANTCLIFF: Pardon? I'm talking about other
7 discharges of firearms, not other shootings out there; just a
8 discharge of a firearm. I don't know if anybody else has ever
9 been shot out there, nor do I care.

10 And second, I don't know that it's outside of the
11 motion in limine on dangerousness. And I think it is directly
12 relevant to the charges in this case.

13 They're charged with tampering with evidence, and
14 picking up -- the fact that they didn't report the discharge of
15 a firearm, Judge. And if there are other agents out there that
16 haven't reported it, I think that is directly relevant.

17 MS. KANOF: Your Honor, I agree with the relevance if
18 other agents didn't report this shooting. But, in fact,
19 Mr. Antcliff's argument goes against -- he said not other
20 shootings. If -- he's asking about other discharges.

21 My objection would be relevance. What is the
22 relevance that another agent on another day discharged their
23 firearm, and didn't report it, to this case?

24 MR. PETERS: It would be relevant to whether or not
25 the failure to report the discharge of a firearm is evidence of

1 a guilty mind, which is exactly what their theory of this case
2 is. They're trying to say that, by not reporting it, they
3 intended to cover up something wrong. But if, in fact, agents
4 frequently discharged firearms without reporting it, then that
5 cuts contrary to that. It's relevant to motive.

6 Plus, they're also trying to use the fact that the
7 discharge wasn't reported to prove that the defendants knew
8 they had done something wrong. In their obstruction count they
9 have to prove that they had a corrupt purpose.

10 THE COURT: I understand. My concern is -- my concern
11 is that I don't know what this officer knows or doesn't know
12 about discharging other weapons. He's only been here, I think
13 he says, since just before this incident.

14 MR. ANTCLIFF: I do.

15 THE COURT: Okay. You do?

16 MR. ANTCLIFF: He wrote it in his reports.

17 MS. KANOF: Your Honor, I will tell the Court that
18 other -- no other Border Patrol agent in the Fabens sector has
19 shot at someone other than in 2004 and in 2003, and they both
20 were reported. Now, if the Court wants us to get into the ones
21 that were reported where they were actually shooting at a
22 person, we would be glad to do that. But every other discharge
23 was at a snake or at a target.

24 MR. ANTCLIFF: He said every discharge must be
25 reported within an hour, regardless of what they were shooting

1 at.

2 THE COURT: Do you have that report that you're
3 referring to?

4 MR. ANTCLIFF: Yeah. Oscar Juarez told him. That's
5 one, right off the top of my head, that he shot at a snake. I
6 think it was Juarez.

7 THE COURT: And he didn't report?

8 MR. ANTCLIFF: And did not report it. And it's common
9 out there not to report discharges of a firearm. I mean, I'm
10 not talking about people. I'm -- just in general.

11 MS. KANOF: I would disagree to it's common. Who else
12 other than Oscar in this case?

13 THE COURT: Here's -- here's what I would say to you.
14 We are -- how long -- how much longer do you anticipate? What
15 I'm thinking about doing -- I don't have a clue what he's going
16 to say, because I haven't seen his reports.

17 MR. ANTCLIFF: I understand.

18 THE COURT: We can take some of this up outside the
19 jury, before I rule, because I don't want to rule in a vacuum.
20 But I was thinking -- how long do you anticipate going today?

21 MR. ANTCLIFF: A couple minutes. I'm not taking
22 forever. On this issue, maybe a couple of minutes. On the
23 rest, before she comes back up, maybe ten total.

24 THE COURT: What I'm trying to decide is whether to
25 let them go, take this up in the morning.

1 MR. ANTCLIFF: You can, but I do want to end on this
2 sustaining an objection. I've got more questions for a few
3 minutes.

4 THE COURT: Do you have a copy, before I rule?

5 MR. ANTCLIFF: I have a copy of everything. So does
6 the Government. Yes.

7 THE COURT: Okay. Let's do this. I'm going to take
8 just a short break, let the jury stretch their feet.

9 MR. ANTCLIFF: If you want to let them go, that's
10 fine. It's ten after 5:00. We can give you this stuff and
11 pick up in the morning. That's fine.

12 THE COURT: It's up to you.

13 MR. ANTCLIFF: It doesn't matter. If I'm coming back
14 to this, it doesn't really matter anyway, so...

15 THE COURT: Well, I just -- because you guys are
16 talking about something outside anything we've talked about
17 before. I don't know what you have in the reports.

18 MR. ANTCLIFF: I understand.

19 MS. KANOF: Oscar Juarez reports in Jencks that he
20 shot at a snake one time. Now, for him to be asking, isn't it
21 common --

22 MR. ANTCLIFF: I haven't asked that question.

23 MS. KANOF: Well, you just told the judge it's common.
24 How do you know it's common?

25 MR. ANTCLIFF: I haven't asked the question in front

1 of anybody else. And I'll pull the reports that talk about
2 what Juarez said.

3 THE COURT: Let's go ahead and -- I'm going to go
4 ahead and take a short break, and then we will take this up.

5 MR. ANTCLIFF: I'm happy if you want to recess, Judge.

6 THE COURT: Well, it's going to be another -- how long
7 do you anticipate --

8 MS. KANOF: I'm going to redirect for a while. She's
9 going to have to come back tomorrow. He can recross.

10 THE COURT: Okay. Get those reports ready for me.

11 (End of bench conference; open court.)

12 THE COURT: Give me just a second.

13 All right. Ladies and gentlemen of the jury, it's
14 about 5:15. We're going to take a recess for the evening and
15 come back in the morning. I'm sure all of you could use a
16 little bit of a break.

17 I do want to tell you a couple of things before we
18 break this evening. And that is that you have heard the
19 instructions from this Court regarding discussing this case.
20 Again, you remain under all of those rules. I want to be very
21 clear regarding that issue. And that is, as I've said to you
22 before, you are not to discuss this case with anyone.

23 There has been some media attention. You are not to
24 read any articles or view any television or listen to the radio
25 regarding this. The evidence you are to receive in this case

1 is to be received in this courtroom. Therefore, if you're
2 watching TV, if you happen to pick up a newspaper, if you are
3 listening to the radio and hear something regarding this case,
4 or believe it's regarding this case, then I'm going to tell you
5 you need to immediately turn off the television, stop reading
6 the article. Because the evidence you receive you should be
7 receiving in this courtroom.

8 Is everyone clear about that? It's very important
9 that you listen to that instruction.

10 That includes anything on the Internet, anywhere.
11 Okay?

12 All right. Now, you've also heard descriptions of
13 locations. I don't know, without looking at all of your juror
14 sheets, where you all live. But it's important that you
15 understand that you cannot go view locations or try to figure
16 out locations regarding this. Again, the only evidence you are
17 to consider is evidence you receive in this courtroom. Is
18 everyone clear?

19 JURORS: Yes.

20 THE COURT: All right. We will take a recess for the
21 evening. I would ask you to be back here in the jury room
22 tomorrow morning about 8:30. All right? And then we will get
23 started shortly thereafter.

24 So, at this time, the Court stands in recess for the
25 evening.

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

2 THE COURT: You may be seated. Hold on just a second.

3 Mr. Antcliff, were you able to find those reports?

4 MR. ANTCLIFF: Yes, Your Honor.

5 THE COURT: Okay. Could you give them to

6 Mr. Martinez?

7 MR. ANTCLIFF: Page 5.

8 THE COURT: All right. Now, for the record, we are
9 outside the presence of the jury. And what prompted the
10 conference at the bench was the question asked by Mr. Antcliff
11 regarding the incidents of discharge of weapons along the
12 levee. Is that correct?

13 MR. ANTCLIFF: Yes, Your Honor. Sorry.

14 THE COURT: That's okay. Are you ready? I don't know
15 if you're discussing something else.

16 MR. ANTCLIFF: We were discussing this.

17 THE COURT: Okay. What I want to be clear about was
18 the last question you asked. Give me just a second.

19 MS. KANOF: It starts with, Other agents in Fabens
20 have discharged firearms and not reported it.

21 THE COURT: Right. All right. And you have given the
22 Court a report that you indicated -- and so, at this time,
23 after Ms. Kanof has objected, if you would explain to the Court
24 what relevance you believe this has.

25 MR. ANTCLIFF: First, Judge, the -- on direct, he

1 testified as to the Border Patrol's policy regarding the
2 discharge of a firearm. And I guess it's Border Patrol wide,
3 although we're talking about the Fabens sector. And part of
4 the indictment deals with the failure of my client and
5 Ms. Stillinger's client to report the discharge of a firearm as
6 required under those policies.

7 I don't remember the counts in the indictment
8 specifically, but I can go back and look, if you want, that
9 deal with failure to do that.

10 I think that, during the course of this agent's
11 investigation, he learned that other agents have discharged
12 their weapons and not reported it out there. And that -- I
13 used the word common in the bench conference that we had, and
14 I -- maybe that was a bad word. But, certainly, he has
15 information that other agents, however common it may be, have
16 discharged their firearms and not reported it.

17 And, specifically, he has information that one of the
18 agents who is going to testify in this case, Mr. Juarez,
19 discharged his firearm at a snake and didn't report it.

20 And I think that's directly relevant to the charges in
21 the indictment as to our clients. And so I don't see -- I
22 think, obviously, I ought to be able to ask this agent
23 questions about that, and the policy.

24 THE COURT: Okay. And so I'm clear, what we're
25 talking about here are not shootings, or any other shootings.

1 We're talking about actual discharge of firearms and failure to
2 report the discharge.

3 MR. ANTCLIFF: This line of questioning at this time,
4 yes.

5 THE COURT: All right. And that's all I'm talking
6 about is this line of questioning at this time --

7 MR. ANTCLIFF: Right.

8 THE COURT: -- is regarding discharging firearms and
9 failure to report the discharging of firearms.

10 MR. ANTCLIFF: That's correct.

11 THE COURT: All right. And you have given me your
12 report. Do you know specifically, in the report, where that's
13 referenced?

14 MR. ANTCLIFF: Page 5, the first and second -- I guess
15 it's the second and third full paragraphs on that page.

16 THE COURT: Okay. Hold on. Let me just look at them
17 real quick before --

18 MS. KANOF: I'm sorry, Your Honor?

19 THE COURT: I'm just going to read that real quick
20 before your response.

21 MS. KANOF: Sure. Because I was going to read it into
22 the record, Your Honor.

23 THE COURT: Okay.

24 Anything else, Mr. Antcliff, before I let Ms. Kanof
25 respond?

1 MR. ANTCLIFF: This -- the indictment, Judge,
2 specifically references the duty to report the discharge of a
3 firearm, Count 10 for me, and apparently Count 9 for Mr. Ramos.

4 THE COURT: All right. Go ahead, Ms. Kanof.

5 MS. KANOF: Thank you, Your Honor. The first
6 paragraph that he makes reference to -- first of all,
7 Your Honor, the character of this evidence is not just hearsay.
8 It's hearsay on hearsay, rumor and innuendo. And it is being
9 offered for the truth of the matter asserted.

10 Oscar Juarez is going to testify. At that time, the
11 Court can make a determination as to whether or not they can
12 ask him about this. But they certainly -- they can ask him
13 about what he did.

14 But the Government would even object to them asking
15 him about what he's heard about what other agents do. Because,
16 if you look at the last line of the first paragraph that he
17 pointed to you, when asked to give names and/or specific
18 incidents of the agents shooting warning shots, Juarez stated
19 he did not know any names and he could not recall any
20 incidents.

21 And this -- this witness is not qualified. It is
22 hearsay. It's hearsay to Mr. Juarez, and it's hearsay on
23 hearsay to this witness. And it's being offered for the truth
24 of the matter asserted.

25 If they want to call a witness to say that, we can

1 talk about it then. They're allowed to put up a defense.
2 They're allowed to show the Court that this happens all the
3 time and people don't report it. But they have to give quality
4 evidence. This is not the right witness, because he cannot
5 vouch for the truth of what Oscar Juarez told him, especially
6 when Oscar backs out of it in the last sentence. When asked to
7 give names, he did not know any names and could not recall any
8 incidents.

9 With regard to the shooting of the snake, it's just
10 plain hearsay. It's not hearsay on hearsay, like the preceding
11 paragraph. It's just plain hearsay.

12 Oscar Juarez is going to testify. I will represent to
13 that to Court. At that time, if it's relevant that he shot a
14 snake and didn't report it, then the Court will admit that. I
15 don't know whether the Government will object at that time or
16 not.

17 But -- but with regard to asking the case agent, we
18 might as well not have a trial. He might as well just get up
19 there and testify as to what everybody told him and then sit
20 down. It's not prior inconsistent statement. It's not offered
21 for any purpose except for the truth of the matter asserted.

22 Oscar hasn't testified, so it's not being offered for
23 prior inconsistent statement. It's not being offered to
24 impeach. They are trying to bootstrap, so they don't have to
25 call witnesses, with inappropriate evidence.

1 Additionally, if the Court reads that paragraph, Oscar
2 Juarez doesn't say they don't report those target shootings.
3 That paragraph doesn't even say the shootings aren't reported.
4 It says nothing about reporting.

5 THE COURT: All right.

6 MS. KANOF: So they are sort of trying to get the jury
7 to infer something that's hearsay on hearsay, that isn't even
8 necessarily true, and isn't in his report.

9 THE COURT: All right. Mr. Antcliff?

10 MR. ANTCLIFF: Judge, I'm not asking him -- the
11 question was: During the course of your investigation, did you
12 learn of other firearms discharges which were not reported?

13 That's it. That was the gist of the question. I'm
14 not asking him for where he learned it, who he learned it from,
15 what specific he learned. That's the only question before the
16 Court at this time.

17 And Ms. Kanof says that he -- this agent cannot vouch
18 for the veracity of what Mr. Juarez is saying in his statement,
19 the third statement that he's given in this case to Agent
20 Sanchez. But they're sponsoring him as a witness in this case.
21 And this is Jencks material that we received yesterday, I
22 think. I think I got this yesterday.

23 These -- that question is directly relevant to two of
24 the counts in the indictment as his answer, and I would ask you
25 to allow it.

1 MS. KANOF: Your Honor, Jencks is supposed to be given
2 by law after the witnesses have testified. They aren't even
3 entitled to this statement until Oscar Juarez. But, out of the
4 goodness of the Government's heart, we gave it to them early.

5 MR. ANTCLIFF: Give me a break.

6 THE COURT: Okay. So noted.

7 Mr. Antcliff, my question to you is: Is your only
8 question about whether or not he learned of any other discharge
9 of weapons?

10 MR. ANTCLIFF: That is the question that I asked.

11 THE COURT: I know that's the question you asked. Is
12 that the extent of the examination you intend, depending on his
13 answer?

14 In other words, are we going to go into what
15 incidents, how he learned it --

16 MR. ANTCLIFF: No, I can't.

17 THE COURT: -- who he learned it --

18 MR. ANTCLIFF: I don't think I can, Judge. I think
19 that is the only question on -- that's left on that line.

20 THE COURT: All right. The Court's ruling will be you
21 will be allowed ask that question. There will be no follow-up
22 questions without approaching the bench first.

23 MR. ANTCLIFF: Understood.

24 THE COURT: All right. Anything further before we
25 take a break for the evening?

1 MR. ANTCLIFF: No, Your Honor.

2 THE COURT: All right. We will resume tomorrow
3 morning at 8:30.

4 The Court stands in recess.

5 (Transcript continues in Volume VII.)

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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